
Delaware Register of Regulations

Issue Date: February 1, 2023

Volume 26 - Issue 8, Pages 637-719

IN THIS ISSUE:

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Regulations:

Proposed

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Calendar of Events
& Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before January 15, 2023.

Cover Photo
Dover, Delaware



INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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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
March 1	February 15	4:30 p.m.
April 1	March 15	4:30 p.m.
May 1	April 15	4:30 p.m.
June 1	May 15	4:30 p.m.
July 1	June 15	4:30 p.m.
August 1	July 15	4:30 p.m.

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL**

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Section 6010(a) and (c) (7 **Del.C.** §6010(a) & (c))
7 **DE Admin. Code** 1126

ERRATA

1126 Motor Vehicle Emissions Inspection Program - Sussex County

* **Please Note:** The Department of Natural Resources and Environmental Control, Division of Air Quality, regulation, 7 **DE Admin. Code** 1126 Motor Vehicle Emissions Inspection Program was published as final in the *Delaware Register of Regulations*, 26 **DE Reg.** 598 (01/01/23). Some of the submitted amendments to subsections 1.1.2 and 1.6 were inadvertently not underlined in the *Register*.

Those subsections should have read:

1.1.2 Except as exempted in subsection 1.2, the requirements shall apply to all 1968 and later model year, light duty passenger cars and 1970 and later model year trucks up to 14,000 pounds gross vehicle weight rating registered in Sussex County. beginning on ~~xxxx/2023~~ January 11, 2023.]

1.6 Calibration and Test Procedures and Approved Equipment

1.6.1 All emissions testing for the purpose of determining compliance with emissions standards shall be performed using equipment approved by the Department.

1.6.2 Calibration: The calibration of equipment shall be in accordance with provisions established by the Division in accordance with 40 CFR 51.359.

1.6.3 Test Procedures: The vehicle emissions test shall be performed in accordance with provisions established by the Division in order to meet the requirements in 40 CFR 51.357.

The regulation was published as final in the January 2023 *Register* and is effective as stated in that publication. See 26 **DE Reg.** 598 (01/01/23).

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Section 6010(a) and (c) (7 **Del.C.** §6010(a) & (c))
7 **DE Admin. Code** 1131

ERRATA

1131 Motor Vehicle Emissions Inspection Program - Kent and New Castle Counties

* **Please Note:** The Department of Natural Resources and Environmental Control, Division of Air Quality, regulation, 7 **DE Admin. Code** 1131 Low Enhanced Inspection and Maintenance Program was published as final in the *Delaware Register of Regulations*, 26 **DE Reg.** 602 (01/01/23). A submitted amendment to Section 3.0 was inadvertently not underlined in the *Register*.

The introductory portion to Section 3.0 should have read:

3.0 **Definitions.**

The following words and terms, when used in this regulation, have the following meaning:

The regulation was published as final in the January 2023 *Register* and is effective as stated in that publication. See 26 **DE Reg.** 602 (01/01/23).

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.

DELAWARE STATE FIRE PREVENTION COMMISSION

Statutory Authority: 16 Delaware Code, Section 6604(1) (16 **Del.C.** §6604(1))
1 **DE Admin. Code** 709

PUBLIC NOTICE

709 Fire Service Standards

The Delaware State Fire Prevention Commission, pursuant to 16 **Del.C.** § 6604(1), proposes to revise Regulation 709 Fire Service Standards, by modifying the process of addressing complaints and grievances, detailing conduct that can be considered official misconduct of firefighters and fire companies, adding a process for conducting investigations of firefighter injuries, incorporating and adopting additional National Fire Prevention Association standards, and making other changes as detailed below.

The Commission will accept written comments to the proposed amendments from February 1, 2023 through March 3, 2023. Written comments should be sent to Sherry Lambertson, Executive Specialist for the Delaware Fire Prevention Commission, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, DE 19904. Written comments may also be sent by email to the following email address: fire.commission@delaware.gov.

*Please Note:

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

<https://regulations.delaware.gov/register/february2023/proposed/26 DE Reg 649RFA 02-01-23.pdf>

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

<https://regulations.delaware.gov/register/february2023/proposed/26 DE Reg 649 02-01-23.htm>

PROPOSED REGULATIONS

DEPARTMENT OF AGRICULTURE OFFICE OF THE SECRETARY

Statutory Authority: 3 Delaware Code, Chapter 12 (3 Del.C. Ch. 12)
3 DE Admin. Code 601

PUBLIC NOTICE

601 Delaware Pesticide Rules and Regulations

Summary

Pursuant to the authority granted by Title 3 chapter 12 of the Delaware Code, the Department of Agriculture proposes to amend its regulations. The purpose of the amended regulations is to ensure the Delaware Department of Agriculture remains in compliance with the United States Environmental Protection Agency (EPA) Certification of Pesticide Applicators regulations at 40 C.F.R. Part 171. Section 11 of the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA), 7 U.S.C. § 136i, requires any state that "desires to certify applicators of pesticides" to have and maintain an EPA-approved plan to certify applicators of Restricted Use Pesticides (RUPs) that meets or exceeds the federal requirements for the training and certification of such applicators. In 2017 the federal requirements for state certification plans were changed, in response to these changes DDA worked with EPA Region III representatives to make changes to our certification plan to meet these new requirements. As a result of these changes, several updates to our 601 Delaware Pesticide Rules and Regulations had to be made. Delaware's plan has been approved by EPA and the Department has until December 31st 2024 to bring all applicators into compliance.

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 February 1, 2023, 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 *Delaware Register of Regulations* website: https://regulations.delaware.gov/services/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations indicating whether these proposed regulations should be adopted, rejected or modified. Interested parties may hand deliver to the Department, any written suggestions, data, briefs or other materials at the above address. Pursuant to 29 Del.C. §10118(a), public comments must be received on or before March 3, 2023. Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Regulation

On or after March 3, 2023, 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.

Effective Date of Amendments to Regulations

If adopted by the Department of Agriculture, the amendments shall take effect ten days after being published as final in the *Delaware Register of Regulations*.

*Please Note:

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

<https://regulations.delaware.gov/register/february2023/proposed/26 DE Reg 650RFA 02-01-23.pdf>

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

<https://regulations.delaware.gov/register/february2023/proposed/26 DE Reg 650 02-01-23.htm>

OFFICE OF THE SECRETARY

Statutory Authority: 3 Delaware Code, Chapters 1, 71, and 72 (3 Del.C. Chs. 1, 71, & 72)
3 DE Admin. Code 906

PUBLIC NOTICE

906 Possession, Sale or Exhibition of Live Wild Mammals or Hybrids of Wild Mammals or Live Reptiles not Native to or Generally Found in the State of Delaware

Summary

Pursuant to the authority granted by Title 3 chapters 1, 71, and 72 of the Delaware Code, the Department of Agriculture proposes to amend its regulations. The purpose of the amended regulations is to provide clear detail regarding the authority of the Department and State Veterinarian to determine an animal species to be invasive and clarify the requirements for non-native species and animal species determined to be invasive. In 2022, there has been an alarming increase in potbellied pigs at large in the State of Delaware. Potbellied pigs are non-native to the State of Delaware and many animals have been abandoned by their owners; are not in good care; have been a nuisance for private property owners; and with the species' early reproductive capacity, can become feral quickly and may contract contagious and infectious diseases. The Department, State Veterinarian, and sister state agencies have a responsibility to mitigate and reduce the threat of infectious and contagious diseases in animals and those that may spread to humans. Given the concerns listed above, potbellied pigs have been determined to be an invasive animal species in the State of Delaware.

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 February 1, 2023, 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 *Delaware Register of Regulations* website: https://regulations.delaware.gov/services/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations indicating whether these proposed regulations should be adopted, rejected or modified. Interested parties may hand deliver to the Department, any written suggestions, data, briefs or other materials at the above address. Pursuant to 29 Del.C. §10118(a), public comments must be received on or before March 3, 2023. Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Regulation

On or after March 3, 2023, 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.

Effective Date of Amendments to Regulations

If adopted by the Department of Agriculture, the amendments shall take effect ten days after being published as final in the *Delaware Register of Regulations*.

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

<https://regulations.delaware.gov/register/february2023/proposed/26 DE Reg 651RFA 02-01-23.pdf>

906 Possession, Sale or Exhibition of ~~Live Wild Mammals or Hybrids of Wild Mammals or Live Reptiles not Native to or Generally Found in the State of Delaware~~ Non-Native and Invasive Animal Species

May 16, 1994

1.0 Scope and Authority

These regulations govern the possession, sale and exhibition of ~~live wild mammals or hybrids of wild mammals or live reptiles, not native to or generally found~~ exotic animal species determined to be invasive in the State of Delaware. These regulations are promulgated pursuant to the authority granted by 3 **Del.C.** Ch. 72. The State Veterinarian or ~~his or her~~ a designee of the State Veterinarian or the Department shall have the authority to administer these Rules and Regulations and shall be solely responsible for making the determinations required hereunder. If future situations warrant, these regulations may be amended.

2.0 Definitions

The following terms when used in these Rules and Regulations shall have the following meanings:

~~"Carnivores"~~ means ~~flesh eating mammals which possess teeth and claws adapted for attacking and devouring their prey.~~

~~"Department"~~ means The Delaware Department of Agriculture.

~~"Exotic"~~ means a live wild mammal, hybrid of a wild mammal, and a live reptile not native to or generally found in Delaware as defined in 3 **DE Admin. Code** 903, Section 3.0 and 7 **DE Admin. Code** 3900, Section 23.0. An exotic animal is ecologically foreign to Delaware, but allowed for possession, sale, and exhibition if a permit has been issued by the Department.

~~"Herbivore"~~ means ~~those mammals feeding exclusively on vegetable matter.~~

~~"Hybrid of a Wild Mammal"~~ means a mammal whose parents are different varieties of the same species or belong to different but closely allied species, one parent being a wild mammal not native to or generally found in Delaware and the other parent being a domestic mammal native to or generally found in Delaware.

~~"Invasive animal species"~~ or ~~"invasive animal"~~ means ~~those species that are not native to or generally found in Delaware that as determined by the State Veterinarian become overpopulated and cause harm to the environment, adversely affecting habitats, bioregions, or causing ecological, environmental, or economic damage.~~

~~"Not Native to or Generally Found in Delaware"~~ means ~~those species which according to the Delaware Department of Natural Resources and Environmental Control, Division of Fish and Wildlife are not native to Delaware.~~

~~"Omnivores"~~ means ~~that group of animals which eat any sort of food, especially both animal and vegetable in origin.~~

~~"Primates"~~ means the highest order of mammals including monkeys and lemurs.

~~"Reptile"~~ means ~~any cold blooded vertebrate of the class Reptilia including turtles, lizards, snakes, crocodilians and the tuatara.~~

~~"Subject Creatures"~~ means ~~live wild mammals or hybrids of wild mammals or live reptiles not native to or generally found in Delaware which are not specifically exempted by these Rules and Regulations from the requirements of these Rules and Regulations and Chapter 72 of Title 3 of the Delaware Code.~~

3.0 Requirements for Obtaining a Permit

3.1 The following requirements must be met before the Department will issue a permit to possess, sell or exhibit a subject creature:

3.1.1 Enclosure Requirements

- ~~3.1.1.1 There must be two enclosures to house a subject creature, a primary enclosure and a secondary enclosure. Fastening or locking devices shall be required on both the primary and the secondary enclosures and must be tamper proof from the general public.~~
- ~~3.1.1.2 The primary enclosure shall consist of a pen, cage or other enclosure where the subject creature will be kept, and must be of such construction that it cannot be destroyed by or escaped from by the subject creature.~~
- ~~3.1.1.3 The secondary enclosure must be of a type sufficient to prevent the subject creature from escaping from the property of the custodian of the subject creature should the subject creature escape from its primary enclosure. The secondary enclosure shall be of a type sufficient to prevent bodily contact between members of the public and the subject creature.~~
- ~~3.1.1.4 If the subject creature is a reptile, the requirement for a secondary enclosure may be waived if, in the opinion of the State Veterinarian or his or her designee, the primary enclosure provides adequate protection for the general public.~~
- ~~3.1.1.5 If the subject creature is removed from the primary and/or secondary enclosures for any reason, it will be the responsibility of the owner/caretaker to make every effort to insure against the escape of the creature.~~

- ~~3.1.1.5.1 If the subject creature is out of the enclosures for the purpose of exercise, it will be the responsibility of the owner/caretaker to have the creature restrained by such a device that the creature will be under the strict control of the owner/caretaker at all times. Under strict control of the owner/caretaker shall be deemed to mean that the owner/caretaker will have the creature restrained to such a degree as to prevent its attacking humans or other animals that may come within its close proximity.~~

- ~~3.1.1.5.2 If the subject creature is to be moved from one location to another for any reason, the creature shall be transported in such a cage or other transportation device that will be strong enough to preclude its escape while in transport.~~

3.2 Requirements for the Treatment of Subject Creatures

- ~~3.2.1 The subject creature or creatures must be receiving proper care, humane treatment and veterinary treatment, if required. The State Veterinarian may consult with the local Society for the Protection at Cruelty to Animals (the "S. P.C.A. ") to enforce the provisions of this rule.~~

3.3 Prohibition on Public Nuisance

- ~~3.3.1 The subject creature must not be a public nuisance. A nuisance will be considered as including, but not limited to, a subject creature which creates excessive odors or noise, displays obnoxious behavior or causes justifiable fear.~~

3.4 Inspection requirements

- ~~3.4.1 Prior to the granting of a permit under this section, a final inspection of the premises where the subject creature or creatures are to be housed shall be completed by department personnel to ensure that the requirements of these Rules and Regulations are being met by the applicant. The applicant must schedule such an inspection with the Department. Nothing contained herein shall be construed to prohibit the Department's personnel from reinspecting the applicant's premises at any time.~~

3.0 Invasive Animal Species

- 3.1 The Department and State Veterinarian oversee exotic animal species in the State of Delaware and have the authority to determine whether an exotic animal species is invasive. If an animal species is determined to be invasive, the sale, trade, breeding, import, barter, gifting, release into the wild, and auction of the animal species is prohibited.

- 3.2 The State Veterinarian may determine that an animal species is invasive based on the potential of the animal species to become feral, and if that animal species is not native to or generally found in the State of Delaware and is at-large.

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- 3.3 The Department will not issue a permit to possess, breed, sell, or exhibit an animal species that is determined to be invasive.
- 3.4 The State Veterinarian or the Department will issue a public notice indicating that an animal species is determined to be invasive. An owner or caretaker that possesses, breeds, sells, or exhibits an animal species, determined to be invasive, prior to the date of the public notice is required to:
- 3.4.1 Tag the animal with a visible form of identification and register the device with the Department.
- 3.4.2 Cease breeding or other activity that increases the count of the animal species that is determined to be invasive.
- 3.4.3 Provide adequate housing and secure fencing such that the invasive animal species cannot escape.
- 3.4.4 Report within 12 hours to the Department in-person or by telephone if the animal is at-large.
- 3.4.5 House male and female animals, capable of reproducing, separately to ensure that breeding does not occur.
- 3.4.6 Obtain an Invasive Animal Permit from the Department.
- 3.4.7 Allow the Department, State Veterinarian, or duly authorized agent access to the premises where the animal species is being held to assess compliance with these Rules and Regulations, and to examine the welfare of the animal species in the event of or threat of a contagious or infectious disease.

4.0 Types of Permits

- ~~4.1 There shall be four types of permits which may be issued by the Department: 1) an individual permit; 2) a class permit; 3) breeder permit; or 4) exhibition permit.~~
- ~~4.2 Individual Permits~~
- ~~4.2.1 When subject creatures are kept as pets, the custodian of the subject creature must apply to the Department on forms supplied by the Department for an individual permit for each subject creature so kept. Individual permits granted by the Department shall be valid for the life of the subject creature, provided, however, that said permit or permits shall expire when, the custodian transfers possession of the subject creature to another person. Any natural addition (born from the animals already permitted) will require a permit when reaching the age of three (3) months if continued to be kept on original premise.~~
- ~~4.3 Class Permits~~
- ~~4.3.1 Covers all animals. Animals are a business. Owner must have a business license. When subject creatures are kept for resale or exhibit or for medical or psychological research, the custodian of the subject creature or creatures shall apply to the Department on forms provided by the Department for a class permit for each class of subject creatures so kept.~~
- ~~4.4 Breeder Permits~~
- ~~4.4.1 Hobbyist; covers all animals, breeds animals as a hobby for personal enjoyment.~~
- ~~4.5 Exhibition Permits~~
- ~~4.5.1 Covers all animals use for educational displays and presentations. Cages and containers must be secure so there is no chance of escape during exhibition and transport.~~
- ~~4.5.2 Applicants may be granted permits for the following. Classes of subject creatures: (1) Reptiles; (2) Primates; (3) Herbivores; (4) Carnivores; and (5) Omnivores.~~

4.0 Species Declared as Invasive Animal Species

- 4.1 Potbellied pigs
- 4.2 Feral swine of any kind

5.0 Requirements for Permits

- 5.1 An owner or caretaker of an exotic animal species must obtain an Exotic Animal Permit from the Delaware Department of Agriculture for any animal species not determined to be invasive pursuant to this regulation and not determined to be exempt pursuant to 3 DE Admin. Code 903. The State Veterinarian will not issue an Exotic Animal Permit for an animal species that is determined to be invasive.
- 5.2 If an owner or caretaker of an animal species that has been determined to be invasive has already obtained an Exotic Animal Permit for that animal, the owner or caretaker must obtain an Invasive Animal Permit. The Exotic Animal Permit will become void.
- 5.3 The State Veterinarian may inspect the premises where an invasive animal species is being held. This includes premises for which an owner or caretaker has obtained an Exotic Animal Permit for an animal, prior to that animal species being determined to be invasive.

~~5-0~~ 6.0 Refusal or Cancellation of a Permit

- ~~5-1~~ 6.1 ~~The State Veterinarian may refuse to grant a permit under these Rules and Regulations, or may cancel a permit issued under these Rules and Regulations, 3 DE Admin. Code 903 if the applicant or permit holder is not in compliance with these Rules and Regulations this regulation or 3 Del.C. Ch. 72.~~
- 6.2 If the State Veterinarian proposes to cancel a permit already issued, the Department will notify the permit holder of the intended action.
- 5.2 Notice and Informal Hearing
 - ~~5-2-1~~ ~~Whenever the State Veterinarian proposes to refuse to issue a permit, or to cancel a permit already issued, the Department shall first give written notice to the applicant or permit holder of the intended action and the reasons therefore. The notice shall inform the applicant or permit holder that he or she has ten (10) days from the date of the notice to request a hearing before the State Veterinarian or his or her designee. If no timely request for a hearing is received by the Department, the State Veterinarian's decision shall be final. The request for a hearing must be in writing and received by the Department within ten (10) days of the date of the notice to such person. The hearing shall be informal, and the technical rules of evidence shall not apply. The hearing shall be scheduled by the Department as soon thereafter as possible, but in no event more than ten (10) days after receipt of the request for the hearing, unless the State Veterinarian in his or her sound discretion finds that the public health, safety or welfare will not be jeopardized by a later hearing date. The hearing shall take place at a location designated by the State Veterinarian.~~
 - 5-2-2 The hearing shall be before the State Veterinarian or his or her designee. The purpose of the hearing will be to determine whether the person requesting the hearing meets all of the requirements for obtaining or retaining a permit under these Rules and Regulations and 3 Del.C. Ch. 72. The hearing shall be recorded. The person requesting the hearing has the right to present evidence on his behalf, to rebut evidence against him or her and to be represented by Counsel. The hearing officer shall render his or her decision in writing within ten (10) calendar days of the date of the hearing and provide a copy of said decision to the person requesting the hearing. The hearing officer's decision shall state the reasons why the permit was refused or canceled, and this decision shall be final.

~~6-0~~ 7.0 Notification of Transfer or Escape

- 6-1 Notification of Transfer
 - ~~6-1-1~~ 7.1 Prior to any change of possession or relocation of a subject creature for any reason whatsoever; the transferor or person relocating a subject creature an invasive animal species shall notify the Department in writing on forms provided by the Department of such transfer or relocation. No transfer of possession or relocation of a subject creature an invasive animal species may occur unless and until the transferee or the person relocating a subject creature accepting the relocated invasive animal applies for and is granted a new permit by the Department as herein provided in

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this regulation or receives approval from the State Veterinarian to relocate such invasive animal across state lines.

6.2 Notification of Escape

6.2.4 ~~7.2~~ Within ~~twenty-four~~ 12 hours of the escape of any ~~subject creature or creatures~~ invasive animal species from the custody of its custodian, ~~said the~~ custodian shall notify the Department, by phone or in-person, of ~~such the~~ escape, and provide reasonable assistance and cooperation to the Department to recapture ~~said subject creature or creatures~~ the invasive animal species.

7.0 Failure to Obtain Proper Permit

7.1 ~~When the Department has reason to believe that a subject creature is being kept by a person without a proper permit issued pursuant to these Rules and Regulations, the Department shall notify such person of such violation in writing. Such person shall have ten (10) calendar days from the date of this notice to obtain a proper permit pursuant to these Rules and Regulations. At the discretion of the State Veterinarian and for good cause shown, upon written request of the person, the State Veterinarian may grant an additional ten (10) day extension to such person if, in the State Veterinarian's sound discretion, such extension will not endanger the public health, safety and welfare. The lack of money or resources needed to come into compliance with these Rules and Regulations and 3 Del.C. Ch. 72 shall not be good cause for an extension of this Rule.~~

7.2 Informal Hearings

7.2.1 ~~If a person notified pursuant to this Section believes that a creature in his or her custody is not a creature subject to these Rules and Regulations or 3 Del.C. Ch. 72, such person may request a hearing before the State Veterinarian. Such request must be in writing and received by the Department within ten (10) days of the date of the notice to the person of such violation. The hearing shall be informal, and the technical rules of evidence shall not apply. The hearing shall be scheduled by the Department as soon thereafter as possible, but in no event more than ten (10) days after receipt of the request for the hearing unless the State Veterinarian in his or her sound discretion finds that the public health, safety and welfare will not be jeopardized by a later hearing date. The hearing shall take place at a location designated by the State Veterinarian.~~

7.2.2 ~~The hearing, shall be before the State Veterinarian or his or her designee. The purpose of the hearing will be to determine whether or not the person notified has custody of a creature subject to these Rules and Regulations and 3 Del.C. Ch. 72 without the requested permit. The hearing shall be recorded. The person requiring the hearing has the right to present evidence on his or her behalf, to rebut evidence against him or her, and to be represented by counsel. The hearing officer shall render his or her decision in writing within ten (10) calendar days of the date of the hearing and provide a copy of said decision to the person requesting the hearing. The hearing officer's decision shall state what, if any actions must be taken on the part of the custodian of the creature to comply with these Rules and Regulations and 3 Del.C. Ch. 72, and the time within which such action must be taken.~~

7.3 Disposition of Subject Creatures Kept in Violation of These Rules and Regulations.

7.3.1 ~~If a person fails to comply with these Rules and Regulations or 3 Del.C. Ch. 72 within the time allowed by the State Veterinarian or his or her designee, and fails to place the subject creature or creatures in a holding facility approved by the State Veterinarian, a list of which facilities will be maintained and made available by the Department, the State Veterinarian may order the confiscation and euthanization of the subject creature or creatures kept in violation of these Rules and Regulations or 3 Del.C. Ch. 72 without further notice to the custodian of said subject creature or creatures or any other person.~~

8.0 Violations

8.1 If a permitted invasive animal species is found at-large without visible identification, and the Department is not able to contact the owner or caretaker, the Department or other State or federal agents may euthanize the animal immediately on-site.

- 8.2 If the Department has reason to believe that an invasive animal species is being kept by a person without an Invasive Animal Permit, the Department shall notify the person of such violation. The lack of money or resources needed to come into compliance with this regulation and 3 Del.C. Ch. 72 shall not be good cause for an extension of this regulation.
- 8.3 If an owner or caretaker fails to comply with this regulation, the State Veterinarian may order the seizure and euthanization of the permitted invasive animal species kept in violation of this regulation without further notice to the owner or caretaker.
- 8.4 If an individual or retail establishment is found selling or otherwise making available to members of the public an animal species determined to be invasive, the establishment will be found in violation of this regulation. The State Veterinarian may order the seizure and euthanization of any invasive animal species found on the premises of the establishment.

8-0 9.0 Emergency Action

Nothing in ~~these Rules and Regulations~~ this regulation shall be construed to prohibit the Department from confiscating and destroying any ~~subject creature~~ invasive animal species without notice or a hearing when in the opinion of the State ~~veterinarian or his or her sound discretion~~ Veterinarian such emergency action is required to protect the public health, safety or welfare.

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(18) (14 Del.C. §122(b)(18))
14 DE Admin. Code 915

PUBLIC NOTICE

Educational Impact Analysis Pursuant to 14 Del.C. §122(d)

915 James H. Groves High School

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §122(b)(18), the Delaware Department of Education ("Department") developed amendments to 14 DE Admin. Code 915 James H. Groves High School. The regulation provides for the operation of James H. Groves High School, an adult education high school. The proposed amendments in this regulation include adding a defined term in Section 1.0, replacing "State Director" with "Director of Adult and Prison Education Resources" throughout the regulation, and striking the standardized assessment requirement from subsection 2.1.1.1.2. In addition, the proposed amendments include nonsubstantive changes consistent with the Delaware Administrative Code Drafting and Style Manual.

The proposed amendments were published in the *Register of Regulations* on November 1, 2022. The Department received one written submittal concerning the proposed amendments. Benjamin Schrader, Chairperson of the State Council for Persons with Disabilities ("SCPD") commented that the SCPD recommends that the Department include "education" between "alternative" and "program" in the definition of "In School Credit Program" and that the Department not remove the requirement the standard assessment requirement from subsection 2.1.1.1.2 or identify other ways of meeting the secondary skill level. In addition, Mr. Schrader commented that SCPD recommends there be additional language that identifies Groves as providing education to incarcerated students and that those students are otherwise exempt from the admission criteria; the Department reconsider whether expelled students can enroll in Groves without a waiver in subsection 2.3; and reconsider amending subsection 4.2 regarding the absence policy.

As a result of SCPD's written submittal, the Department decided to add "education" to the definition of "In

School Credit Program" in Section 1.0 and to not strike the standardized assessment requirement from subsection 2.1.1.1.2 and add additional language to the subsection. Additionally, the Department decided to strike the requirement that provision cannot be made for excused absences from subsection 4.2 because each Groves site has its own attendance policy and the requirement is not necessary. The Department decided not to make any further changes to the regulation that was published on November 1, 2022 as a result of SCPD's written submittal.

In accordance with 29 **Del.C.** §10118(c), the additional changes in Section 1.0, subsection 2.1.1.1.2, and subsection 4.2 are substantive changes. Therefore, the additional changes, together with the amendments that were published on November 1, 2022, are included in this proposed regulation.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before March 6, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The regulation addresses the operation of James H. Groves High School, an adult education high school. The proposed amendments to the regulation are not designed to help improve student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The proposed amendments are not designed to help ensure that all students receive an equitable education.

3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The proposed amendments are not designed to help ensure students' health and safety is protected.

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

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The proposed amendments do 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 proposed amendments do 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 amended regulation does not change the decision-making authority and accountability for addressing the subject to be regulated. By statute (14 **Del.C.** §121(b)(18)), the Department is authorized to prescribe a regulation that provides for the operation of adult education and family literacy programs. Such regulation is proposed by the Secretary of Education and is subject to the approval of the State Board of Education.

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

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

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

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

<https://regulations.delaware.gov/register/february2023/proposed/26 DE Reg 657RFA 02-01-23.pdf>

915 James H. Groves High School

1.0 Definitions

The following words and terms, when used in this regulation, have the following meaning:

“**Certificate of Educational Attainment**” or “**CEA3**” means that the holder of the certificate has passed the designated assessments with the required scores in each sub test area and has written an approved Groves content area research paper.

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

“**Groves Leadership Team**” means an advisory group composed of the Groves Center administrators, the ~~State Director of Adult Education~~ Director of Adult and Prison Education Resources, a representative from the Groves student association and prison education teacher supervisors. The Associate Secretary, Student Supports shall be an ex officio member of the leadership team.

“**In School Credit Program**” means an alternative education program operated by the James H. Groves High School that provides an opportunity for students who are age 14 or older and enrolled in their local day school to attain credits needed to fulfill high school graduation requirements.

“**James H Groves Center**” or “**Center**” or “**Centers**” means the specific location in a school district, agency or organization where instruction is provided for the James H. Groves High School program.

“**James H. Groves High School**” or “**Groves**” means an adult high school established by the State of Delaware to provide the opportunity for adults and out of school youth to earn and obtain a high school diploma. The James H. Groves High School is a single school with multiple centers established and operated through a proposal application process. The James H. Groves High School is administered by the Delaware Department of Education.

“**Sex Offender**” means an offender convicted of offenses specified in 11 **Del.C.** §4121(a)(4).

2.0 Admission Criteria and Process

2.1 The following individuals may enroll in the James H. Groves High School:

2.1.1 An adult 18 years of age and older, who resides in ~~the State of~~ Delaware or is a resident of another state and is currently employed in Delaware and has been so employed for a minimum of 6 months prior to enrollment.

2.1.1.1 The applicant shall:

2.1.1.1.1 Submit an application on forms approved by the Department;

2.1.1.1.2 Qualify as meeting secondary level skills, as determined by the Department, on a standardized assessment or a review of high school credits attained.

2.1.2 Out of school youth 16 to 17 years of age, who have officially withdrawn from a day school and who have not been expelled or have an expulsion pending shall enroll under a waiver process.

2.1.2.1 To apply for an age waiver, the prospective student shall submit to the Groves Center administrator the ~~following-~~ following information:

2.1.2.1.1 A letter of request for admission with the rationale for granting a waiver;

2.1.2.1.2 A letter of recommendation from the high school of record;

2.1.2.1.3 Proof of exit from high school; and

2.1.2.1.4 Proof of age.

2.1.2.2 The prospective student seeking the age waiver shall be subject to the requirements in subsection 2.1.1.1.

2.1.2.3 The decision regarding admission shall be made by the Center administrator.

2.1.2.4 The names of all students receiving an age waiver shall be forwarded within 5 working days of approval by the Center administrator or designee to the Department’s Director of Adult and Prison Education Resources for reporting purposes.

PROPOSED REGULATIONS

- 2.2 High school students who are at least 14 years of age, have completed at least one semester of high school and enrolled for at least 1 credit in their high school of record may earn an unrestricted number of credits in the Groves In School Credit Program and still graduate from their high school of record.
- 2.2.1 To enroll in ~~this program~~ the In School Credit Program, students shall have the permission of their high school of record, their parent, guardian or relative caregiver and the Groves High School principal or designee.
- 2.2.2 All students enrolled in the Groves In School Credit Program shall be included in the September 30th unit count of their high school of record.
- 2.2.3 Students who withdraw from their high school of record and transfer to the Groves High School shall no longer be considered a student in the Groves In School Credit Program and shall be assessed the materials fee for that semester.
- 2.2.4 Students in the Groves In School Credit ~~program~~ Program shall not receive instruction during the school's regularly scheduled school day.
- 2.3 Individuals expelled or pending expulsion from a local school district or charter school shall not be enrolled in Groves High School during the period of expulsion or pending expulsion without a waiver from the Department. Individuals who enroll without a waiver shall lose credits earned during the expulsion period.
- 2.3.1 An applicant for an expulsion or pending expulsion waiver shall meet the following requirements:
- 2.3.1.1 Be 16 or 17 years of age;
- 2.3.1.2 Intend to graduate from the James H. Groves High School;
- 2.3.1.3 Be expelled or be pending expulsion for a nonviolent reason and not be a security threat;
- 2.3.1.4 Submit a letter of recommendation signed by the principal or designee of their high school of record;
- 2.3.1.5 Meet with the Department's Director of Adult and Prison Education Resources or designee to orally present their case for entry into Groves. The decision regarding admission shall be made by the Director or designee; and
- 2.3.1.6 Meet the requirements in subsection 2.1.1.1.
- 2.4 An adult 18 years of age and older who is a registered Sex Offender and who resides in ~~the State of~~ Delaware or is a resident of another state and is currently employed in Delaware and has been continuously employed in Delaware for a minimum of 6 months prior to enrollment shall:
- 2.4.1 Present a letter to the Groves Center administrator from a licensed counselor, psychologist or physician including a summary of past behavior and a statement that the individual does not pose a safety threat to students or staff. The letter shall be dated within 2 months prior to enrollment in the Groves Center.
- 2.4.2 An adult 18 years of age and older who is a registered Sex Offender may be enrolled in the Diploma-At-A-Distance without the letter described in subsection 2.4.1.
- 2.4.3 The names of all students that are registered Sex Offenders and enrolled in the James H. Groves Adult High School shall be reported to the ~~State Director of~~ Adult and Prison Education Resources within 5 working days.

3.0 Acceptable Methods for Offering Units of Credit and Granting Units of Credit for the James H. Groves High School Diploma

- 3.1 The Groves School is authorized to offer credit for the following methods or any combination of the following methods of accruing credit that were used prior to enrollment as well as while enrolled in the Groves program:

(Break in Continuity Within Section)

- 3.1.15 The Certificate of Educational Attainment (CEA 3) that may provide up to 10 units of credit toward graduation.

4.0 Attendance, Grading and Graduation Criteria

- 4.1 A graduation plan shall be developed for each student enrolled in the James H. Groves High School by the Groves Administrator or the student's designee.
- 4.2 Students enrolled in James H. Groves High School courses which have an attendance requirement, shall attend a minimum of 85% of the course hours to receive a unit of credit. ~~No provision is made for excused absences.~~
- 4.3 The grading system for the James H. Groves High School shall be based on a 10 point numeric scale. An alpha conversion chart to determine level of performance shall be:
 - 4.3.1 Students receiving a grade of "A" (90 to 100) demonstrate superior understanding of the content and have demonstrated knowledge and competence at the highest level.
 - 4.3.2 Students receiving a grade of "B" (80-89) demonstrate better than average understanding of the content and have demonstrated above average knowledge and competence.
 - 4.3.3 Students receiving a grade of "C" (70-79) demonstrate average understanding of the content and have demonstrated knowledge and competence.
 - 4.3.4 Students receiving a grade of "D" (60-69) demonstrate satisfactory understanding of the content and have demonstrated knowledge and competence.
 - 4.3.5 No credit is awarded for grades less than 60.
- 4.4 Groves High School students shall be eligible to receive a State of Delaware diploma when they have met the State graduation requirements, pursuant to 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas, in effect at the time of their graduation, except as noted below:
 - 4.4.1 Physical education is waived in lieu of another credit.
 - 4.4.2 All course content shall be based on the State Content Standards. Notwithstanding the above, students enrolled in the James H. Groves High School shall successfully complete and receive credit for a minimum of 1 Groves course to receive a State of Delaware diploma.
 - 4.4.3 The James H. Groves High School must offer at least 1 computer science course pursuant to 14 **Del.C.** §4139 and 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas.

(Break in Continuity of Sections)

7.0 Establishing a Center

- 7.1 A school district, agency or organization may seek to establish a James H. Groves Center for service delivery by following the process outlined below. No district, agency or organization shall have more than 1 Groves Center.

(Break in Continuity Within Section)

- 7.1.4 The Groves Leadership Team shall make a recommendation for Center status through the Department's Director ~~for Adult Education~~ of Adult and Prison Education Resources to the Secretary of Education.
- 7.1.5 Approval or denial shall be communicated to the district, agency or organization by the Department within 60 days of the Center status application.
- 7.1.6 If approved, the Department shall apply for Center funding in the upcoming State budget cycle. If State funding is allocated for the additional Center, full Center status shall be given to the program provided the annual performance report and State Evaluation Report are satisfactory.
- 7.1.7 Appeal Process: In the event Center status is denied by the Department a hearing may be requested by the district, agency or organization. The hearing shall be conducted by the Secretary of Education or the Secretary's designee.

(Break in Continuity of Sections)

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

<https://regulations.delaware.gov/register/february2023/proposed/26 DE Reg 657 02-01-23.htm>

PROPOSED REGULATIONS

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(8), 181(15), 183, 3402(c), 3440, 3441, and 3442 (14 Del.C. §122(b)(8), 181(15), 183, 3402(c), 3440, 3441, & 3442)

PUBLIC NOTICE

Educational Impact Analysis Pursuant to 14 Del.C. §122(d)

1219 B. Bradford Barnes Memorial Scholarship

A. TYPE OF REGULATORY ACTION REQUESTED

Adoption of a New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§ 122(b)(8), 181(15), 183, 3402(c), 3440, 3441, and 3442, the Delaware Department of Education ("Department"), through the Delaware Higher Education Office ("DHEO"), proposes the adoption of 14 DE Admin. Code 1219 B. Bradford Barnes Memorial Scholarship. The B. Bradford Barnes Memorial Scholarship is a student financial assistance for higher education program that is administered by DHEO. The proposed regulation provides the eligibility criteria, application requirements, and award process for the B. Bradford Barnes Memorial Scholarship. The proposed regulation is consistent with House Bill 480 of the 151st General Assembly, which was signed into law on August 25, 2022.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before March 6, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation concerns a student financial assistance for higher education program and is not designed to help improve student achievement as measured against state achievement standards.
2. Will the new regulation help ensure that all students receive an equitable education? The new regulation concerns a student financial assistance for higher education program and is not designed to help ensure that all students receive an equitable education.
3. Will the new regulation help to ensure all students' health and safety are adequately protected? The new regulation concerns a student financial assistance for higher education program and is not designed to help to ensure all students' health and safety are adequately protected.
4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation concerns a student financial assistance for higher education program and is not designed to help to ensure that all students' legal rights are respected.
5. Will the new regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The new regulation concerns a student financial assistance for higher education program and does not change authority and flexibility of decision makers at the local board and school level.
6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation concerns a student financial assistance for higher education program and 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 Department, through DHEO, implements the regulations promulgated and adopted relating to student financial assistance for higher education programs that are administered by DHEO.
8. Will the new regulation be consistent with and not an impediment to the implementation of other state

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

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

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no expected cost to the state of complying with this new regulation. The regulation does not apply to local school boards.

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

<https://regulations.delaware.gov/register/february2023/proposed/26 DE Reg 662RFA 02-01-23.pdf>

1219 B. Bradford Barnes Memorial Scholarship

1.0 Purpose

The purpose of this regulation is to provide the eligibility criteria, application requirements, and award process for the B. Bradford Barnes Memorial Scholarship pursuant to 14 Del.C. §3442.

2.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning:

"Award" means a scholarship awarded under the B. Bradford Barnes Memorial Scholarship Program.

"Delaware Higher Education Office" or "DHEO" means the Department of Education's office which administers specific programs related to higher education, including, but not limited to, student financial assistance programs.

"Free Application for Federal Student Aid" or "FAFSA" means the data supplied in connection with the federal government's application for federal financial aid which DHEO uses to determine an applicant's eligibility for an Award.

"Full-Time Student" means a student enrolled in a minimum of college credit hours as required by the student's college or university for full-time status. Generally, for an undergraduate program, this is a minimum of 12 credit hours per term.

"Student Account Access Site" means the webpage on the DHEO's website where students can access scholarship opportunities.

3.0 Eligibility

3.1 In order to be eligible for an Award under the B. Bradford Barnes Scholarship Program, an applicant shall meet the requirements of subsections 3.1.1 through 3.1.3.

3.1.1 The applicant shall be a graduating high school senior who received an offer of admission from the University of Delaware.

3.1.2 The applicant will enroll as a first-time, Full-Time undergraduate student in the University of Delaware for the following school year.

3.1.3 The applicant must meet the definition of residency as defined in 14 Del.C. §3402(f).

4.0 Application Requirements

4.1 The application acceptance and submission period for the B. Bradford Barnes Memorial Scholarship shall be posted on the DHEO's website by December 1 of each calendar year.

4.1.1 Applications shall not be accepted outside of the posted application acceptance period under any circumstances.

PROPOSED REGULATIONS

4.1.2 Incomplete applications shall not be accepted or processed.

4.2 In order for an application to be considered complete, an applicant shall fulfill all of the requirements in subsections 4.2.1 and 4.2.2.

4.2.1 The applicant shall complete an online application through the Student Account Access Site by the last date of the application acceptance period.

4.2.1.1 Applicants may update their enrollment information on the Student Account Access Site through the last date of the application acceptance period.

4.2.1.2 A first time applicant must establish an account and provide the applicant's valid email address and permanent mailing address before being permitted to submit the information required in subsection 4.2 of this regulation.

4.2.2 The applicant shall complete the FAFSA for the school year in which the scholarship is sought by the application deadline.

5.0 Awards

5.1 One scholarship will be awarded each year to an applicant who meets the requirements of Section 3.0 of this regulation based on the applicant's academic achievement, community service, participation in extracurricular activities, and promise of academic success in college. If several applicants are determined to be equally qualified for an Award, DHEO will consider their financial need.

5.2 To determine an applicant's financial need for the purpose of the B. Bradford Barnes Memorial Scholarship, DHEO will consider the applicant's EFC; the expense of attending the University of Delaware; and the applicant's eligibility for Pell grants and other federal, state, or private grant assistance. For the purpose of this regulation, EFC means the Expected Family Contribution, which is the number that is calculated using the financial information an applicant provides on the applicant's Free Application for Federal Student Aid (FAFSA) to determine the applicant's eligibility for federal student aid.

5.3 An Award shall be used for, and not in excess of, tuition, required fees, room, board, and books at the University of Delaware.

5.4 An Award is renewable within the limits of the appropriations for the B. Bradford Barnes Memorial Scholarship Program.

5.5 To be eligible to renew an Award, a student shall update the student's enrollment information on the Student Account Access Site; meet the academic progress standards set by DHEO and communicated in writing to the student at the time the initial Award is granted; and continue to be enrolled full-time at the University of Delaware, successfully completing coursework according to the standards of the University of Delaware, and eligible to continue to receive financial aid.

5.6 A student shall not receive more than 4 annual Awards.

6.0 Award Payment

6.1 Award payments shall be disbursed directly to the University of Delaware only.

6.2 If a student withdraws from school or otherwise does not qualify for full payment at the end of the add/drop period for a semester, DHEO will apply the refund policies set forth in 14 **Del.C.** §3402(k). For the purpose of this regulation, semester means a half-year term in a school or college, typically lasting 15 to 18 weeks.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(8), 181(15), 183, 3402(c), 3440, 3441, and 3443 (14 Del.C. §122(b)(8), 181(15), 183, 3402(c), 3440, 3441, & 3443)

PUBLIC NOTICE

Educational Impact Analysis Pursuant to 14 Del.C. §122(d)

1220 Herman M. Holloway Memorial Scholarship

A. TYPE OF REGULATORY ACTION REQUESTED

Adoption of a New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§ 122(b)(8), 181(15), 183, 3402(c), 3440, 3441, and 3443, the Delaware Department of Education ("Department"), through the Delaware Higher Education Office ("DHEO"), proposes the adoption of 14 DE Admin. Code 1220 Herman M. Holloway Memorial Scholarship. The Herman M. Holloway Memorial Scholarship is a student financial assistance for higher education program that is administered by DHEO. The proposed regulation provides the eligibility criteria, application requirements, and award process for the Herman M. Holloway Memorial Scholarship. The proposed regulation is consistent with House Bill 480 of the 151st General Assembly, which was signed into law on August 25, 2022. Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before March 6, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation concerns a student financial assistance for higher education program and is not designed to help improve student achievement as measured against state achievement standards.
2. Will the new regulation help ensure that all students receive an equitable education? The new regulation concerns a student financial assistance for higher education program and is not designed to help ensure that all students receive an equitable education.
3. Will the new regulation help to ensure all students' health and safety are adequately protected? The new regulation concerns a student financial assistance for higher education program and is not designed to help to ensure all students' health and safety are adequately protected.
4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation concerns a student financial assistance for higher education program and is not designed to help to ensure that all students' legal rights are respected.
5. Will the new regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The new regulation concerns a student financial assistance for higher education program and does not change authority and flexibility of decision makers at the local board and school level.
6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation concerns a student financial assistance for higher education program and 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 Department, through DHEO, implements the regulations promulgated and adopted relating to student financial assistance for higher education programs that are administered by DHEO.
8. Will the new regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic

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

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

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no expected cost to the state of complying with this new regulation. The regulation does not apply to local school boards.

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

<https://regulations.delaware.gov/register/february2023/proposed/26 DE Reg 665RFA 02-01-23.pdf>

1220 Herman M. Holloway Memorial Scholarship

1.0 Purpose

The purpose of this regulation is to provide the eligibility criteria, application requirements, and award process for the Herman M. Holloway Memorial Scholarship pursuant to 14 **Del.C.** §3443.

2.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning:

"Award" means a scholarship awarded under the Herman M. Holloway Memorial Scholarship Program.

"Delaware Higher Education Office" or **"DHEO"** means the Department of Education's office which administers specific programs related to higher education, including, but not limited to, student financial assistance programs.

"Free Application for Federal Student Aid" or **"FAFSA"** means the data supplied in connection with the federal government's application for federal financial aid which DHEO uses to determine an applicant's eligibility for an Award.

"Full-Time Student" means a student enrolled in a minimum of college credit hours as required by the student's college or university for full-time status. Generally, for an undergraduate program, this is a minimum of 12 credit hours per term.

"Student Account Access Site" means the webpage on the DHEO's website where students can access scholarship opportunities.

3.0 Eligibility

3.1 In order to be eligible for an Award under the Herman M. Holloway Memorial Scholarship Program, an applicant shall meet the requirements of subsections 3.1.1 through 3.1.3.

3.1.1 The applicant shall be a graduating high school senior who received an offer of admission from the Delaware State University.

3.1.2 The applicant will enroll as a first-time, Full-Time undergraduate student in the Delaware State University for the following school year.

3.1.3 The applicant must meet the definition of residency as defined in 14 **Del.C.** §3402(f).

4.0 Application Requirements

4.1 The application acceptance and submission period for the Herman M. Holloway Memorial Scholarship shall be posted on the DHEO's website by December 1 of each calendar year.

4.1.1 Applications shall not be accepted outside of the posted application acceptance period under any circumstances.

4.1.2 Incomplete applications shall not be accepted or processed.

- 4.2 In order for an application to be considered complete, an applicant shall fulfill all of the requirements in subsections 4.2.1 and 4.2.2.
- 4.2.1 The applicant shall complete an online application through the Student Account Access Site by the last date of the application acceptance period.
- 4.2.1.1 Applicants may update their enrollment information on the Student Account Access Site through the last date of the application acceptance period.
- 4.2.1.2 A first time applicant must establish an account and provide the applicant's valid email address and permanent mailing address before being permitted to submit the information required in subsection 4.2 of this regulation.
- 4.2.2 The applicant shall complete the FAFSA for the school year in which the scholarship is sought by the application deadline.

5.0 Awards

- 5.1 One scholarship will be awarded each year to an applicant who meets the requirements of Section 3.0 of this regulation based on the applicant's academic achievement, community service, participation in extracurricular activities, and promise of academic success in college. If several applicants are determined to be equally qualified for an Award, DHEO will consider their financial need.
- 5.2 To determine an applicant's financial need for the purpose of the Herman M. Holloway Memorial Scholarship, DHEO will consider the applicant's EFC; the expense of attending the Delaware State University; and the applicant's eligibility for Pell grants and other federal, state, or private grant assistance. For the purpose of this regulation, EFC means the Expected Family Contribution, which is the number that is calculated using the financial information an applicant provides on the applicant's Free Application for Federal Student Aid (FAFSA) to determine the applicant's eligibility for federal student aid.
- 5.3 An Award shall be used for, and not in excess of, tuition, required fees, room, board, and books at the Delaware State University.
- 5.4 An Award is renewable within the limits of the appropriations for the Herman M. Holloway Memorial Scholarship Program.
- 5.5 To be eligible to renew an Award, a student shall update the student's enrollment information on the Student Account Access Site; meet the academic progress standards set by DHEO and communicated in writing to the student at the time the initial Award is granted; and continue to be enrolled full-time at the Delaware State University, successfully completing coursework according to the standards of the Delaware State University, and eligible to continue to receive financial aid.
- 5.6 A student shall not receive more than 4 annual Awards.

6.0 Award Payment

- 6.1 Award payments shall be disbursed directly to the Delaware State University only.
- 6.2 If a student withdraws from school or otherwise does not qualify for full payment at the end of the add/drop period for a semester, DHEO will apply the refund policies set forth in 14 Del.C. §3402(k). For the purpose of this regulation, semester means a half-year term in a school or college, typically lasting 15 to 18 weeks.
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PROPOSED REGULATIONS

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(8), 181(15), 183, 3402(c), 3440, 3441, and 3447 (14 Del.C. §122(b)(8), 181(15), 183, 3402(c), 3440, 3441, & 3447)

PUBLIC NOTICE

Educational Impact Analysis Pursuant to 14 Del.C. §122(d)

1221 Charles L. "Chuck" Hebner Scholarship

A. TYPE OF REGULATORY ACTION REQUESTED

Adoption of a New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§ 122(b)(8), 181(15), 183, 3402(c), 3440, 3441, and 3447, the Delaware Department of Education ("Department"), through the Delaware Higher Education Office ("DHEO"), proposes the adoption of 14 DE Admin. Code 1221 Charles L. "Chuck" Hebner Scholarship. The Charles L. "Chuck" Hebner Scholarship is a student financial assistance for higher education program that is administered by DHEO. The proposed regulation provides the eligibility criteria, application requirements, and award process for the Charles L. "Chuck" Hebner Scholarship. The proposed regulation is consistent with House Bill 480 of the 151st General Assembly, which was signed into law on August 25, 2022.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before March 6, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation concerns a student financial assistance for higher education program and is not designed to help improve student achievement as measured against state achievement standards.
2. Will the new regulation help ensure that all students receive an equitable education? The new regulation concerns a student financial assistance for higher education program and is not designed to help ensure that all students receive an equitable education.
3. Will the new regulation help to ensure all students' health and safety are adequately protected? The new regulation concerns a student financial assistance for higher education program and is not designed to help to ensure all students' health and safety are adequately protected.
4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation concerns a student financial assistance for higher education program and is not designed to help to ensure that all students' legal rights are respected.
5. Will the new regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The new regulation concerns a student financial assistance for higher education program and does not change authority and flexibility of decision makers at the local board and school level.
6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation concerns a student financial assistance for higher education program and 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 Department, through DHEO, implements the regulations promulgated and adopted relating to student financial assistance for higher education programs that are administered by DHEO.
8. Will the new regulation be consistent with and not an impediment to the implementation of other state

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

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

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no expected cost to the state of complying with this new regulation. The regulation does not apply to local school boards.

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

<https://regulations.delaware.gov/register/february2023/proposed/26 DE Reg 668RFA 02-01-23.pdf>

1221 Charles L. "Chuck" Hebner Scholarship

1.0 Purpose

The purpose of this regulation is to provide the eligibility criteria, application requirements, and award process for the Charles L. "Chuck" Hebner Scholarship pursuant to 14 Del.C. §3447.

2.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning:

"Award" means a scholarship awarded under the Charles L. "Chuck" Hebner Scholarship Program.

"Delaware Higher Education Office" or "DHEO" means the Department of Education's office which administers specific programs related to higher education, including, but not limited to, student financial assistance programs.

"Full-Time Student" means a student enrolled in a minimum of college credit hours as required by the student's college or university for full-time status. Generally, for an undergraduate program, this is a minimum of 12 credit hours per term.

"Student Account Access Site" means the webpage on the DHEO's website where students can access scholarship opportunities.

3.0 Eligibility

3.1 In order to be eligible for an Award under the Charles L. "Chuck" Hebner Scholarship Program, an applicant shall meet the requirements of subsections 3.1.1 through 3.1.3.

3.1.1 The applicant shall be a graduating high school senior.

3.1.2 The applicant will enroll as a first-time, Full-Time undergraduate student at a degree-granting college for the following school year.

3.1.3 The applicant must meet the definition of residency as defined in 14 Del.C. §3402(f).

4.0 Application Requirements

4.1 The application acceptance and submission period for the Charles L. "Chuck" Hebner Scholarship shall be posted on the DHEO's website by December 1 of each calendar year.

4.1.1 Applications shall not be accepted outside of the posted application acceptance period under any circumstances.

4.1.2 Incomplete applications shall not be accepted or processed.

4.2 In order for an application to be considered complete, an applicant shall complete an online application through the Student Account Access Site by the last date of the application acceptance period.

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- 4.2.1 Applicants may update their enrollment information on the Student Account Access Site through the last date of the application acceptance period.
- 4.2.2 A first time applicant must establish an account and provide the applicant's valid email address and permanent mailing address before being permitted to submit the information required in subsection 4.2 of this regulation.

5.0 Awards

- 5.1 DHEO determines the number and amount of Awards to be given annually. The number and amount of Awards each year will vary and is based on and subject to the General Assembly appropriating funds for the Charles L. "Chuck" Hebner Scholarship. Scholarships will be awarded to applicants who meet the requirements of Section 3.0 of this regulation based on the applicant's academic achievement, community service, participation in extracurricular activities, and promise of academic success in college.
- 5.2 An Award shall be used for, and not in excess of, tuition, mandatory fees, room, board, and other direct and indirect educational expenses at the applicant's college.
- 5.3 An Award is renewable within the limits of the appropriations for the Charles L. "Chuck" Hebner Scholarship Program.
- 5.4 To be eligible to renew an Award, a student shall update the student's enrollment information on the Student Account Access Site; meet the academic progress standards set by DHEO and communicated in writing to the student at the time the initial Award is granted; and continue to be enrolled full-time at the student's college, successfully completing coursework according to the standards of the student's college, and eligible to continue to receive financial aid.
- 5.5 A student shall not receive more than 4 annual Awards.

6.0 Award Payment

- 6.1 Award payments shall be disbursed directly to the student's college only.
- 6.2 If a student withdraws from school or otherwise does not qualify for full payment at the end of the add/drop period for a semester, DHEO will apply the refund policies set forth in 14 Del.C. §3402(k). For the purpose of this regulation, semester means a half-year term in a school or college, typically lasting 15 to 18 weeks.

PROFESSIONAL STANDARDS BOARD

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

PUBLIC NOTICE

Educational Impact Analysis Pursuant to 14 Del.C. §122(d)

1568 Elementary Dual Language Immersion Teacher

A. TYPE OF REGULATORY ACTION REQUESTED

Adoption of New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§1203 and 1205(b), the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed 14 DE Admin. Code 1568 Elementary Dual Language Immersion Teacher. The regulation concerns the requirements for an Elementary Dual Language Immersion Teacher Standard Certificate in accordance with 14 Del.C. §1220. Section 1.0 provides who would be required to hold the Elementary Dual Language Immersion Teacher Standard Certificate and exceptions

to requirement; Section 2.0 provides definitions for the proposed regulation; Section 3.0 concerns the issuance of an Elementary Dual Language Immersion Teacher Standard Certificate; Section 4.0 provides the prescribed education, knowledge, and skill requirements for the issuance of an Elementary Dual Language Immersion Teacher Standard Certificate; Section 5.0 provides the application requirements; Section 6.0 concerns Secretary of Education review; Section 7.0 concerns the validity of a Elementary Dual Language Immersion Teacher Standard Certificate; Section 8.0 concerns disciplinary actions; and Section 9.0 concerns applicants' and Educators' contact information with the Department and specifies how they can change their name or address.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before March 6, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the new regulation help improve student achievement as measured against state achievement standards? The education, knowledge, and skill requirements in Section 4.0 are designed to improve the quality of the educator workforce, which will help to improve student achievement.

2. Will the new regulation help ensure that all students receive an equitable education? The education, knowledge, and skill requirements in Section 4.0 are designed to improve the quality of the educator workforce, which will help to ensure students in Delaware public schools receive an equitable education.

3. Will the new regulation help to ensure all students' health and safety are adequately protected? The proposed new regulation addresses a standard certificate for educators and is not designed to help ensure students' health and safety is protected.

4. Will the new regulation help to ensure that all students' legal rights are respected? The proposed new regulation addresses a standard certificate for educators and is not designed to help ensure students' legal rights are respected.

5. Will the new regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The proposed new regulation does not change authority or flexibility of decision makers at the local board and school level. By statute (14 **Del.C.** § 1224), a school district or charter school may request that the Secretary of Education review the credentials of an applicant who does not meet the requirements for an Elementary Dual Language Immersion Teacher Standard Certificate but whose effectiveness is documented by the district or school. Section 6.0 is consistent with the statute.

6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The proposed new regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels. The application requirements in Section 5.0 apply to individual applicants. In addition, the requirements in Section 9.0 apply to individual applicants and Educators.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Department implements the rules and regulations promulgated and adopted pursuant to 14 **Del.C.** Ch. 12 relating to licensure and certification of educators.

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

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

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

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by**

29 Del. C. Ch. 104, is available at:

<https://regulations.delaware.gov/register/february2023/proposed/26 DE Reg 670RFA 02-01-23.pdf>

1568 Elementary Dual Language Immersion Teacher

1.0 Content

- 1.1 This regulation shall apply to the issuance of an Elementary Dual Language Immersion Teacher Standard Certificate pursuant to 14 Del.C. §1220(a). The Elementary Dual Language Immersion Teacher Standard Certificate is required for Partner Language Teachers who are assigned to teach math, science, and partner language literacy in grades K to 6 in Delaware public schools.
- 1.2 Notwithstanding the requirement set forth in subsection 1.1, a Partner Language Teacher who is assigned to teach math, science, and partner language literacy in grades K to 2 may hold an Early Childhood Teacher Standard Certificate (14 DE Admin. Code 1520) and either the Bilingual Teacher Standard Certificate (14 DE Admin. Code 1561) or the World Language Teacher Standard Certificate (14 DE Admin. Code 1565) in lieu of the Elementary Dual Language Immersion Teacher Standard Certificate.
- 1.3 Notwithstanding the requirement set forth in subsection 1.1, a Partner Language Teacher who is assigned to teach math, science, and partner language literacy in grades K to 6 may hold an Elementary Teacher Standard Certificate (14 DE Admin. Code 1521) and either the Bilingual Teacher Standard Certificate (14 DE Admin. Code 1561) or the World Language Teacher Standard Certificate (14 DE Admin. Code 1565) in lieu of the Elementary Dual Language Immersion Teacher Standard Certificate.

2.0 Definitions

The following words and terms, when used in this regulation shall have the following meaning:

"Department" means the Delaware Department of Education.

"Educator" means a person licensed and certified by the State under 14 Del.C. Ch. 12 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Professional Standards Board and approved by the State Board of Education. The term 'educator' does not include substitute teachers.

"Employing Authority" means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, and management companies.

"Immorality" means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of his or her unfitness or otherwise.

"License" means a credential which authorizes the holder to engage in the practice for which the license is issued.

"Partner Language" means the language other than English in which instruction is being provided in a Delaware dual language immersion program.

"Partner Language Teacher" means a teacher who is assigned to teach math, science, and partner language literacy in grades K to 6 in a Delaware dual language immersion program in a Delaware public school.

"Regionally Accredited" means educational accreditation by a regional accrediting agency that is recognized by the U.S. Secretary of Education as a reliable authority concerning the quality of education offered by the institutions of higher education it accredits, including Middle States Commission on Higher Education.

"Standard Certificate" means a credential issued to certify that an educator has the prescribed knowledge, skill or education to practice in a particular area, teach a particular subject, or teach a category of students.

"Standards Board" means the Professional Standards Board established pursuant to 14 Del.C. §1201.

"Valid and Current License or Certificate" means a current full or permanent certificate or license as an educator issued by another state or jurisdiction. This means the applicant is fully credentialed by having met all of the requirements for full licensure or certification as an educator in another state or jurisdiction. It does not include temporary, emergency, conditional certificates of eligibility or expired certificates or licenses issued from another state or jurisdiction.

3.0 Issuance of a Standard Certificate

- 3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue an Elementary Dual Language Immersion Teacher Standard Certificate to an applicant who:
- 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License or a Standard or Professional Status Certificate issued by the Department prior to August 31, 2003 and meets the requirements set forth in Section 4.0 of this regulation; or
 - 3.1.2 Has met the requirements for an educator's license in Delaware and holds a Valid and Current License or Certificate as an elementary dual language immersion teacher issued by another state or jurisdiction.
- 3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for an Elementary Dual Language Immersion Teacher Standard Certificate if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the allegations include but are not limited to conduct such as Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials, until the applicant provides evidence of the investigation's resolution.

4.0 Prescribed Education, Knowledge, and Skill Requirements

- 4.1 For an applicant who holds an Elementary Teacher Standard Certificate (14 DE Admin. Code 1521), the applicant shall have demonstrated oral and written proficiency in the Partner Language of the dual immersion program by satisfying the requirements in subsections 4.1.1 and 4.1.2.
- 4.1.1 The applicant achieved a minimum level of Advanced Mid on the America Council of the Teaching of Foreign Languages (ACTFL) Oral Proficiency Interview (OPI) in the Partner Language based on the ACTFL's Proficiency Guidelines.
 - 4.1.2 The applicant achieved the applicable minimum level on the ACTFL Writing Proficiency Test (WPT) as provided in subsections 4.1.2.1 and 4.1.2.2.
 - 4.1.2.1 For tests using the Roman alphabet, the applicant achieved a minimum level of Advanced Mid in the Partner Language based on the ACTFL's Proficiency Guidelines.
 - 4.1.2.2 For tests using a non-Roman alphabet, the applicant achieved a minimum level of Advanced Low in the Partner Language based on the ACTFL's Proficiency Guidelines.
- 4.2 For an applicant who does not hold a content area Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.2.1 and 4.2.2.
- 4.2.1 The applicant shall have satisfied one of the following requirements.
 - 4.2.1.1 The applicant earned a bachelor's degree from a Regionally Accredited college or university in which English was the primary language of instruction with a minimum of 30 semester hours of coursework in elementary education from an educator preparation program approved or recognized by the Council for the Accreditation of Educator Preparation (CAEP) and demonstrated oral and written proficiency in the Partner Language by satisfying the requirements in subsections 4.1.1 and 4.1.2.
 - 4.2.1.2 The applicant earned a bachelor's degree in elementary education from a college or university in which the Partner Language was the primary language of instruction and achieved a minimum level of Intermediate High on both the ACTFL OPI and the ACTFL WPT in English.
 - 4.2.1.3 The applicant satisfactorily completed an alternative routes for licensure or certification program to teach grades K to 6 as provided in 14 Del.C. §§1260 - 1266 and demonstrated

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oral and written proficiency in either the Partner Language or English as provided in subsections 4.2.1.3.1 and 4.2.1.3.2.

4.2.1.3.1 If the applicant earned the applicant's bachelor's degree from a college or university in which English was the primary language of instruction, the applicant shall demonstrate oral and written proficiency in the Partner Language by satisfying the requirements in subsections 4.1.1 and 4.1.2.

4.2.1.3.2 If the applicant earned the applicant's bachelor's degree from a college or university in which the Partner Language was the primary language of instruction, the applicant shall demonstrate oral and written proficiency in English by achieving a minimum level of Intermediate High on both the ACTFL OPI and the ACTFL WPT in English.

4.2.1.4 The applicant satisfactorily completed a Department-approved educator preparation program in elementary education or immersion education and demonstrated oral and written proficiency in either the Partner Language or English as provided in subsections 4.2.1.4.1 and 4.2.1.4.2.

4.2.1.4.1 If the applicant earned the applicant's bachelor's degree from a college or university in which English was the primary language of instruction, the applicant shall demonstrate oral and written proficiency in the Partner Language by satisfying the requirements in subsections 4.1.1 and 4.1.2.

4.2.1.4.2 If the applicant earned the applicant's bachelor's degree from a college or university in which the Partner Language was the primary language of instruction, the applicant shall demonstrate oral and written proficiency in English by achieving a minimum level of Intermediate High on both the ACTFL OPI and the ACTFL WPT in English.

4.2.2 The applicant shall have achieved a minimum score on the examinations specified in subsections 4.2.2.1 and 4.2.2.2.

4.2.2.1 The applicant shall have achieved a minimum score of 157 on the Praxis Subject Assessment - Elementary Education Mathematics Subtest (ETS Test Code #5003) or a minimum score of 143 on the Praxis Elementary Education: Content Knowledge for Teaching Mathematics CKT Subtest (ETS #7813).

4.2.2.2 The applicant shall have achieved a minimum score of 159 on the Praxis Subject Assessment - Elementary Education Science Subtest (ETS Test Code #5005) or a minimum score of 144 on the Praxis Elementary Education: Content Knowledge for Teaching Science CKT Subtest (ETS #7814).

4.3 For an applicant who does not hold an Elementary Teacher Standard Certificate but holds a Standard Certificate in another area, the applicant shall have satisfied the requirements in subsections 4.3.1 and 4.3.2.

4.3.1 The applicant shall have demonstrated oral and written proficiency in either the Partner Language or English as provided in subsections 4.3.1.1 and 4.3.1.2.

4.3.1.1 If the applicant earned the applicant's bachelor's degree from a college or university in which English was the primary language of instruction, the applicant shall demonstrate oral and written proficiency in the Partner Language by satisfying the requirements in subsections 4.1.1 and 4.1.2.

4.3.1.2 If the applicant earned the applicant's bachelor's degree from a college or university in which the Partner Language was the primary language of instruction, the applicant shall demonstrate oral and written proficiency in English by achieving a minimum level of Intermediate High on both the ACTFL OPI and the ACTFL WPT in English.

4.3.2 The applicant shall have achieved a minimum score on the examinations specified in subsections 4.3.2.1 and 4.3.2.2.

4.3.2.1 The applicant shall have achieved a minimum score of 157 on the Praxis Subject Assessment - Elementary Education Mathematics Subtest (ETS Test Code #5003) or a minimum score of 143 on the Praxis Elementary Education: Content Knowledge for Teaching Mathematics CKT Subtest (ETS #7813).

4.3.2.2 The applicant shall have achieved a minimum score of 159 on the Praxis Subject Assessment - Elementary Education Science Subtest (ETS Test Code #5005) or a minimum score of 144 on the Praxis Elementary Education: Content Knowledge for Teaching Science CKT Subtest (ETS #7814).

5.0 Application Requirements

- 5.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with the application for the Initial License, and the applicant shall also provide all required documentation for the License.
- 5.2 If the applicant is also applying for the issuance or renewal of an educator's license or paraeducator's permit, the applicant must disclose the applicant's criminal conviction history upon application. Failure to disclose a criminal conviction history is grounds for denial of the license or permit application as specified in 14 Del.C. §1219 and it could delay the processing or result in the denial of the application for an Elementary Dual Language Immersion Teacher Standard Certificate.
- 5.3 For an applicant who holds an Elementary Teacher Standard Certificate, the following documentation is required with the application for an Elementary Dual Language Immersion Teacher Standard Certificate:
- 5.3.1 Proof the applicant holds an Elementary Teacher Standard Certificate issued by the Department; and
 - 5.3.2 Official scores on the ACTFL OPI and WPT as provided in subsections 4.1.1 and 4.1.2; and
 - 5.3.3 Additional documentation as required by the Department.
- 5.4 For an applicant who does not hold a content area Standard Certificate, the following documentation is required in the application for an Elementary Dual Language Immersion Teacher Standard Certificate:
- 5.4.1 Official transcript from the applicant's college or university.
 - 5.4.1.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's college or university; or
 - 5.4.1.2 Sealed paper transcripts may be submitted.
 - 5.4.1.3 The Department will not accept copies of transcripts; and
 - 5.4.2 For degrees earned from a college or university located outside of the United States, an evaluation report of the transcript from a member of either the National Association of Credential Evaluation Services (NACES) or Association of International Credential Evaluators, Inc. (AICE), if applicable; and
 - 5.4.3 Official scores on the ACTFL OPI and WPT as provided in subsections 4.1.1 and 4.1.2, if applicable; and
 - 5.4.4 Official scores on the ACTFL OPI and the ACTFL WPT in English, if applicable; and
 - 5.4.5 Official scores on the Praxis Subject Assessment or Praxis Elementary Education: Content Knowledge for Teaching as provided in subsection 4.2.2; and
 - 5.4.6 Additional documentation as required by the Department.
- 5.5 For an applicant who does not hold an Elementary Teacher Standard Certificate but holds a Standard Certificate in another area, the following documentation is required in the application for an Elementary Dual Language Immersion Teacher Standard Certificate:
- 5.5.1 Official scores on the ACTFL OPI and WPT as provided in subsections 4.1.1 and 4.1.2, if applicable; and
 - 5.5.2 Official scores on the ACTFL OPI and the ACTFL WPT in English, if applicable; and
 - 5.5.3 Official scores on the Praxis Subject Assessment or Praxis Elementary Education: Content Knowledge for Teaching as provided in subsection 4.3.2; and
 - 5.5.4 Additional documentation as required by the Department.
- 5.6 For applicants who have met the requirements for licensure as an educator in Delaware and hold a Valid and Current License or Certificate as an elementary dual language immersion teacher from

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another state or jurisdiction, the following documentation is required in the application for an Elementary Dual Language Immersion Teacher Standard Certificate:

- 5.6.1 An official copy of the Valid and Current License or Certificate; and
- 5.6.2 Additional documentation as required by the Department.

6.0 Secretary of Education Review

- 6.1 The Secretary of Education may, upon the written request of a local school district or charter school, review credentials submitted in an application for an Elementary Dual Language Immersion Teacher Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for an Elementary Dual Language Immersion Teacher Standard Certificate but whose effectiveness is documented by the local school district or charter school.
 - 6.1.1 For school districts, requests shall be approved by the superintendent of the school district.
 - 6.1.2 For charter schools, requests concerning the head of school of the charter school shall be approved by the charter school's board of directors and requests concerning all other applicants shall be approved by the charter school's head of school.

7.0 Validity of a Standard Certificate

- 7.1 An Elementary Dual Language Immersion Teacher Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.
- 7.2 An Elementary Dual Language Immersion Teacher Standard Certificate is not subject to renewal.

8.0 Disciplinary Action

- 8.1 An Educator's Elementary Dual Language Immersion Teacher Standard Certificate may be revoked, suspended, or limited for cause as provided in 14 **DE Admin. Code** 1514 Limitation, Suspension, and Revocation of Licenses, Certificates, and Permits.
- 8.2 An Educator's Elementary Dual Language Immersion Teacher Standard Certificate shall be revoked if the Educator's Initial, Continuing, or Advanced License or Standard or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's application in accordance with 14 **Del.C.** §1222.
- 8.3 An Educator whose certificate is noticed for disciplinary action is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with the 14 **DE Admin. Code** 1515 Hearing Procedures and Rules.

9.0 Contact Information and Change of Name or Address

- 9.1 All applicants and Educators are required to update their contact information in DEEDS if their contact information changes.
 - 9.2 An Educator who legally changes the Educator's name and wishes to change the name on the Elementary Dual Language Immersion Teacher Standard Certificate shall provide a notarized copy of evidence of the name change such as a marriage license or court action.
 - 9.3 An applicant or Educator whose mailing address, email address, or phone number changes shall provide the Department with the new mailing address, email address, or phone number within 14 calendar days of the change.
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DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)t and Sections 2601-2606 (16 Del.C. §122(3)t & §§2601-2606)
16 DE Admin. Code 4459A

PUBLIC NOTICE

4459A Regulations Governing the Childhood Lead Poisoning Prevention Act for Children Between the Ages of 22 and 26 Months

Pursuant to 16 Del.C. §122(3)(t) and §§ 2601-2606, the Health Systems Protection Section of the Division of Public Health, Department of Health and Social Services, is proposing revisions to the Regulations Governing the Childhood Lead Poisoning Prevention Act for Children Between the Ages of 22 and 26 Months. On February 1, 2023, the Division of Public Health plans to publish as "proposed" revisions to the Regulations Governing the Childhood Lead Poisoning Prevention Act for Children Between the Ages of 22 and 26 Months regulations. The revisions include:

- Renamed regulation to remove outdated reference;
- Updated and added new definitions;
- Updated requirements for blood lead testing, including age requirements and documentation and reporting requirements; and
- Technical corrections.

These revisions are required by House Bill 222 as amended by House Amendment 1 (151st GA).

The proposed regulation published in the July 2022 *Register of Regulations* (26 DE Reg. 34 (07/01/22) (Prop.)) is no longer being considered in favor of the amendments presented here pursuant to 29 Del.C. §10118(c).

Copies of the proposed regulations are available for review in the February 1, 2023 edition of the *Delaware Register of Regulations*, accessible online at: <https://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs, or other written materials concerning the proposed regulations must submit them by Friday, March 3, 2023, at:

Division of Public Health
417 Federal Street
Dover, DE 19901
Email: DHSS_DPH_regulations@delaware.gov
Phone: (302) 744-4951

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

<https://regulations.delaware.gov/register/february2023/proposed/26 DE Reg 677RFA 02-01-23.pdf>

4459A Regulations Governing the Childhood Lead Poisoning Prevention Act ~~for Children Between the Ages of 22 and 26 Months~~

1.0 General Provisions: Provisions

~~1.1~~ Preamble.

- ~~1.1.1~~ These regulations are adopted by the Secretary of Delaware Health and Social Services pursuant to 16 Del.C., §122(3)(t) and ~~§ 2602~~ §§2601-2606. These regulations establish standards for blood lead testing of children between ~~22 12~~ and ~~26 24~~ months of age ~~who are at high risk of to test for~~

lead poisoning. These regulations also establish a record retention policy, enforcement modalities modalities, and penalties for violators.

2.0 ~~Definitions.~~ Definitions

For purposes of this chapter, the following definitions shall apply:

"Administer a blood test for lead" means to draw a blood specimen, by either venous or capillary methodology, and:

(a) Send the specimen to a medical laboratory for blood lead analysis; or

(b) Conduct a blood lead analysis at a health care provider's office; or

(c) Order a blood specimen to be drawn by a third-party health care provider, by either venous or capillary methodology, and sent to a medical laboratory for blood lead analysis.

"Blood lead analysis" means the analysis and determination by a medical laboratory of the blood lead level in a blood specimen.

"Blood lead registry" means the database maintained by the Department that includes the results of all blood lead testing reported to the Department.

"Blood lead testing" means taking a capillary or venous sample of blood for point-of-care testing using a Clinical Laboratory Improvement Act of 1988 (CLIA) licensed or waived test or sending it to a laboratory to determine the level of lead in the blood.

"Capillary" means a blood sample taken from the capillaries in the finger or heel for lead analysis.

"Department" means the Delaware Department of Health and Social Services.

"Division" means the Delaware Division of Public Health.

"Health care provider" means ~~the~~ an individual that generally provides medical care to a child including, ~~but not limited to,~~ a physician, a physician's assistant physician assistant, or a nurse.

"High risk" means ~~a child between the ages of 22 and 26 months who meets any of the following conditions:~~

- ~~• Is suspected by a parent or a health care provider to be at risk for lead exposure or to exhibit the symptoms of lead poisoning.~~
- ~~• Has a sibling or frequent playmate with lead poisoning.~~
- ~~• Is a recent immigrant, refugee, or foreign adoptee.~~
- ~~• Has a household member who uses traditional, folk, or ethnic remedies or cosmetics or who routinely eats food imported informally (e.g., by a family member) from abroad.~~
- ~~• Lives in or regularly visits a house or day care center (including out buildings) built before 1978.~~
- ~~• Lives with an adult whose job or hobby involves exposure to lead (e.g. construction, welding, pottery, mechanic, jeweler, plumber, renovator, firing range enthusiast, stained glass maker).~~
- ~~• Lives near an active lead smelter, battery recycling plant, or other industry likely to release lead.~~
- ~~• Lives in, attends day care in, or visits any of the following zip code areas at least 6 hours a week or 60 hours a year:~~
 - ~~• **197XX:** 01, 02, 03, 06, 09, 11, 13, 20, 33~~
 - ~~• **198XX:** 01, 02, 03, 04, 05, 06, 08, 09, 10~~
 - ~~• **199XX:** 01, 04, 33, 34, 38, 39, 40, 41, 43, 45, 46, 47, 50, 52, 53, 56, 58, 60, 62, 63, 66, 68, 71, 73, 75, 77.~~

"Laboratory" means a laboratory certified to perform either waived or non-waived blood lead analysis according to the federal Clinical Laboratory Improvement Act of 1988 (CLIA).

"Lead poisoning" means a medical condition confirmed by means of a venous blood lead level, measured in micrograms of lead per deciliter of whole blood, established by rule by the Delaware Division of Public Health based on the best available information about the effects of elevated blood lead levels.

"Low Risk" means ~~a child between the ages of 22 and 26 months who does not meet any of the conditions listed in the definition for "High Risk"~~.

"Parent or guardian" means an individual acting in a primary custodial capacity.

"Reference level" means the most current blood lead reference level as determined by the Centers for Disease Control and Prevention.

"Screening" means a capillary blood lead test, including where a drop of blood is taken from a finger or heel of the foot.

"Testing" means a venous blood lead test where blood is drawn from a vein.

"Venous" means a blood sample taken from a vein in the arm for lead analysis.

3.0 ~~Requirement:~~ Requirement for Blood Tests for Lead Poisoning

- 3.1 ~~The A primary health care provider of for a child between the ages of 22 and 26 months shall determine if said child is at high risk of lead poisoning. If the child is determined to be at high risk, the health care provider shall perform or cause to be performed a blood lead test shall administer or order a blood test for lead when the child is between 9 and 15 months of age and again between 21 and 27 months of age. Further, tests conducted between 15 and 18 months of age shall be considered a 12-month test, and between 18 and 21 months of age shall be considered a 24-month test.~~
- 3.2 ~~A primary health care provider for a child who is 28 months old or older and younger than 6 years old shall administer a blood test for lead in the following circumstances:~~
- 3.2.1 ~~If the child has not previously received a blood test for lead;~~
- 3.2.2 ~~If the child's parent or guardian fails to provide documentation that the child has previously received a blood test for lead;~~
- 3.2.3 ~~If the health care provider is unable to obtain the results of a previous blood lead analysis; or~~
- 3.2.4 ~~If the child's parent or guardian requests that the child receive a blood test for lead regardless of the child's age.~~
- 3.3 ~~A health care provider shall administer or order a blood test for lead, by venous methodology, if the results of a capillary screening indicate blood lead level result greater than or equal to the reference level in a child younger than 6 years old.~~
- 3.4 ~~A health care provider giving non-primary care to a child may, but is not required to, administer a blood test for lead, even if a blood test for lead is not medically indicated.~~
- 3.5 ~~If a child is insured under Delaware's Medicaid program, the child's primary health care provider shall administer a blood test for lead to the child at the 12-month visit and again at the 24-month visit in accordance with Early and Periodic Screening, Diagnosis and Treatment (EPSDT) requirements.~~

4.0 ~~Applicability:~~ Applicability

- 4.1 ~~The blood lead testing requirement specified in these regulations applies to all children 22 to 26 months of age except those determined not to be at high risk under 6 years of age (younger than 72 months of age).~~
- 4.2 ~~Blood lead testing is not required on a child between the ages of 22 and 26 months when said child is determined by the health care provider to be at low risk for elevated blood lead levels. If a health care provider determines that a child is low risk, the health care provider will keep the completed risk assessment questionnaire (with all "NO" responses) in the child's chart for at least three years.~~

5.0 ~~Religious exemption:~~ Exemption

A religious exemption may be granted to a child if the blood lead testing conflicts with a genuine and sincere religious belief and not a belief based merely on philosophical, scientific, moral, personal, or medical opposition to blood lead testing. A certificate of blood lead testing exemption for religious ~~reasons~~ beliefs shall be signed and dated by the child's parent or guardian, notarized, and kept in the child's medical chart.

6.0 ~~Time line for valid blood lead testing:~~ Timeline for Valid Blood Lead Testing

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To be valid, a blood lead test shall be performed, as required by these regulations, on a child ~~after completion of a risk assessment questionnaire when the child is between the ages of 22 and 26 months.~~ when the child is between 9 and 15 months of age and again between 21 and 27 months of age. Children ~~that test with blood lead levels above the reference level of concern established by the Centers for Disease Control ("CDC"), which is currently 10 µg/dl,~~ will and Prevention must have a venous confirmation by a laboratory prior to intervention blood test if the original test was conducted through capillary screening.

7.0 ~~Documentation.~~ **Blood Lead Testing Documentation and Reporting Requirements**

- 7.1 A health care provider and a laboratory performing a blood lead test required by these regulations shall ensure that the results of the blood lead test are reported to the Division.
- 7.2 ~~Proof of blood lead testing will be verified through the Blood Lead Registry and by auditing a child's medical charts.~~ The laboratory, health care provider's office, or other facility that administers a blood test for lead for a child 18 years old or younger shall obtain the information required by this regulation at the time of drawing the blood specimen.
- 7.3 A laboratory that performs blood lead analysis shall provide a referral form of paper or electronic requisition that specifies the required information for use by a laboratory, a health care provider's office, or another facility that draws a blood specimen. The facility that draws a blood specimen shall:
- 7.3.1 Record the information required under this regulation on the laboratory's referral form or similar form; and
- 7.3.2 Forward the required information concurrently with the blood specimen to the laboratory that performs blood lead analysis.
- 7.4 A laboratory required to report a blood lead level test under this regulation shall report the blood lead level test in the format approved by the Division and shall include the following information:
- 7.4.1 The child's demographic information, including:
- 7.4.1.1 First name, middle initial, and last name;
- 7.4.1.2 Date of birth;
- 7.4.1.3 Country of birth;
- 7.4.1.4 Sex;
- 7.4.1.5 Race and ethnicity;
- 7.4.1.6 Master Client Index (MCI) number if the child is enrolled in Medicaid or a Delaware children's health program;
- 7.4.1.7 Complete home address at the time the blood specimen was drawn, including house or apartment number, street, city or town, county, zip code, and state;
- 7.4.1.8 Telephone number; and
- 7.4.1.9 Parent or guardian's name.
- 7.4.2 Type of blood specimen, venous or capillary, and the blood draw date;
- 7.4.3 The health care provider's name, office name, address, telephone number, and national provider identifier (NPI);
- 7.4.4 If the draw site is different from the health care provider's office, the laboratory's or other facility's name, address, telephone number, and NPI;
- 7.4.5 All of the following information about the laboratory performing the blood lead analysis:
- 7.4.5.1 Laboratory name, address, telephone number, and clinical laboratory improvement amendment number (CLIA);
- 7.4.5.2 Laboratory method used to analyze the blood specimen;
- 7.4.5.3 The limit of detection for the method used to analyze the blood specimen; and
- 7.4.5.4 If reporting a "no result" test results, the limit of detection for the laboratory method.
- 7.4.6 Blood lead level in micrograms per deciliter expressed with a numeric results comparator of:
- 7.4.6.1 Equal, if the blood lead level is an exact measurement; or

7.4.6.2 Less than or greater than, if a blood lead level reading is below or above a certain level that a device used to analyze a blood specimen can accurately record.

7.4.7 Additional information as may be required by the Division.

8-0 **Records-**

~~A completed risk assessment questionnaire, including the determination of the child's risk of lead poisoning, shall be maintained in a child's medical chart for at least three years. The Division will conduct scheduled and impromptu chart audits to monitor compliance.~~

8.0 **Missing Information**

8.1 A laboratory that receives a blood specimen from a laboratory, a health care provider's office, or another facility without all the required information listed in Section 7.0 included on the referral form required under subsection 7.3 shall:

8.1.1 Within 3 business days of receipt of the blood specimen, send to the facility that provided the blood specimen a written or electronic message citing the requirements of this regulation, requesting that all the required missing information be forwarded to the laboratory; and

8.1.2 Upon receipt of the required information, collate and transmit the information to the Division within the time frames set forth in this regulation.

8.2 When the laboratory reports a blood lead level test result to the Division with 1 or more of the requirements listed in Section 7.0 omitted, the laboratory shall concurrently provide the name and address of the facility that:

8.2.1 Drew the blood specimen; and

8.2.2 Failed upon request to forward the required information to the laboratory.

8.3 The facility that drew the blood specimen shall respond to a written or electronic message from a laboratory that did not receive all of the required information listed in Section 7.0 by providing the information to the laboratory within:

8.3.1 One business day of receiving the message regarding a blood lead level test result of greater than or equal to the reference level;

8.3.2 Five business days of receiving the message for a blood lead level test result of less than the reference level.

8.4 A laboratory not permitted to perform a blood lead analysis that accepts a blood specimen from a health care provider for referral to another laboratory for blood lead analysis shall ensure that:

8.4.1 The requisition record includes all of the information that is required under this regulation; and

8.4.2 The required information is transmitted to the laboratory performing the blood lead analysis along with the blood specimen.

8.5 Reporting a Blood Lead Level test result with missing information:

8.5.1 A laboratory shall collate information required under Section 7.0 that is collected to complete a previously incomplete requisition record for a blood lead level test before submitting the information to the Division in accordance with this regulation.

8.5.2 A laboratory shall report to the Division the missing information collated pursuant to this regulation:

8.5.2.1 Concurrently with the blood lead level test result, if the reporting time frame for a blood lead level test result established in subsection 8.3 has not concluded; or

8.5.2.2 In a manner indicating that there has been a change in the blood lead level test record, if reporting the missing information after the initial blood lead level test result was reported to the Division.

9.0 **Additional Reporting Requirements**

9.1 In addition to the reporting requirements set forth in Section 7.0, a laboratory shall report the result of a blood lead level test to:

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- 9.1.1 The health care provider that ordered the blood lead level test; and
- 9.1.2 Another entity as required by State, federal, or local statutes or regulations, or in accordance with accepted standards of practice.
- 9.2 A laboratory shall report the result of a blood lead level test to the Division by electronic system, facsimile or other manner required by the Division within 2 weeks of a final blood lead level test result.
- 9.3 A laboratory that uses an electronic system for tracking blood lead level test results shall report a result to the Division electronically in a manner consistent with the technical specifications established by the Division.

10.0 Proof of Documentation Requirements Prior to Child Care or School Enrollment

- 10.1 Upon first admission or continued enrollment, the parent or guardian of a child 12 months of age or older shall provide to the administrator of a child care facility, public or private nursery school, preschool, or kindergarten proof from their child's primary health care provider that the child received a blood lead level test or screening.
- 10.2 Except in the case of enrollment in kindergarten, the blood test may be done within 60 calendar days of the date of enrollment.
- 10.3 A child's parent or guardian must provide 1 of the following to the administrator of a child care facility, public or private nursery school, preschool, or kindergarten:
- 10.3.1 A statement from the child's primary health care provider that the child has received the required screenings or tests for lead;
- 10.3.2 A certificate signed by the parent or guardian stating that the blood test is contrary to the parent's or guardian's religious beliefs; or
- 10.3.3 Certified documentation of the child's blood lead analysis, as specified in this regulation, administered in connection with the 12-month visit and 24-month visit to the child's health care provider not later than:
- 10.3.3.1 30 calendar days from the 12-month visit or 24-month visit; or
- 10.3.3.2 30 calendar days from first entry into the program or system.
- 10.4 If the child's first blood test for lead poisoning was administered after the child is 24 months old, then only certified documentation of the most recent blood lead analysis is required to be reported.
- 10.5 If a child has more than 2 blood tests for lead poisoning done between the ages of 12 months and 24 months, then only certified documentation of the 2 most recent blood lead analyses shall be reported.
- 10.6 The information sent to or received by a program or school shall be recorded and certified by a health care provider's signature on a form that includes the following:
- 10.6.1 Name of the child;
- 10.6.2 Date of the blood lead analysis; and
- 10.6.3 The signature of the child's primary health care provider or designee.
- 10.7 This Section shall apply to all children born after June 30, 2021.

9.0 Severability. 11.0 Severability

If any provision or application of any provision of these regulations is held invalid, that invalidity shall not affect the validity of other provisions or applications of these regulations.

40.0 Penalty. 12.0 Penalty

Violators are subject to sanctions pursuant to 16 ~~Del.C.~~ Del.C. §107 for each violation of the requirements established in these regulations.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
Board of Occupational Therapy Practice

Statutory Authority: 24 Delaware Code, Section 2006(a)(1) (24 Del.C. §2006(a)(1))
24 DE Admin. Code 2000

PUBLIC NOTICE

2000 Board of Occupational Therapy Practice

Pursuant to 24 Del.C. §2006 (a)(1), the Delaware Board of Occupational Therapy Practice has proposed revisions to its rules and regulations. The rules are designed to address modifications to the supervision of occupational therapy assistants. A public hearing will be held on March 1, 2023 at 4:30 p.m. (on the second floor in conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904) or virtual 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 Board of Occupational Therapy Practice, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. Written comments will be accepted until March 16, 2023 in accordance with 29 Del.C. §10118(a).

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

<https://regulations.delaware.gov/register/february2023/proposed/26 DE Reg 683RFA 02-01-23.pdf>

2000 Board of Occupational Therapy Practice

1.0 Supervision/consultation Requirements for Occupational Therapy Assistants

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

“Occupational therapy assistant” shall mean a person licensed to assist in the practice of occupational therapy under the supervision of an occupational therapist. 24 Del.C. §2002.

“Under the supervision of an occupational therapist” means the interactive process between the licensed occupational therapist and the occupational therapy assistant. It shall be more than a paper review or co-signature. The supervising occupational therapist is responsible for insuring the extent, kind, and quality of the services rendered by the occupational therapy assistant.

- ~~The phrase, “under the supervision of an occupational therapist,” as used in the definition of occupational therapist assistant includes, but is not limited to the following requirements:~~
 - ~~Communicating to the occupational therapy assistant the results of patient/client evaluation and discussing the goals and program plan for the patient/client;~~
 - ~~In accordance with supervision level and applicable health care, educational, professional and institutional regulations, reevaluating the patient/client, reviewing the documentation, modifying the program plan if necessary and co-signing the plan;~~
 - ~~Case management;~~
 - ~~Determining program termination;~~
 - ~~Providing information, instruction and assistance as needed;~~
 - ~~Observing the occupational therapy assistant periodically; and~~
 - ~~Preparing on a regular basis, but at least annually, a written appraisal of the occupational therapy assistant’s performance and discussion of that appraisal with the assistant.~~
- ~~The supervisor may assign to a competent occupational therapy assistant the administration of standardized tests, the performance of activities of daily living evaluations and other elements of patient/client evaluation and reevaluation that do not require the pro-~~

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~~professional judgment and skill of an occupational therapist. The occupational therapy assistant may not evaluate or develop a treatment plan independently.~~

1.2 Supervision for Occupational Therapy Assistants

- 1.2.1 ~~Supervising occupational therapists must have at least one (1) 1 year clinical experience after they have received permanent licensure. The supervisor may assign to a competent occupational therapy assistant the administration of standardized tests, the performance of activities of daily living evaluations and other elements of patient/client evaluation and reevaluation that do not require the professional judgment and skill of an occupational therapist. The occupational therapy assistant may not evaluate or develop a treatment plan independently.~~
- 1.2.2 ~~An occupational therapist may supervise up to three (3) occupational therapy assistants.~~
- 1.2.3 ~~Effective July 1, 2009, the supervising occupational therapist shall submit to the Board a completed Verification of Occupational Therapy Assistant Supervision form upon the commencement of supervision.~~
- 1.2.4 ~~Effective July 1, 2009, the supervising occupational therapist shall immediately advise the Board in writing when he or she is no longer supervising an occupational therapy assistant and shall provide the Board with an updated Verification of Occupational Therapy Assistant Supervision form.~~
- 1.2.5 ~~1.2.2~~ The amount of supervision should be determined by the occupational therapist before the individuals enter into a supervisor/supervisee relationship. The chosen amount of supervision should be reevaluated regularly for effectiveness. Special consideration should be given to experience and any changes in practice area concentrations.
- 1.2.6 ~~1.2.3~~ The supervising occupational therapist, in collaboration with the occupational therapy assistant, shall maintain a written supervisory plan specifying the amount of supervision and shall document the supervision of each occupational therapy assistant. The amount of supervision should be determined by the occupational therapist before the individuals enter into a supervisor/supervisee relationship. The chosen amount of supervision should be reevaluated regularly for effectiveness. This plan shall be reviewed at least every six (6) months or more frequently as demands of service changes.
- 1.2.7 ~~1.2.4~~A supervisor who is temporarily unable to provide supervision shall arrange for substitute supervision by an occupational therapist licensed by the Board with at least one (1) 1 year of clinical experience, as defined above, to provide supervision as specified by Section 1.0 of these rules and regulations.

(Break in Continuity of Sections)

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

<https://regulations.delaware.gov/register/february2023/proposed/26 DE Reg 683 02-01-23.htm>

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 601

REGULATORY IMPLEMENTING ORDER

601 Schools and Law Enforcement Agencies

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §122(b), the Secretary of Education intends to amend 14 **DE Admin. Code** 601 School and Law Enforcement Agencies. This regulation was previously proposed on October 1, 2022, but since that time the Department determined that additional clarification was needed related to the titles of individuals responsible for reporting crimes. Therefore, this regulation is being amended pursuant to 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years, to ensure alignment with existing practice, and to clarify the titles of head of charter schools and the individuals required to report crimes. Additionally, it is being amended to correct typographical and grammatical errors to comply with *Delaware Administrative Code Drafting and Style Manual*.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on December 1, 2022. The Department of Education received two comments in support of the amended regulation.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 601 School and Law Enforcement Agencies in order to clarify the titles of individuals responsible for reporting crimes. Therefore, this regulation is being amended pursuant to 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis

every four years, to ensure alignment with existing practice, and to clarify the titles of head of charter schools and the individuals required to report crimes. Additionally, it is being amended to correct typographical and grammatical errors to comply with *Delaware Administrative Code Drafting and Style Manual*.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin.** 601 School and Law Enforcement Agencies. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 601 School and Law Enforcement Agencies attached hereto is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 601 School and Law Enforcement Agencies 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** 601 School and Law Enforcement Agencies amended hereby shall be in the form attached hereto, and said regulation shall be cited as 14 **DE Admin. Code** 601 School and Law Enforcement Agencies 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 January 10, 2023. 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 10th day of January 2023.

Department of Education

Mark A. Holodick, Ed.D., Secretary of Education

Approved this 10th day of January 2023

601 Schools and Law Enforcement Agencies

1.0 Purpose

The purpose of this regulation is to ensure that effective communication and working relationships exist between public schools and law enforcement agencies.

2.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning:

"**Alternative Program**" mean a program established pursuant to 14 **Del.C.**, Chapter 16.

"**School Employee**" ~~for purposes of this regulation shall mean~~ means all persons 18 years of age or older hired by a school district, attendance zone, or charter school; subcontractors such as bus drivers or security guards; employees of an Alternative Program provider; substitute employees; and persons hired by or subcontracted by other state agencies to work on school property. This definition shall be consistent with 14 **Del.C.** §4112.

3.0 Written Policy and Memorandum of Agreement (MOA)

- 3.1 All local school districts, charter schools, and Alternative Programs shall establish a written policy on effectively communicating and working with law enforcement agencies. Each school district, charter school and Alternative Program shall develop a ~~Memorandum of Agreement (MOA)~~ MOA with each law enforcement agency which provides services to it. Each MOA shall be in a form substantially

similar to a Model MOA as developed, approved and ~~from time to time~~ revised as needed by the Department of Education.

- 3.2 The Department of Education shall review the Model ~~MOA~~ MOA, and each school district, charter school, or Alternative Program shall review its current MOA at least once every three years.

4.0 Training Component

- 4.1 Any school administrator responsible for reporting school crimes or reporting school conduct incidents to law enforcement and to the Department of Education; or any school administrator responsible for reporting suspension and expulsion data to the Department of Education; or any school administrator responsible for any disciplinary process involving staff or students shall complete Department of Education approved training and any such additional training the Department of Education may prescribe ~~from time to time~~.
- 4.2 The approved training shall be primarily provided by staff at the Department of Education. The training may be provided by a school administrator at the district, charter school, or Alternative Program who is qualified to provide such training by having completed the Department of Education approved training within the last ~~twenty-four (24)~~ 24 months. The district, charter school, or Alternative Program shall provide the ~~name(s) of the trainer(s)~~ names of trainers conducting the training and the ~~name(s) of those school administrator(s)~~ names of school administrators attending the training if such training was provided by the district, charter school, or Alternative Program.
- 4.3 Each school district, charter school, and Alternative Program shall, at the time of hiring and at the beginning of each school year thereafter, advise each School Employee of ~~his/her~~ the duty to report school crimes and the penalty for failure to so report as prescribed in 14 **Del.C.** §4112 (e).

5.0 Reporting of Crimes to the Delaware Department of Education

- 5.1 The ~~superintendent~~ principal or head administrator of each school ~~district~~, charter school, and Alternative Program Program, or ~~his/her~~ the principal's or head administrator's designee, shall ensure each school within ~~his/her~~ the principal's or head administrator's jurisdiction reports to the Department of Education all school crimes required to be reported pursuant to 14 **Del.C.** §4112, and any subsequent amendment thereto. Such reports shall be submitted in a format as designated by the Department of Education and filed with the Department of Education within the time prescribed by Delaware statutes.

6.0 Reporting Specific Incidents of Misconduct

- 6.1 In addition to those school crimes required to be reported to law enforcement pursuant to 14 **Del.C.** §4112, the ~~superintendent~~ principal or head administrator of each school ~~district~~, charter school, and Alternative Program, or ~~his/her~~ the principal's or head administrator's designee, shall report to the Department of Education when any incidents of misconduct as defined in subsections 6.1.1 through 6.1.14 occur on school property or at a school function except subsection 6.1.6.1 which must be reported to the Department of Education regardless of origin of the speech. Such reports shall be submitted in a format as designated by the Department of Education and filed with the Department of Education not later than five working days following the incident.
- 6.1.1 Pornography, possession and production
- 6.1.2 Criminal mischief (vandalism)
- 6.1.3 Tampering with public records
- 6.1.4 Alcohol, possession and use
- 6.1.5 Felony theft
- 6.1.6 Bullying (allegations and substantiated incidents)
- 6.1.6.1 Cyberbullying (allegations and substantiated incidents) as defined in 14 **DE Admin. Code** 624, subsection 2.1.
- 6.1.7 Offensive Touching (student or employee victim)

- 6.1.8 Terroristic Threatening (student or employee victim)
- 6.1.9 Sexual Harassment
- 6.1.10 Fighting
- 6.1.11 Inhalants
- 6.1.12 Drug Paraphernalia
- 6.1.13 Teen Dating Violence
- 6.1.14 Unlawful Drug ~~Use/Influence~~ Use or Influence

7.0 Compliance Component

A school that fails to comply with the reporting mandates as set forth herein shall be subject to identification as a "Persistently Dangerous School" as this term is defined in 14 **DE Admin. Code** 608. A school identified as a Persistently Dangerous School will retain that designation for the entire fiscal year.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 & 1205(b) and 29 Delaware Code, Section 10113(b)(2) (14 **Del.C.** §§1203 & 1205 and 29 **Del.C.** §10113(b)(2))

ORDER

1515 Hearing Procedures and Rules

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§1203 and 1205 and 29 **Del.C.** §10113(b)(2), the Professional Standards Board proposes to amend 14 **DE Admin. Code** 1515 Hearing Procedures and Rules. The regulation sets forth rules of practice and procedure of the concerning license disciplinary and license denial actions before the Professional Standards Board. The amendments include clarifying Section 2.0 and amending the Professional Standards Board's address in subsection 5.1.2.

The adoption of this regulation is exempt from the requirement of public notice and comment and is adopted informally in accordance with 29 **Del.C.** §10113(b)(2).

II. FINDINGS OF FACTS

On January 5, 2023, the Professional Standards Board proposed 14 **DE Admin. Code** 1515 Hearing Procedures and Rules, in the form attached hereto as Exhibit A, to the Department to adopt informally pursuant to 29 **Del.C.** §10113(b)(2). The Department finds that the proposed regulation is necessary to implement 14 **Del.C.** Ch. 12. The Department further finds that the proposed regulation sets forth rules of practice and procedure used by the Professional Standards Board. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1515 Hearing Procedures and Rules.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1515 Hearing Procedures and Rules. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205 and 29 **Del.C.** §10113(b)(2), 14 **DE Admin. Code** 1515 Hearing Procedures and Rules, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1515 Hearing Procedures and Rules adopted hereby shall be in the form

attached hereto as Exhibit A and said regulation shall be cited as 14 DE Admin. Code 1515 Hearing Procedures and Rules in the Administrative Code of Regulations for the Department.

V. EFFECTIVE DATE OF ORDER

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

IT IS SO ORDERED the 17th day of January, 2023.

Department of Education

Mark A. Holodick, Ed.D., Secretary of Education

Approved this 17th day of January, 2023.

1515 Hearing Procedures and Rules (Break in Continuity of Sections)

2.0 Definitions

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

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

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

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

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

(Break in Continuity of Sections)

5.0 Other Hearing Rules and Procedures

5.1 Communications

5.1.1 In license, certificate, and permit disciplinary actions, a copy of any document filed with or submitted to the Standards Board or the hearing officer shall be provided to the other party or the other party's counsel.

5.1.2 Address of the Standards Board and Parties' Contact Information

5.1.2.1 Hand-delivered submissions shall be delivered to the Standards Board at the ~~Townsend Building, 401 Federal Street, 2nd Floor, Dover, Delaware 19904~~ John W. Collette Education Resource Center, 35 Commerce Way, Dover, Delaware 19904.

~~5.1.2.1~~ 5.1.2.2 Mailed submissions shall be delivered to the Standards Board at ~~401 Federal Street, Suite 2, Dover, Delaware 19904~~ 35 Commerce Way, Suite 1, Dover, Delaware 19904.

5.1.2.3 Applicants and educators shall keep the Standards Board informed of their current mailing addresses, phone numbers, and email addresses.

5.2 Counsel

5.2.1 Applicants and educators may be represented by counsel.

5.2.2 The attorney representing an applicant or an educator in a proceeding before the Standards Board shall notify the Executive Director of the representation in writing as soon as practical. In license, certificate, and permit disciplinary actions, a copy of the notice shall be provided to the Department at the same time.

5.2.3 Attorneys who are not members of the Delaware Bar may be admitted pro hac vice in accordance with Rule 72 of the Rules of the Supreme Court of the State of Delaware.

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

<https://regulations.delaware.gov/register/february2023/final/26 DE Reg 688 02-01-23.htm>

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

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

ORDER

Temporary Extension to COVID-19 Disaster Relief Co-pay & Premium Provisions

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 Ambulatory Surgical Center Services regarding adjusting the reimbursement methodology. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C.** §10114 and its authority as prescribed by 31 **Del.C.** §512.

The Department published its notice of proposed regulation changes pursuant to 29 **Del. C.** §10115 in the December 2022 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2022, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding the Temporary Extension to COVID-19 Disaster Relief Co-pay & Premium Provisions.

Background

On March 13, 2020, the President of the United States issued a proclamation that the COVID-19 outbreak in the United States constitutes a national emergency. Additionally, on March 13, 2020, pursuant to section 1135(b) of the Act, the Secretary of the United States Department of Health and Human Services invoked his authority to waive or modify certain requirements of titles XVIII, XIX, and XXI of the Act as a result of the consequences of the COVID-19 pandemic, to the extent necessary, as determined by the Centers for Medicare & Medicaid Services (CMS). This is to ensure that sufficient health care items and services are available to meet the needs of individuals enrolled in the respective programs and to ensure that health care providers that furnish such items and services in good faith, but are unable to comply with one or more of such requirements as a result of the COVID-19 pandemic, may be reimbursed for such items and services and exempted from sanctions for such noncompliance, absent any determination of fraud or abuse.

Statutory Authority

Section 1135(b) of the Social Security Act

Purpose

The purpose of this proposed regulation is to temporarily extend the suspension of member copays and premiums for six months following the end of the PHE.

Summary of Proposed Changes

Effective for services provided on the day after the end of the PHE until 6 months following the end of the month in which the PHE ends, DHSS/DMMA proposes to amend Section 7.4-B of the Medicaid State Plan to temporarily

extend the provision approved by CMS to waive member copays and premiums.

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 440.386 and the *state* public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA gave public notice and provided an open comment period for 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 December 31, 2022.

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

There is no anticipated fiscal impact as co-pays and premiums have been waived since March of 2020.

Summary of Comments Received with Agency Response and Explanation of Changes

There were no comments received during the comment period.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the December 2022 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding the Temporary Extension to COVID-19 Disaster Relief Co-pay & Premium Provisions is adopted and shall be final effective February 11, 2023.

1/13/23

Date of Signature

Molly Magarik, Secretary, DHSS

State/Territory: Delaware

Section 7 - General Provisions **7.4. Temporary Extension to the Medicaid Disaster Relief Policies** **for the COVID-19 National Emergency**

***Please Note: Due to the formatting requirements of the regulation, it is being attached here as a PDF document:**

[https://regulations.delaware.gov/register/february2023/final/Section 7.4.B - Temporary Extension to COVID-19 DR Provisions AMENDED.pdf](https://regulations.delaware.gov/register/february2023/final/Section%207.4.B%20-%20Temporary%20Extension%20to%20COVID-19%20DR%20Provisions%20AMENDED.pdf)

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Early, Periodic, Screening, Diagnosis, & Treatment Coverage in the Delaware Healthy Children's Program

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 Early, Periodic, Screening, Diagnosis, & Treatment coverage in the Delaware Healthy Children's Program, specifically to align services provided to children under the Title XXI CHIP State Plan with services provided to children under the Title XIX Medicaid State Plan. The Department's proceedings to amend its regulations were initiated pursuant to 29 Del.C. §10114 and its authority as prescribed by 31 Del.C. §512.

The Department published its notice of proposed regulation changes pursuant to 29 Del. C. §10115 in the December 2022 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2022, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The purpose of this proposed regulation is to align services provided to children under the Title XXI CHIP State Plan with services provided to children under the Title XIX Medicaid State Plan.

Background

The Children's Health Insurance Program (CHIP) is an optional program established and administered by a State, jointly funded with the Federal government, to provide child health assistance to uninsured, low-income children through a separate child health program, a Medicaid expansion program, or a combination program. Coverage provided under a CHIP State Plan must consist of any of the four types of coverage outlined in Section 2103(a) of the Social Security Act, specifically, benchmark coverage; benchmark-equivalent coverage; existing comprehensive state-based coverage; and/or Secretary-approved coverage. Within each of these types of coverages, there are additional options.

Delaware's CHIP Program, the Delaware Healthy Children's Program (DHCP), provides Secretary-approved coverage; specifically, it provides coverage that includes benchmark coverage plus additional coverage. This coverage includes all services that are provided to children under the Medicaid State Plan, except Non-Emergency Transportation (NEMT) and Prescribed Pediatric Extended Care (PPEC).

NEMT is an important benefit provided through Medicaid and is associated with a significant reduction in missed appointments. Transportation barriers can prevent individuals from accessing vital medical care. Extension of the NEMT benefit to children enrolled in CHIP will increase access to care for these targeted low-income children. PPEC facilities are provided as an alternative to more expensive institutionalization or as an alternative to community/home care for children who are determined to be in medical need of the service. These services include nursing services, speech therapy, physical therapy, and occupational therapy provided in an outpatient setting, up to twelve hours per day, five days a week. Typically, children that are eligible for PPEC services are enrolled with Medicaid under the Children's Community Alternative Disability Program (CCADP). If a child in CHIP were to be medically complex enough to receive PPEC services, they would be referred to the CCADP to be reviewed for coverage under that benefit. However, revising the coverage provided under the CHIP State Plan, to Secretary-approved coverage, coverage the same as Medicaid State plan, including Early Periodic Screening Diagnosis and Treatment (EPSDT) will ensure that no child enrolled in the CHIP program will go without access to transportation, or in the rare instance, PPEC services until the child was able to be reviewed for the CCADP.

Additionally, this State Plan Amendment will allow for easier administration of the CHIP program by aligning services and reducing CMS administrative requirements on states that do not align services between the Medicaid and CHIP State Plans.

Statutory Authority

42 CFR 457.65

42 CFR 457.450

Section 2103(a) of the Social Security Act

Purpose

The purpose of this proposed regulation is to align services provided to children under the Title XXI CHIP State Plan with services provided to children under the Title XIX Medicaid State Plan.

Summary of Proposed Changes

Effective for services provided on and after July 1, 2023, DHSS/DMMA proposes to amend the Title XXI Children's Health Insurance Program (CHIP) State Plan regarding Early, Periodic, Screening, Diagnosis, & Treatment (EPSDT) coverage in the Delaware Healthy Children's Program.

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 440.386 and the *state* public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA gave public notice and provided an open comment period for 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 December 31, 2022.

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

	Federal Fiscal Year 2023	Federal Fiscal Year 2024
Federal funds	\$125,816	\$679,212
General (State) funds	\$51,539	\$266,765

Summary of Comments Received with Agency Response and Explanation of Changes

The following summarized comments were received:

Comment: The Governor's Advisory Council for Exceptional Citizens (GACEC) is concerned by DMMA's intention to update the DMAP policies and portal without public notice.

Agency Response: DMMA would like to clarify that updating the DMAP policies and portal is not subject to APA requirements since they are internal policies/procedures, not regulations.

Comment: The Governor's Advisory Council for Exceptional Citizens (GACEC) supports the expansion of NEMT to provide transportation services.

Agency Response: DMMA appreciates the support.

Comment: The Governor's Advisory Council for Exceptional Citizens (GACEC) would like to verify that DHSS will be covering inpatient and outpatient mental health and substance abuse services, as well as wrap around and specialty dental care, in other categories, since specific language in reference to these services was removed.

Agency Response: DMMA would like to clarify that all benefits will be provided to CHIP members in the same manner as described in the Medicaid State Plan. There were no benefits removed. The details around the benefits were administrative requirements since the CHIP and Medicaid State Plan services were not aligned under EPSDT. These details were removed as details are maintained in the Medicaid State Plan.

Comment: The Governor's Advisory Council for Exceptional Citizens (GACEC) supports the adoption of EPSDT medical necessity standards for CHIP children.

Agency Response: DMMA appreciates the support.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the December 2022 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding the Early, Periodic, Screening, Diagnosis, & Treatment coverage in the Delaware Healthy Children's Program is adopted and shall be final effective February 11, 2023.

1/13/23

Date of Signature

Molly Magarik, Secretary, DHSS

***Please Note:** Due to the formatting requirements of the regulation, it is being attached here as a PDF document:

[https://regulations.delaware.gov/register/february2023/final/CHIP EPSDT Coverage Sec. 1 and Sec. 6 AMENDED.pdf](https://regulations.delaware.gov/register/february2023/final/CHIP%20EPSDT%20Coverage%20Sec.%201%20and%20Sec.%206%20AMENDED.pdf)

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

16 DE Admin. Code 20620

ORDER

Guardianship Fees - Post-Eligibility Protection of Income

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated

proceedings to amend Delaware Social Services Manual (DSSM) 20620.1 regarding Guardianship Fees - Post-Eligibility Protection of Income, specifically, to align language with the recently approved Title XIX Medicaid State Plan allowing Medicaid recipients institutionalized in long-term care facilities to retain an allowance of income to pay for guardianship costs. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Del.C.** §10114 and its authority as prescribed by 31 Del.C. §512.

The Department published its notice of proposed regulation changes pursuant to 29 **Del. C.** §10115 in the December *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 31, 2022, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The purpose of this proposed regulation is to advise the public that Delaware Health and Social Services (DHSS)/ Division of Medicaid and Medical Assistance (DMMA) is proposing to revise Division of Social Services Manual (DSSM) section 20620.1 to align with the CMS approved language.

Background

Medicaid recipients, institutionalized in long-term care facilities, are required to apply their income toward the cost of institutional care. The individual must contribute income to pay for institutional services, deducting only certain allowable amounts, such as a personal needs allowance that is reasonable in amount for clothing and other personal needs of the individual while in the institution.

Some institutionalized recipients may be appointed a guardian by the Court to make medical or financial decisions. There can be cost associated with services provided by the guardian. The services may include, but not be limited to, receiving and depositing income, paying bills, or maintaining accounts. 25 DE Reg. 866 (03/01/22) amended Title XIX Medicaid State Plan to allow Medicaid recipients institutionalized in long-term care facilities to retain an allowance of income to pay for guardianship not to exceed \$100 and to include the establishment of a guardianship (to include attorney's fees) not to exceed \$750.

DMMA published revisions to the Title XIX Medicaid State Plan and the Division of Social Services Manual (DSSM) 20620.1 regarding guardianship fees and post-eligibility treatment of income that were adopted as final in August of 2022. DMMA subsequently submitted the Title XIX Medicaid State Plan changes to the Centers for Medicare and Medicaid Services (CMS). After review and discussions with CMS, gross earned income was revised to gross income; this change must be revised in Section 20620.1 of the DSSM.

Statutory Authority

§1902(a)(50)(q) of the Social Security Act

§1902(a)(14)(l) of the Social Security Act

Purpose

The purpose of this proposed regulation is to advise the public that Delaware Health and Social Services (DHSS)/ Division of Medicaid and Medical Assistance (DMMA) is proposing to revise Division of Social Services Manual (DSSM) section 20620.1 to align with the CMS approved language.

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 440.386 and the state public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA gave public notice and provided an open comment period for 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 December 31, 2022.

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

There is no anticipated increase in the fiscal impact from the original publication to align with the CMS approved language.

Summary of Comments Received with Agency Response and Explanation of Changes

There were no comments received during the public comment period.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Delaware Social Services Manual (DSSM) 20620.1 regarding Guardianship Fees - Post-Eligibility Protection of Income, specifically, to align language with the recently approved Title XIX Medicaid State Plan allowing Medicaid recipients institutionalized in long-term care facilities to retain an allowance of income to pay for guardianship costs, is adopted and shall be final effective February 11, 2023.

1/13/23

Date of Signature

Molly Magarik, Secretary, DHSS

20000 Medicaid Long Term Care

20620.1 Personal Needs Allowance

20620.1.1 \$50.00 per month of available income is to be protected for the Medicaid recipients recipient's direct personal needs; or

20620.1.2 If the recipient regularly attends a rehab/educational program off the grounds of his or her long-term care facility, including employment for the purpose of rehabilitation in a sheltered workshop, \$50.00 per month will be protected; or

20620.1.3 For long-term care facility residents who are participating in substantial gainful activity (SGA) (20 CFR 416.971), the following amounts, not to exceed the Adult Foster Care rate will be deducted from gross earned income:

20620.1.3.1 Mandatory payroll deductions that are a condition of employment including, but not limited to:

- Federal, State and Local Taxes
- FICA
- Union Dues
- Insurance premiums
- Pension contributions
- Transportation costs as paid to & from work
- Clothing and personal needs allowance of \$75/month.

20620.1.3.2 If monthly earnings average more than the current SGA amount in a calendar year, this is considered SGA and the Division of Medical Assistance (DMMA) can allow a personal needs allowance of up to the AFC rate.

20620.1.3.3 If earnings average less than \$300 a month in a calendar year, this is not ordinarily considered SGA and DMMA can allow the \$50 personal needs allowance.

20620.1.3.4 If average earnings are between \$300 and the current SGA amount, DMMA must consider other factors to determine whether or not the work constitutes SGA. Other factors include considering if the work is comparable to persons without disabilities in the community performing similar jobs.

20620.1.4 For nursing facility residents requiring a court appointed guardian, the following amounts will be deducted from the gross ~~earned~~ income:

i. Monthly guardianship fees not to exceed \$100

ii. Initial establishment of a guardianship (to include attorney's fees) not to exceed \$750

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)t (16 **Del.C.** §122(3)t)
16 **DE Admin. Code** 4459

ORDER

4459 Lead Based Paints Hazards

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Lead Based Paints Hazards. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, subsection 122(3)(t).

On September 1, 2022 (Volume 26, Issue 3), DHSS published in the *Delaware Register of Regulations* its notice of proposed regulations, pursuant to 29 *Del.C.* § 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by October 3, 2022, after which time DHSS would review information, factual evidence, and public comment to the said proposed regulations.

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

FINDINGS OF FACT:

Some changes were made to the regulations since publication as proposed in response to public comment. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Lead Based Paints Hazards is adopted and shall become effective February 11, 2023 (ten days), after publication of the final regulation in the *Delaware Register of Regulations*.

1/13/23

Date

MOLLY MAGARIK
SECRETARY

SUMMARY OF EVIDENCE

STATE OF DELAWARE REGULATIONS GOVERNING
LEAD BASED PAINTS HAZARDS

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services

(DHSS) Regulations Governing Lead Based Paints Hazards were published in the Delaware Register of Regulations. Written comments were received on the proposed regulations during the public comment period (September 1, 2022 through October 3, 2022).

Entities offering written comments include:

- Amy Roe, Ph.D.
- Brightfields, Inc.

Comments

Amy Roe, Ph.D.

Please amend 2.0 Definitions by adding "or higher" after the end parenthesis following 3.5 µg/dL, as shown in red below:

"Elevated Blood Lead Level (EBLL) blood lead level" or "(EBLL)" means an excessive absorption of lead that is a concentration of lead in whole blood of 20 3.5 µg/dL (micrograms of lead per deciliter of whole blood) **or higher** for a single venous test, or of 15 - 19 µg/dL in two consecutive fingerstick blood level tests taken three to four months apart.

This change clarifies that any blood lead level at or above 3.5 µg/dL is considered elevated, not just those levels that are exactly 3.5 µg/dL.

DPH response: The Division of Public Health appreciates the submission of comments regarding this regulation. DPH has reviewed these comments and has determined that this proposed change shall be incorporated into the final regulation as published.

Brightfields, Inc.

BrightFields has reviewed the proposed changes to the above-referenced regulations. In an effort to aid the Division of Public Health in the promulgation of these amendments and their future enforcement, BrightFields respectfully submits the following comments and suggestions on the proposed amendments to 16 DE Admin. Code 4459 and 16 DE Admin. Code 4459B regulations:

16 DE Admin. Code 4459 Lead Based Paints Hazards

Section 2.0

- Refer to section about abatement firm and individual certification requirements under "Abatement" definition.
- Refer to section about Renovation, Repair and Painting (RRP) certification requirements under "Interim Controls" definition.
- Define "Renovation, Repair and Painting" and refer to regulation 16 DE Admin. Code 4459B Residential Property Renovation, Repair and Painting.

Section 5.5

- Clarify applicability is to lead-based paint and not to all paint.
- Specify what certification(s) are required to perform Interim Controls.

Section 5.6

- Specify certification(s) required in Section 5.6.1 and add "firm" certification in addition to "individual" - Specify that firm certification is required in addition to individual certification.

General Comment:

- Some of the comments outlined above could be addressed in an accompanying guidance or policy document.

DPH response: The Division of Public Health appreciates the submission of comments regarding this regulation. DPH has reviewed these comments and has determined that some of these proposed changes shall be incorporated into the final regulation as published.

4459 ~~Lead-Based Paints~~ Lead-Based Paint Hazards (Break in Continuity of Sections)

2.0 Definitions

(Break in Continuity Within Section)

"~~Elevated Blood Lead Level (EBLL)~~ blood lead level" or "~~(EBLL)~~" means an excessive absorption of lead that is a concentration of lead in whole blood of ~~20~~ 3.5 µg/dL (micrograms of lead per deciliter of whole blood) **[or higher]** for a single venous test, or of ~~15–19~~ 15–19 µg/dL in two consecutive fingerstick blood level tests taken three to four months apart.

(Break in Continuity of Sections)

5.0 Work Practice Standards For Conducting ~~Lead-based~~ Lead-Based Paint Activities: Target Housing and ~~Child-occupied Facilities.~~ Child-Occupied Facilities

(Break in Continuity Within Section)

5.5 Interim Controls.

5.5.1 Interim controls of lead-based paint hazards identified in a risk assessment shall be conducted in accordance with the provisions of these regulations. Interim control measures include paint stabilization of deteriorated [lead-based] paint, treatments for friction and impact surfaces where levels of lead dust are above the levels specified in subsection 5.1.4.3.1, dust control, and lead-contaminated soil control. As provided by Section 2.0, interim controls may be performed in combination with, or be replaced by, abatement methods. [If Lead Abatement activity and Interim Controls are to be performed at the same structure, the Abatement firm can perform both activities. In addition, individuals certified as RRP Renovator pursuant to 16 DE Admin. Code 4459B may perform the Interim Controls but may not perform lead abatement activities.]

(Break in Continuity Within Section)

5.5 5.6 Abatement.

5.5.1 5.6.1 An abatement shall be conducted only by **[a firm or]** an individual certified by the ~~[Secretary and, if conducted,~~ **Secretary. Abatement]** shall be conducted according to the procedures in this section.

***Please note that no additional changes were made to the regulation as originally proposed and published in the September 2022 issue of the Register at page 157 (26 DE Reg. 157). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/february2023/final/26 DE Reg 697 02-01-23.htm>

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)t (16 Del.C. §122(3)t)
16 DE Admin. Code 4459B

ORDER

4459B Residential Property Renovation, Repair and Painting

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Residential Property Renovation, Repair and Painting. The DHSS proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, subsection 122(3)(t).

On September 1, 2022 (Volume 26, Issue 3), DHSS published in the *Delaware Register of Regulations* its

notice of proposed regulations, pursuant to 29 *Del.C.* § 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by October 3, 2022, after which time DHSS would review information, factual evidence, and public comment to the said proposed regulations.

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

FINDINGS OF FACT:

Some changes were made to the regulations since publication as proposed in response to public comment. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Residential Property Renovation, Repair and Painting is adopted and shall become effective February 11, 2023 (ten days), after publication of the final regulation in the *Delaware Register of Regulations*.

Date 1/13/23

MOLLY MAGARIK
SECRETARY

SUMMARY OF EVIDENCE

STATE OF DELAWARE REGULATIONS GOVERNING RESIDENTIAL PROPERTY RENOVATION, REPAIR AND PAINTING

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Residential Property Renovation, Repair and Painting were published in the *Delaware Register of Regulations*. Written comments were received on the proposed regulations during the public comment period (September 1, 2022 through October 3, 2022).

Entities offering written comments include:

- Brightfields, Inc.

Comments

Brightfields, Inc.

BrightFields has reviewed the proposed changes to the above-referenced regulations. In an effort to aid the Division of Public Health in the promulgation of these amendments and their future enforcement, BrightFields respectfully submits the following comments and suggestions on the proposed amendments to 16 DE Admin. Code 4459 and 16 DE Admin. Code 4459B regulations:

16 DE Admin. Code 4459B Residential Property Renovation, Repair and Painting

Section 1.4.7

- Specify the required elements of an Occupant Protection Plan. Thorough guidance of what is required should be provided to contractors. Many contractors have very little experience in written communication and the Occupant Protection Plan is a profound change in what they are required to communicate.
- Specify at what point the Occupant Protection Plan is to be submitted.

Section 3.0

- Add a section specifying requirements if a building is unoccupied or if a building is being converted to target housing or a child-occupied facility from a different past use. Define at what point the building becomes target housing or a child-occupied facility.
- Specify or provide guidance on what the review/approval process will be for Occupant Protection Plans. Specify the turn-around time (if any) for the State's approval.

Section 3.1

- The word "abatement" should be replaced by "renovation" in the first sentence.
- Specify the difference between a "notification of the commencement of lead-based paint renovation activities" and "Start Work Notification." Clarify if these are two different submittals. o Don't use two different notification periods ("5 business days" vs. "7 days"), which will add to confusion.

General Comment:

- The amendments to the 16 DE Admin. Code 4459B rule apparently have the potential to significantly add to the time, effort and cost to home renovations on target housing and child-occupied facilities. Please make study results on the economic impacts of the Occupant Protection Plan requirement public. Please publicize the justification for this rule change and how the rule will be enforced.
- Some of the comments outlined above could be addressed in an accompanying guidance or policy document.

DPH response: The Division of Public Health appreciates the submission of comments regarding this regulation. DPH has reviewed these comments and has determined that some of these proposed changes shall be incorporated into the final regulation as published.

4459B Residential Property Renovation, ~~Repair~~ Repair, and Painting (Break in Continuity of Sections)

3.0 Information Distribution Requirements

3.1 Written or electronic notification of the commencement of lead-based paint renovation activities in target housing or a child-occupied facilities or as a result of a Federal, State of Delaware, or local order shall be given to the Secretary 5 business days prior to the commencement of [abatement renovation] activities. [This requirement will be considered satisfied by compliance with subsection 3.1.1 of this regulation.

3.1.1] The lead renovation firm must submit a Start Work Notification to the Department of Health and Social Services at least **[7 5 business]** days before beginning work that includes any set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including[:

~~3.1.1~~ **3.1.1.1]** Specialized cleaning;

~~3.1.2~~ **3.1.1.2]** Repairs;

~~3.1.3~~ **3.1.1.3]** Maintenance;

~~3.1.4~~ **3.1.1.4]** Painting;

~~3.1.5~~ **3.1.1.5]** Temporary containment;

~~3.1.6~~ **3.1.1.6]** Ongoing monitoring of lead-based paint hazards or potential hazards; and

~~3.1.7~~ **3.1.1.7]** The establishment and operation of management and resident education programs.

***Please note that no additional changes were made to the regulation as originally proposed and published in the September 2022 issue of the Register at page 158 (26 DE Reg. 158). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/february2023/final/26 DE Reg 699 02-01-23.htm>

DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and 332 (18 Del.C. §§311 & 332)
18 DE Admin. Code 1315

EXEMPT FINAL ORDER

1315 Arbitration of Health Insurance Disputes Between Individuals and Carriers

Regulation 1315 implements 18 Del.C. §§332, which requires health insurance carriers to submit to arbitration disputes with a covered person or authorized representative regarding adverse determinations upon a request for arbitration by the covered person.

With this order, the Department is updating Regulation 1315 to revise the definition of "authorized

representative" to remove the requirement that an insurance carrier, when informing a covered person of its internal review process, must inform the covered person of the availability of legal assistance from attorneys working for the Delaware Department of Justice in the preparation of an appeal of an adverse determination involving treatment for substance abuse. These changes are being made due to the January 1, 2020 sunset of HB 100, 81 **Del. Laws**, Ch. 28, § 3 (May 30, 2017), which amended 18 **Del.C.** §332. The Department is also taking the opportunity to make stylistic updates to the regulation.

This order is exempt from the requirement of public notice and comment because it includes "amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulation," pursuant to 29 **Del.C.** §10113(b)(5) and it includes "non-substantive changes in existing regulations to alter style or form or to correct technical errors," pursuant to 29 **Del.C.** §10113(b)(4).

This order shall be effective 10 days after publication in the *Register of Regulations*.

IT IS SO ORDERED.

The 5th day of January, 2023

Trinidad Navarro
Commissioner, Delaware Department of Insurance

1315 Arbitration of Health Insurance Disputes Between Individuals and Carriers

1.0 Purpose and Statutory Authority

The purpose of this Regulation is to implement 18 **Del.C.** §332, which requires health insurance carriers to submit to arbitration disputes with a covered person or authorized representative regarding adverse determinations upon a request for arbitration by the covered person. This Regulation is promulgated pursuant to 18 **Del.C.** §§311 and 332; and 29 **Del.C.** Ch. 101. This Regulation should not be construed to create any cause of action not otherwise existing at law.

2.0 Definitions

"Adverse determination" means a decision by a carrier to deny (in whole or in part), reduce, or terminate health insurance benefits or a determination that an admission or continued stay, or course of treatment, or other covered health service does not satisfy the insurance policy's clinical requirements for appropriateness, necessity, health care setting and/or level of care.

"Authorized representative" means an individual whom a covered person willingly acknowledges to represent his interests during the internal review process and/or an appeal through the arbitration process or the Independent Health Care Appeals Program, including but not limited to a provider to whom a covered person has assigned the right to collect sums due from a carrier for health care services rendered by the provider to the covered person. A carrier may require the covered person to submit written verification of his consent to be represented. If a covered person has been determined by a physician to be incapable of assigning the right of representation, the covered person may be represented by a family member or a legal representative. ~~In cases involving the existence or scope of private or public coverage for substance abuse treatment, assistance may be provided by or through the Delaware Department of Justice as an authorized representative, regardless of whether the covered person has been determined by a physician to be incapable of assigning the right of representation. The Department of Justice may be reached by calling 302-577-4206, by visiting <http://attorneygeneral.delaware.gov/doj-treatmentassistance/>, or by email at doj-treatmentassistance@state.de.us.~~

"Carrier" means any entity that provides health insurance in this State. Carrier includes an insurance company, health service corporation, managed care organization and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation. Carrier also includes any third-party administrator or other entity that adjusts, administers or settles claims in connection with health insurance.

"Covered person" means an individual and/or family who has entered into a contractual arrangement, or on whose behalf a contractual arrangement has been entered into, with a carrier, pursuant to which the carrier provides health insurance for such person or persons.

“**Department**” means the Delaware Insurance Department.

“**Duration of an Emergency Medical Condition**” means a period of time that begins with an Emergency Medical Condition and ends when the Emergency Medical Condition is either treated or stabilized as such stabilization is evidenced by post stabilization care [as referenced in 18 **Del.C.** §§3349(c)(3) and 3565(c)(3)] in a hospital where such post stabilization care is not within the definition of emergency care services.

“**Emergency care provider**” means a provider of emergency care services including a provider who also provides health care services that aren't emergency care services.

“**Emergency care services**” means those services identified in 18 **Del.C.** §§3349(d) and 3565(d) performed at any time during the Duration of an Emergency Medical Condition, including any covered service providing for the transportation of a patient to a hospital emergency facility for an emergency medical condition including air and sea ambulances so long as medical necessity criteria are met.

“**Emergency Medical Condition**” shall have the meaning assigned to it by 18 **Del.C.** §§3349(e) and 3565(e).

“**Final coverage decision**” means the decision by a carrier at the conclusion of its internal review process upholding, modifying or reversing its adverse determination.

“**Grievance**” means a request by a covered person or his authorized representative that a carrier review an adverse determination by means of the carrier's internal review process.

“**Health care services**” means any services or supplies included in the furnishing to any individual of medical care or hospitalization, or incidental to the furnishing of such care or hospitalization, as well as the furnishing to any individual of any and all other services for the purpose of preventing, alleviating, curing or healing human illness, injury, disability or disease.

“**Health insurance**” means a plan or policy issued by a carrier for the payment for, provision of, or reimbursement for health care services.

“**Network Emergency Care Provider**” is a provider who has a written participation agreement with the carrier to provide emergency care services or governing payment of emergency care services.

“**Non-Network Emergency Care Provider**” is a provider who is not a Network Emergency Care Provider.

“**Provider**” means an individual or entity, including without limitation, a licensed physician, a licensed nurse, a licensed physician assistant and a licensed nurse practitioner, a licensed diagnostic facility, a licensed clinical facility, and a licensed hospital, who or which provides health care services in this State.

3.0 Arbitration Procedure to Review a Carrier's Final Coverage Decision

3.1 Petition for Arbitration

- 3.1.1 A covered person or his authorized representative may request review of a carrier's final coverage decision through arbitration by delivering a Petition for Arbitration, using the standardized form available from the Department by mail and on its web site, and all supporting documentation to the Department so that the request for review is received by the Department within sixty days of receipt by the covered person of written notice of the carrier's final coverage decision.
- 3.1.2 A covered person or his authorized representative must deliver to the Department an original and one copy of the Petition for Arbitration and all supporting documentation.
- 3.1.3 At the time of delivering the Petition for Arbitration and supporting documentation to the Department, a covered person or his authorized representative must also:
 - 3.1.3.1 Send a copy of the Petition for Arbitration and supporting documentation to the carrier by certified mail, return receipt requested;
 - 3.1.3.2 Deliver to the Department a Proof of Service confirming that a copy of the Petition was mailed to the carrier by certified mail, return receipt requested; and
 - 3.1.3.3 Deliver to the Department a ~~\$75.00~~ \$75 filing fee.

- 3.1.4 The Department may refuse to accept any Petition that is not timely filed or does not otherwise meet the criteria for arbitration. If the subject of the Petition is appropriate for review through IHCAP (refer to Independent Health Care Appeal Program, Regulation 1301), the Department shall advise the covered person or his authorized representative of the procedure to obtain IHCAP review. If the subject of the Petition is appropriate for IHCAP review, the Petition for Arbitration will be treated as an IHCAP appeal for purposes of determining whether the IHCAP appeal is timely filed in accordance with subsection 5.1 of Regulation 1301.
- 3.2 Response to Petition for Arbitration
- 3.2.1 Within 20 days of receipt of the Petition, the carrier must deliver to the Department an original and one copy of a Response with supporting documents or other evidence attached.
- 3.2.2 At the time of delivering the Response to the Department, the carrier must also:
- 3.2.2.1 Send a copy of the Response and supporting documentation to the covered person or his authorized representative by certified mail, return receipt requested;
- 3.2.2.2 Deliver to the Department a proof of service confirming that a copy of the Response was mailed to the covered person or his authorized representative by certified mail, return receipt requested; and
- 3.2.2.3 Deliver to the Department a ~~\$75.00~~ \$75 filing fee.
- 3.2.3 The Department may return any non-conforming Response to the carrier.
- 3.2.4 If the carrier fails to deliver a Response to the Department in a timely fashion, the Department, after verifying proper service, and with written notice to the parties, may assign the matter to the next scheduled Arbitrator for summary disposition. The Arbitrator may:
- 3.2.4.1 Determine the matter in the nature of a default judgment after establishing that the Petition is properly supported and was properly served on the carrier; and
- 3.2.4.2 Allow the matter to be reopened to prevent a manifest injustice. A request for re-opening must be made by the covered person or his authorized representative no later than seven days after notice of the default judgment.
- 3.3 Summary Dismissal of Petition by the Arbitrator
- 3.3.1 If the Arbitrator determines that the subject of the Petition is not appropriate for arbitration or IHCAP or is meritless on its face, the Arbitrator may summarily dismiss the Petition and provide notice of such dismissal to the parties.
- 3.4 Appointment of Arbitrator
- 3.4.1 Upon receipt of a Response that conforms with the requirements of this regulation, the Department shall assign an Arbitrator from a panel of Arbitrators and shall schedule the matter for a hearing so that the Arbitrator can render a written decision within 45 days of the delivery to the Department of the Petition for Arbitration.
- 3.4.2 The Arbitrator shall be of suitable background and experience to decide the matter in dispute and shall not be affiliated with any of the parties or with the provider whose service is at issue in the dispute.
- 3.5 Arbitration Hearing
- 3.5.1 The Arbitrator shall give notice of the arbitration hearing date to the parties at least 10 days prior to the hearing. The parties are not required to appear and may rely on the papers delivered to the Department.
- 3.5.2 The arbitration hearing is to be limited, to the maximum extent possible, to each party being given the opportunity to explain their view of the previously submitted evidence and to answer questions presented to the parties by the Arbitrator.
- 3.5.3 If the Arbitrator allows any brief testimony, the Arbitrator shall allow brief cross-examination or other response by the opposing party.
- 3.5.4 The Delaware Uniform Rules of Evidence will be used for general guidance but will not be strictly applied.

- 3.5.5 Because the testimony may involve evidence relating to personal health information that is confidential and protected by state or federal laws from public disclosure, the arbitration hearing shall be closed unless otherwise agreed by the parties.
- 3.5.6 The Arbitrator may contact, with the parties' consent, individuals or entities identified in the papers by telephone in or outside of the parties' presence for information to resolve the matter.
- 3.5.7 The Arbitrator is to consider the matter based on the submissions of the parties and information otherwise obtained by the Arbitrator in accordance with this regulation. The Arbitrator shall not consider any matter not contained in the original or supplemental submissions of the parties, other than information otherwise obtained by the Arbitrator pursuant to this Regulation, that has not been provided to the opposing party with at least five days' notice, except claims of a continuing nature that are set out in the filed papers.
- 3.6 Arbitrator's Written Decision.
 - 3.6.1 The Arbitrator shall render his decision and mail a copy of the decision to the parties within 45 days of the filing of the Petition.
 - 3.6.2 The Arbitrator's decision shall include allowable charges and payments for each service subject to arbitration for a period that will end on the 360th day after the date of the Arbitrator's decision.
 - 3.6.3 The Arbitrator's decision is binding upon the carrier except as provided in 18 **Del.C.** §332(g).
- 3.7 Arbitration Costs.
 - 3.7.1 In arbitrations commenced pursuant to 18 **Del.C.** §332 and Section 3.0 of this Regulation, the carrier shall pay the costs of arbitration, any compensation paid to the arbitrator not to exceed \$250, and any additional related fees which exceed the filing fee of \$75 required to commence arbitration. In the event the covered person prevails, the \$75 filing fee paid by the covered person will be refunded by the carrier.

4.0 Carrier Recordkeeping and Reporting Requirements

- 4.1 A carrier shall maintain written or electronic records documenting all grievances and Petitions for Arbitration including, at a minimum, the following information:
 - 4.1.1 For each grievance:
 - 4.1.1.1 The date received;
 - 4.1.1.2 Name and plan identification number of the covered person on whose behalf the grievance was filed;
 - 4.1.1.3 A general description of the reason for the grievance; and
 - 4.1.1.4 The date and description of the final coverage decision.
 - 4.1.2 For each Petition for Arbitration:
 - 4.1.2.1 The date the Petition was filed;
 - 4.1.2.2 Name and plan identification number of the covered person on whose behalf the Petition was filed;
 - 4.1.2.3 A general description of the reason for the Petition; and
 - 4.1.2.4 Date and description of the Arbitrator's decision or other disposition of the Petition.
- 4.2 A carrier shall file with its annual report to the Department the following information:
 - 4.2.1 The total number grievances filed.
 - 4.2.2 The total number of Petitions for Arbitration filed, with a breakdown showing:
 - 4.2.2.1 The total number of final coverage decisions upheld through arbitration; and
 - 4.2.2.2 The total number of final coverage decisions reversed through arbitration.

5.0 Non-Retaliation

- 5.1 A carrier shall not disenroll, terminate or in any way penalize a covered person who exercises his rights to file a grievance or Petition for Arbitration solely on the basis of such filing.

5.2 A carrier shall not terminate or in any way penalize a provider with whom it has a contractual relationship and who exercises, on behalf of a covered person, the right to file a grievance, or Petition for Arbitration solely on the basis of such filing.

6.0 Confidentiality of Health Information

Nothing in this Regulation shall supersede any federal or state law or regulation governing the privacy of health information.

7.0 Computation of Time

In computing any period of time prescribed or allowed by this Regulation, the day of the act or event after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or Sunday, or other legal holiday, or other day on which the Department is closed, in which event the period shall run until the end of the next day on which the Department is open. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and other legal holidays shall be excluded in the computation. As used in this section, "legal holidays" shall be those days provided by statute or appointed by the Governor or the Chief Justice of the State of Delaware.

8.0 Effective Date

~~This Regulation shall become effective ten days after being published as a final regulation. The amendment to the definition of "authorized representative" shall become effective 10 days after being published as a final regulation and shall sunset on January 1, 2020 unless expressly reauthorized prior to that date became effective on April 11, 2016, 10 days after being published as a final regulation. The amendment to the definition of "authorized representative" became effective January 11, 2018. The current amendment to the definition of "authorized representative" shall become effective ten days after being published in the *Register of Regulations*.~~

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 1104 (7 Del.C. §1104)
7 DE Admin. Code 3301 and 3304

Secretary's Order No: 2022-F-0028

RE: Approving Final Amendments to 7 DE Admin. Code 3300 - *Non-Tidal Finfish*, sections 3301- *Definitions* and 3304 - *Creel Limits, Size Limits and Seasons, 3.0 Trout*

Date of Issuance: December 29, 2022

Effective Date: February 11, 2023

3300 Non-Tidal Finfish

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

Background, Procedural History and Findings of Fact

This Order relates to 7 DE Admin. Code 3300 - *Non-Tidal Finfish*, more specifically sections 3301- *Definitions* and 3304 - *Creel Limits, Size Limits and Seasons, 3.0 Trout* ("Regulation"). The Department proposes revisions to the Regulation that will enable the Department to augment the waters open for trout fishing by adding an additional 0.4 miles of trout stream to the stocked portion of Red Clay Creek and designate this area as fly-fishing only. In addition, the Department proposes revisions to the Regulation to designate "Youth Day" as the first Saturday of

April in trout streams and the first Saturday of March in trout ponds.

In 2018, a section of Red Clay Creek was designated as a trout stream, allowing stocking for trout to be fished in these waters. The trout stream section of Red Clay Creek measures 1.0 miles from the dam just below the boundary between the State of Delaware and the Commonwealth of Pennsylvania, to the bridge at Yorklyn Road in Hockessin, Delaware. As a result of the improved water quality in Red Clay Creek, the Department worked with Auburn Valley State Park to expand the trout stream section in these waters by 0.4 miles. The Amendment extends the trout stream of Red Clay Creek by 0.4 miles past the bridge at Yorklyn Road and downstream to the Auburn Valley State Park boundary adjacent to Creek Road. The Department proposes the 0.4-mile expansion be reserved for fly-fishing only to alleviate the high population of fly-fishing in White Clay Creek.

Fly-fishing is an angling method that uses a light-weight lure to catch fish. The fly is cast using a fly rod, reel, and specialized weighted line that requires casting techniques significantly different from other forms of casting. Throughout the State the only trout stream area reserved for fly-fishing only is one section of White Clay Creek. With the growing popularity of fly-fishing, the Department has designated the 0.4-mile expansion of trout stream in Red Clay Creek as a second trout stream area reserved for fly-fishing only.

Freshwater trout angling is a seasonally popular activity and fly-fishing has grown in popularity amongst anglers. Fly-fishing and trout angling saw an increase during the Covid-19 pandemic. In 2020, under the authority granted by the Governor's Covid-19 Emergency Order, the Department designated the first day of the 2020 trout season as "Youth Day". This day was reserved for those under the age of 16 to fish for trout. The event grew in popularity amongst all anglers, including experienced angler's being able to assist those under the age of 16. The Emergency Order was terminated in 2021, and the Department is required to amend the Regulation to continue the designation of "Youth Day" for anglers under the age of 16.

The Department proposes Amendments to continue the designation of "Youth Day" as the beginning of the trout season. The Amendment will designate the first Saturday of March in trout ponds and the first Saturday of April in trout streams as "Youth Day". Subsequently, trout season for all anglers will then begin on the first Sunday of March in trout ponds and the first Sunday of April in trout streams.

The Department intends to encourage youth to become anglers by providing a designated day for youth to fish for trout a day before all anglers can begin trout fisheries in the streams and ponds. In addition, the 0.4-mile expansion of trout stream in Red Clay Creek for fly-fishing only is expected to ease the overpopulated stream in White Clay Creek.

The Department has the statutory basis and legal authority to act with regard to the formal promulgation of these proposed Amendments, pursuant to 7 *Del. C.* §103 (a & b). The Department published its initial proposed regulation Amendments in the November 1, 2022, *Delaware Register of Regulations*. Thereafter, the public hearing regarding this matter was held on November 22, 2022. There were four members of the public in attendance, with three (3) public comments given at the time of the hearing. Pursuant to 29 *Del.C.* §10118(a), the hearing record ("Record") remained open for receipt of additional written comment for 15 days following the public hearing. The Record formally closed for comment in this matter at close of business on December 7, 2022, with six (6) written comments received by the Department for the formal 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.

Subsequent to the close of the Record, and at the request of presiding Hearing Officer Theresa Newman, the Department's Division of Fish and Wildlife staff prepared a Technical Response Memorandum ("TRM"). The TRM responds to the comments received by the Department in this matter and provides a thorough discussion in response to the suggestions and questions provided by the public.

Following the receipt of the Department's TRM as noted above, the Hearing Officer prepared her Hearing Officer's Report dated December 21, 2022 ("Report"), which expressly incorporated both the Department's proposed Amendments and the TRM into the Record generated in this matter. 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 in the Division of Fish and Wildlife, and established by the Hearing Officer's Report, I find that the proposed regulatory Amendments to 7 DE Admin. 3300 - *Non-Tidal Finfish*, sections 3301- *Definitions* and 3304 - *Creel Limits, Size Limits and Seasons*, 3.0 *Trout*, are well

supported. I further find that the Department's experts fully developed the record to support adoption of these Amendments. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed Amendments be promulgated as final.

The following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to 7 *Del. C.* §§901, 903(a, b, & e) and 7 *Del. C.* §103 (a & b);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Chapter 60, to issue an Order adopting these 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 November 22, 2022, and during the 15 days subsequent to the hearing (through December 7, 2022), before making any final decision;
4. Promulgation of the proposed Amendments to 7 DE Admin. 3300 - *Non-Tidal Finfish*, sections 3301-*Definitions* and 3304 - *Creel Limits, Size Limits and Seasons, 3.0 Trout*, will enable the Department to augment the waters open for trout fishing by adding an additional 0.4 miles of trout stream to the stocked portion of Red Clay Creek, designate the added 0.4 miles as a fly-fishing only area, and designate "Youth Day" as the first Saturday of March in trout ponds and the first Saturday of April in trout streams.
5. The Department has reviewed the proposed Amendments in light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and believes the same to be lawful, feasible and desirable, and the recommendations as proposed should be applicable to all Delaware citizens equally;
6. The Department's proposed regulatory Amendments, as initially published in the November 1, 2022, *Delaware Register of Regulations*, 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 should be 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
7. The Department shall submit the proposed Amendments as final regulatory amendments 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.

Lisa Borin Ogden
For: Shawn M. Garvin
Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the November 2022 issue of the *Register* at page 377 (26 DE Reg. 377). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/february2023/final/26 DE Reg 706 02-01-23.htm>

DEPARTMENT OF SAFETY AND HOMELAND SECURITY
OFFICE OF THE SECRETARY

Statutory Authority: 21 Delaware Code, Section 6901(c) (21 **Del.C.** §6901(c))
2 DE Admin. Code 1301

ORDER

1301 Nonconsensual Towing

NATURE OF THE PROCEEDINGS

The Delaware Department of Safety and Homeland Security (DSHS), in compliance with the State's

Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 21 of the Delaware Code, Chapter 69, Section 6901(c), proposed to amend its regulations on Nonconsensual Towing to promote public safety for nonconsensual towing initiated by the Delaware State Police. The proposed amendments sought to revise DSHS's existing Regulation 1301. The proposed amendments were published in the Register Regulations and provided for a public comment period through August 5, 2022. 26 **DE Reg.** 40 (07/01/22). DSHS received and considered public comments from three parties. After considering the comments, DSHS proposed to further amend the regulations. The proposed revised regulations were then published at 26 **DE Reg.** 304 (October 1, 2022). DSHS resubmitted a Regulatory Flexibility Analysis and Impact Statement for the proposed amended regulations, as required by 29 **Del. C.** Ch. 104. DSHS again 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 October 1, 2022 through November 4, 2022. During this period, DSHS received no public comments.

FINDINGS OF FACT

The public was given the required notice of DSHS'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 regulation was submitted. No public comments were submitted to DSHS. Thus, DSHS finds that the proposed revised regulation should be adopted as submitted by DSHS.

EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by DSHS pursuant to 21 **Del. C.** 6901(c). 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, DSHS does hereby ORDER this 22nd day of December 2022 that the amended regulations be, and that they hereby are, adopted to be enacted as set forth below.

IT IS SO ORDERED, this 22nd day of December 2022.

Delaware Department of Safety and Homeland Security
Nathaniel McQueen Jr., Secretary
12/22/2022

***Please note that no changes were made to the regulation as originally proposed and published in the October 2022 issue of the Register at page 304 (26 DE Reg. 304). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/february2023/final/26 DE Reg 708 02-01-23.htm>

GENERAL NOTICES

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 29 Delaware Code, Section 7903(14) (29 Del.C. §7903(14))

NOTICE OF PUBLIC COMMENT

Delaware Drinking Water State Revolving Fund

Notice of Public Participation:

Public comment on the Delaware Drinking Water State Revolving Fund Project Priority List Ranking Criteria

The Department of Health and Social Services, Drinking Water State Revolving Fund ("DWSRF") is announcing the publication of the draft Project Priority List Ranking Criteria for DWSRF projects.

In order to meet public notice and participation requirements under §35.3580 of the Code of Federal Regulations (40 CFR Part 35 Subpart L), the Department of Health and Social Services, as the lead agency for the Drinking Water State Revolving Fund in Delaware, is publishing the draft Project Priority List Ranking Criteria. The draft ranking criteria will be available for public review at <https://www.dhss.delaware.gov/dhss/dph/hsp/dwsrf.html> for 30 days beginning February 1 through March 3, 2023.

The purpose of the public participation period is to gather comments regarding the draft ranking criteria.

SUMMARY OF PROPOSED REVISIONS TO RANKING CRITERIA

1. A revision to Section 2c, Quality Deficiencies, to increase the maximum number of points from 180 to 300 to ensure projects addressing the most significant public health problems are ranked the highest.
2. A revision to Section 2f, Storage, to add 50 points for projects addressing the repair of a degraded storage facility.
3. A revision to Section 2g, Distribution, to add 80 points for projects addressing the lack of critical redundancy.

The opportunity for public comment on the draft ranking criteria is available for 30 days beginning February 1 through March 3, 2023. Comments may be provided to DWSRF by mail or email to:

Drinking Water State Revolving Fund
417 Federal St, 3rd Fl, Suite 205, Dover, DE 19901
DHSS_DPH_DWSRF@delaware.gov

Responses to individual questions and comments will not be provided; however, the DWSRF staff will review and consider all comments and make any modifications to the ranking criteria that are deemed necessary. **DWSRF must receive your comments no later than Friday, March 3, 2023.**

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATERSHED STEWARDSHIP

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

GENERAL 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 new and revised regulatory guidance documents for public review. The documents support the Sediment and Stormwater Regulations (7 **DE Admin. Code** 5101), as set forth at 7 **Del.C.** §4006(h) and (i).

The existing Post Construction Stormwater Best Management Practices (BMP) Construction Review Checklists have been revised and additional checklists have been developed, along with a user guide. The BMP Construction Checklists are provided to assist construction reviewers during post construction stormwater BMP construction.

The DNREC Sediment and Stormwater Program hereby provides notice of the revised 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 February 16, 2023. 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 proposed revisions may be reviewed on the Sediment and Stormwater web page (<https://de.gov/sedimentandstormwater>).

Questions regarding the regulatory guidance documents may be directed to Elaine Webb, elaine.webb@delaware.gov.

PREPARED BY:

Elaine Z. Webb

(302) 739-9921

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GENERAL NOTICES

DEPARTMENT OF TRANSPORTATION DIVISION OF TRANSPORTATION SOLUTIONS Traffic Operation Section

Statutory Authority: 21 Delaware Code, Section 4505(d)(1) (21 **Del.C.** §4505(d)(1))

NOTICE

Senate Bill 89 as amended by Senate Amendment 1 - Heritage Trace Subdivision - Smyrna

January 19, 2023

Yvette Smallwood
Registrar of Regulations
411 Legislative Avenue
Dover, DE 19901

Ms. Smallwood,

The Delaware General Assembly introduced Senate Bill 89 as amended by Senate Amendment 1 on March 18, 2021. The legislation which relates to traffic control devices for size and weight of vehicles and loads was subsequently signed by Governor Carney on June 30, 2021.

The legislation, which amends §4505 of Title 21 of the Delaware Code, provides as follows:

§4505. Traffic control devices.

(d)(1) The Secretary of the Department shall submit an order issued under subsection (c) of this section to the Registrar of Regulations for publication in the Register of Regulations. The Secretary shall also publish the order on the Department's website with other similar orders.

In accordance with 21 *Del. C.* §4505(d)(1), notice is hereby given by the Delaware Department of Transportation, Traffic Operation Section, as approved and ordered by the Secretary of the Department of Transportation pursuant to 21 *Del. C.* §4505(c), for the following temporary traffic control device for the safe movement of traffic in the area:

"Trailers, semi-trailers, and recreational trailers unattached to a motor vehicle, shall be prohibited from stopping, standing, or parking" within the Heritage Trace Subdivision in Smyrna

Please accept this notification by the Delaware Department of Transportation in order to publish the information in the Register of Regulations.

Thank you,
Peter Haag, P.E., PTOE
Chief of Traffic Engineering

DIVISION OF TRANSPORTATION SOLUTIONS
Traffic Engineering Section

Statutory Authority: 21 Delaware Code, Section 4505(d)(1) (21 **Del.C.** §4505(d)(1))

NOTICE

Senate Bill 89 as amended by Senate Amendment 1 - Hillview Avenue (N132310)

December 28, 2022

Yvette Smallwood
Registrar of Regulations
411 Legislative Avenue
Dover, DE 19901

Ms. Smallwood,

The Delaware General Assembly introduced Senate Bill 89 as amended by Senate Amendment 1 on March 18, 2021. The legislation which relates to traffic control devices for size and weight of vehicles and loads was subsequently signed by Governor Carney on June 30, 2021.

The legislation, which amends §4505 of Title 21 of the Delaware Code, provides as follows:

§4505. Traffic control devices.

(d)(1) The Secretary of the Department shall submit an order issued under subsection (c) of this section to the Registrar of Regulations for publication in the Register of Regulations. The Secretary shall also publish the order on the Department's website with other similar orders.

In accordance with 21 *Del. C.* §4505(d)(1), Notice is hereby given by Delaware Department of Transportation, Traffic Engineering Section, as approved and ordered by the Secretary of the Department of Transportation pursuant to 21 *Del. C.* §4505(c), for the following permanent traffic control device for the safe movement of traffic in the area:

"No Trucks Over 2 Axles, Except Residential Services" on Hillview Avenue (N132310) between SR9 New Castle Avenue (N19) and Lambson Lane (N370)

Please accept this notification by the Delaware Department of Transportation in order to publish the information in the Register of Regulations.

Thank you,
Peter Haag
Chief of Traffic Engineering

GENERAL NOTICES

DIVISION OF TRANSPORTATION SOLUTIONS

Traffic Engineering Section

Statutory Authority: 21 Delaware Code, Section 4505(d)(1) (21 Del.C. §4505(d)(1))

NOTICE

Senate Bill 89 as amended by Senate Amendment 1 - Lambson Lane (N370)

December 28, 2022

Yvette Smallwood
Registrar of Regulations
411 Legislative Avenue
Dover, DE 19901

Ms. Smallwood,

The Delaware General Assembly introduced Senate Bill 89 as amended by Senate Amendment 1 on March 18, 2021. The legislation which relates to traffic control devices for size and weight of vehicles and loads was subsequently signed by Governor Carney on June 30, 2021.

The legislation, which amends §4505 of Title 21 of the Delaware Code, provides as follows:

§4505. Traffic control devices.

(d)(1) The Secretary of the Department shall submit an order issued under subsection (c) of this section to the Registrar of Regulations for publication in the Register of Regulations. The Secretary shall also publish the order on the Department's website with other similar orders.

In accordance with 21 Del. C. §4505(d)(1), Notice is hereby given by Delaware Department of Transportation, Traffic Engineering Section, as approved and ordered by the Secretary of the Department of Transportation pursuant to 21 Del. C. §4505(c), for the following permanent traffic control device for the safe movement of traffic in the area:

"No Trucks Over 10,000 lbs, Except Residential Services" on Lambson Lane (N370) between SR9 New Castle Avenue (N19) to 100 feet east of East Avenue (N132250)

Please accept this notification by the Delaware Department of Transportation in order to publish the information in the Register of Regulations.

Thank you,
Peter Haag
Chief of Traffic Engineering

DIVISION OF TRANSPORTATION SOLUTIONS
Traffic Engineering Section

Statutory Authority: 21 Delaware Code, Section 4505(d)(1) (21 **Del.C.** §4505(d)(1))

NOTICE

Senate Bill 89 as amended by Senate Amendment 1 - West Avenue (N371)

December 28, 2022

Yvette Smallwood
Registrar of Regulations
411 Legislative Avenue
Dover, DE 19901

Ms. Smallwood,

The Delaware General Assembly introduced Senate Bill 89 as amended by Senate Amendment 1 on March 18, 2021. The legislation which relates to traffic control devices for size and weight of vehicles and loads was subsequently signed by Governor Carney on June 30, 2021.

The legislation, which amends §4505 of Title 21 of the Delaware Code, provides as follows:

§4505. Traffic control devices.

(d)(1) The Secretary of the Department shall submit an order issued under subsection (c) of this section to the Registrar of Regulations for publication in the Register of Regulations. The Secretary shall also publish the order on the Department's website with other similar orders.

In accordance with 21 *Del. C.* §4505(d)(1), Notice is hereby given by Delaware Department of Transportation, Traffic Engineering Section, as approved and ordered by the Secretary of the Department of Transportation pursuant to 21 *Del. C.* §4505(c), for the following permanent traffic control device for the safe movement of traffic in the area:

"No Trucks Over 2 Axles Except Residential Services" on West Avenue (N371) between SR9 New Castle Avenue (N19) and Lambson Lane (N370)

Please accept this notification by the Delaware Department of Transportation in order to publish the information in the Register of Regulations.

Thank you,
Peter Haag
Chief of Traffic Engineering

CALENDAR OF EVENTS/HEARING NOTICES

DELAWARE RIVER BASIN COMMISSION PUBLIC NOTICE

The Delaware River Basin Commission will hold a public hearing on Wednesday, February 8, 2023, commencing at 1:30 p.m. The public hearing will be conducted remotely. Any draft dockets and draft resolutions that will be subjects of the public hearing, along with details about the remote platform and how to attend, will be posted on the Commission's website, www.drbc.gov, at least 10 days prior to the meeting date.

The Commission's quarterly business meeting will be held the following month, on Wednesday, March 8, 2023, commencing at 10:30 a.m. The business meeting also will be conducted remotely. Again, details about the remote platform and an agenda will be posted on the Commission's website, www.drbc.gov, at least 10 days prior to the meeting date.

For additional information, please visit the DRBC website at www.drbc.gov or contact Patricia Hausler at patricia.hausler@drbc.gov.

DELAWARE STATE FIRE PREVENTION COMMISSION

PUBLIC NOTICE 709 Fire Service Standards

The Delaware State Fire Prevention Commission, pursuant to 16 Del.C. § 6604(1), proposes to revise Regulation 709 Fire Service Standards, by modifying the process of addressing complaints and grievances, detailing conduct that can be considered official misconduct of firefighters and fire companies, adding a process for conducting investigations of firefighter injuries, incorporating and adopting additional National Fire Prevention Association standards, and making other changes as detailed below.

The Commission will accept written comments to the proposed amendments from February 1, 2023 through March 3, 2023. Written comments should be sent to Sherry Lambertson, Executive Specialist for the Delaware Fire Prevention Commission, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, DE 19904. Written comments may also be sent by email to the following email address: fire.commission@delaware.gov.

DEPARTMENT OF AGRICULTURE OFFICE OF THE SECRETARY PUBLIC NOTICE 601 Delaware Pesticide Rules and Regulations

Summary

Pursuant to the authority granted by Title 3 chapter 12 of the Delaware Code, the Department of Agriculture proposes to amend its regulations. The purpose of the amended regulations is to ensure the Delaware Department of Agriculture remains in compliance with the United States Environmental Protection Agency (EPA) Certification of Pesticide Applicators regulations at 40 C.F.R. Part 171. Section 11 of the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA), 7 U.S.C. § 136i, requires any state that "desires to certify applicators of pesticides" to have and maintain an EPA-approved plan to certify applicators of Restricted Use Pesticides (RUPs) that meets or exceeds the federal requirements for the training and certification of such applicators. In 2017 the federal requirements for state certification plans were changed, in response to these changes DDA worked with EPA Region III representatives to make changes to our certification plan to meet these new requirements. As a result of these changes, several updates to our 601 Delaware Pesticide Rules and Regulations had to be made. Delaware's plan has been approved by EPA and the Department has until December 31st 2024 to bring all applicators into compliance.

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 February 1, 2023, 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 *Delaware Register of Regulations* website: https://regulations.delaware.gov/services/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations indicating whether these proposed regulations should be adopted, rejected or modified. Interested parties may hand deliver to the Department, any written suggestions, data, briefs or other materials at the above address. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before March 3, 2023. Written materials submitted will be available for inspection at the above address.

OFFICE OF THE SECRETARY
PUBLIC NOTICE

906 Possession, Sale or Exhibition of Live Wild Mammals or Hybrids of Wild Mammals or Live Reptiles not Native to or Generally Found in the State of Delaware

Summary

Pursuant to the authority granted by Title 3 chapters 1, 71, and 72 of the Delaware Code, the Department of Agriculture proposes to amend its regulations. The purpose of the amended regulations is to provide clear detail regarding the authority of the Department and State Veterinarian to determine an animal species to be invasive and clarify the requirements for non-native species and animal species determined to be invasive. In 2022, there has been an alarming increase in potbellied pigs at large in the State of Delaware. Potbellied pigs are non-native to the State of Delaware and many animals have been abandoned by their owners; are not in good care; have been a nuisance for private property owners; and with the species' early reproductive capacity, can become feral quickly and may contract contagious and infectious diseases. The Department, State Veterinarian, and sister state agencies have a responsibility to mitigate and reduce the threat of infectious and contagious diseases in animals and those that may spread to humans. Given the concerns listed above, potbellied pigs have been determined to be an invasive animal species in the State of Delaware.

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 February 1, 2023, 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 *Delaware Register of Regulations* website: https://regulations.delaware.gov/services/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations indicating whether these proposed regulations should be adopted, rejected or modified. Interested parties may hand deliver to the Department, any written suggestions, data, briefs or other materials at the above address. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before March 3, 2023. Written materials submitted will be available for inspection at the above address.

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education meets monthly. These meetings are open to the public. The Board rotates locations of regular meetings among the three counties.

Meeting information can be accessed via the public meeting calendar.

Meeting materials available on the State Board of Education's eBoard site (https://simbli.eboardsolutions.com/SB_Meetings/SB_MeetingListing.aspx?S=190001). (If you are having technical difficulties accessing the site, please try a different browser.)

The next meeting is scheduled for February 16, 2023.

CALENDAR OF EVENTS/HEARING NOTICES

Information regarding special meetings or Committee meetings of the State Board will be posted on the public meeting calendar.

Minutes from recent State Board of Education meetings can be found on the public meeting calendar.

Audio recordings are available after every Board meeting (<https://www.doe.k12.de.us/domain/225>).

Public meeting calendar: <https://publicmeetings.delaware.gov/#search?anyall=any&agencyid=22&startdateinclusive=2019-01-01>

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

PUBLIC NOTICE

4459A Regulations Governing the Childhood Lead Poisoning Prevention Act for Children Between the Ages of 22 and 26 Months

Pursuant to 16 **Del.C.** §122(3)(t) and §§ 2601-2606, the Health Systems Protection Section of the Division of Public Health, Department of Health and Social Services, is proposing revisions to the Regulations Governing the Childhood Lead Poisoning Prevention Act for Children Between the Ages of 22 and 26 Months. On February 1, 2023, the Division of Public Health plans to publish as "proposed" revisions to the Regulations Governing the Childhood Lead Poisoning Prevention Act for Children Between the Ages of 22 and 26 Months regulations. The revisions include:

- Renamed regulation to remove outdated reference;
- Updated and added new definitions;
- Updated requirements for blood lead testing, including age requirements and documentation and reporting requirements; and
- Technical corrections.

These revisions are required by House Bill 222 as amended by House Amendment 1 (151st GA).

The proposed regulation published in the July 2022 *Register of Regulations* (26 **DE Reg.** 34 (07/01/22) (Prop.)) is no longer being considered in favor of the amendments presented here pursuant to 29 **Del.C.** §10118(c).

Copies of the proposed regulations are available for review in the February 1, 2023 edition of the *Delaware Register of Regulations*, accessible online at: <https://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs, or other written materials concerning the proposed regulations must submit them by Friday, March 3, 2023, at:

Division of Public Health
417 Federal Street
Dover, DE 19901
Email: DHSS_DPH_regulations@delaware.gov
Phone: (302) 744-4951

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

Board of Occupational Therapy Practice

PUBLIC NOTICE

2000 Board of Occupational Therapy Practice

Pursuant to 24 **Del.C.** §2006 (a)(1), the Delaware Board of Occupational Therapy Practice has proposed revisions to its rules and regulations. The rules are designed to address modifications to the supervision of occupational therapy assistants. A public hearing will be held on March 1, 2023 at 4:30 p.m. (on the second floor in conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904) or virtual 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 Board of Occupational Therapy Practice, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. Written comments will be accepted until March 16, 2023 in accordance with 29 **Del.C.** §10118(a).
