
Delaware Register of Regulations

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Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before December 15, 2022.

Cover Photo
Dolores Michels
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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its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on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
February 1	January 15	4:30 p.m.
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.

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Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF EDUCATION**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 252

PUBLIC NOTICE**Education Impact Analysis Pursuant to 14 Del.C. Section 122(d)****252 Required Educational Records and Transfer and Maintenance of Educational Records****A. TYPE OF REGULATORY ACTION REQUIRED**

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 **Del.C.** §122(b), the Secretary of Education intends to amend 14 **DE Admin. Code** 252 Required Educational Records and Transfer and Maintenance of Educational Records. The Department is amending this regulation to update the name of the Emergency/Nursing Treatment Card to Delaware Emergency Treatment Card, as is being updated in Regulation 811 School Health Record Keeping Requirements. The regulation is also being amended to correct grammatical errors in order to comply with the *Delaware Administrative Code Drafting and Style Manual*.

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 February 3, 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 amended regulation does not specifically address the improvement of student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation does not specifically address students receiving an equitable education.

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

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

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

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

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

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

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

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

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

<https://regulations.delaware.gov/register/january2023/proposed/26 DE Reg 509RFA 01-01-23.pdf>

252 Required Educational Records and Transfer and Maintenance of Educational Records

1.0 Purpose

The purpose of this regulation is to provide a list of required educational records and outline the process for transferring and maintaining those records.

~~4.0~~ 2.0 Definitions

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

“**Court Orders**” means any written direction from a court of competent jurisdiction directed to the student or affecting the student’s care or custody.

“**Cumulative Record File**” means a file containing the ~~Emergency/Nursing~~ Delaware Emergency Treatment Card, Identifying Data, School Health Record, Progress Report, Student Transcript (for students in grades 9 and above), and Discipline Record.

“**Delaware School Health Record**” means the form required by 14 **DE Admin Code** 811 for Delaware public school students.

“**Discipline Record**” means information about all periods of suspension or of expulsion from the regular school setting imposed on a student as a result of an infraction of the school or district’s code of conduct or other rules.

“~~Emergency/Nursing~~ **Delaware Emergency Treatment Card**” means a form containing contact information and general school emergency procedures for the care of a student who becomes sick or injured at school. The card contains the following information: the student's name, birth date, school

district, school, grade or class assignment, home address, and telephone number; the name, place of employment and work telephone number of the parent, guardian or relative caregiver; two other names, addresses, and telephone numbers of individuals who can be contacted at times when the parent, guardian or relative caregiver cannot be reached; the name and telephone number of the primary health care provider and family dentist; any medical conditions or allergies the student has; and the student's medical insurance. **NON REGULATORY NOTE: 14 DE Admin. Code 811 School Health Record Keeping Requirements contains the same definition for "Delaware Emergency Treatment Card."**

"Identifying Data" means the name of the student, date of birth, sex, race and ethnicity, address, telephone number, Delaware student identification number and the name of the parents, guardians, or relative caregivers.

"Progress Report" means a single record maintained for each student in kindergarten through grade 8 that contains end of year and up to date grades; standardized tests scores such as the state student assessment; and attendance data for each year of the student's attendance.

"Public School" means a school or charter school having any or all of grades kindergarten through grade 12, supported primarily from public funds and under the supervision of public school administrators.

"Student Transcript" means a single record maintained for each student in grades 9 and above that contains the following: end of year and up to date grades; credits earned; class rank; Grade Point Average (GPA); withdrawal or graduation date; standardized tests scores such as the state student assessment, SAT, PSAT, ACT; attendance data and school activities. If applicable, a list of the career technical competencies achieved by a student enrolled in a specific career technical program shall also be included.

2-0 3.0 Education Records Required by Schools in Delaware

2-4 3.1 Each Delaware school shall maintain a Cumulative Record File either as an electronic or paper file for each student enrolled.

2-4.4 3.1.1 The student Cumulative Record File shall contain the ~~Emergency/Nursing~~ Delaware Emergency Treatment Card, Identifying Data, School Health Record, Progress Report, Student Transcript (for students in grades 9 and above) and Discipline Record.

2-4.2 3.1.2 The student Cumulative Record File shall also contain any Court Orders in the school or district's possession, and;

2-4.3 3.1.3 The Cumulative Record File for a child with a disability as defined in 14 DE Admin Code 925 or for a child identified under Section 504 shall contain any records related to the identification, evaluation, placement, and provision of a free appropriate public education. Such documents may be collected and maintained separately.

3-0 4.0 Transfer of the Records of Public School and Private Schools Students

3-4 4.1 When a student transfers from a public school, private school or an educational program operated by the Department of Services for Children, Youth and Their Families to any other school in Delaware, the receiving school shall immediately request the Cumulative Record File from the sending school or program.

3-2 4.2 The Cumulative Record File shall follow each student transferred from one school to another including files for each student with disabilities transferred from one school to another.

3-2.4 4.2.1 Public schools, school districts, private schools and educational programs operated by the Department of Services for Children, Youth and Their Families shall promptly transfer a student's Cumulative Record File upon the request of a receiving school.

3-2.4.4 4.2.1.1 Public schools and school districts shall maintain the original Cumulative Record File and provide a copy of the file when students transfer to a private school or educational program operated by the Department of Services for Children, Youth and Their Families.

PROPOSED REGULATIONS

~~3-2-1-2~~ 4.2.1.2 Public schools and school districts shall provide the original Cumulative Record File when transferring records to another public school.

~~3-2-2~~ 4.2.2 Unpaid student fees or fines shall not be a basis for a public school, school district or an educational program operated by the Department of Services for Children, Youth and Their Families to deny or to delay transfer of the Cumulative Record File.

~~3-2-3~~ 4.2.3 Students shall not be denied enrollment into a public school on the grounds that the student's Cumulative Record File has not been received.

~~3-3~~ 4.3 Before transferring student records, a public school, school district or private school shall specifically confirm that the Cumulative Record File contains the student's Discipline Record.

~~3-4~~ 4.4 When students transfer to a Delaware school from any other school including a school in a foreign country, the receiving school is responsible for having the transcripts evaluated.

~~3-5~~ 4.5 Upon the closure of a charter school, the student's Cumulative Record File shall be forwarded to the receiving school in accordance with charter school closure protocol as outlined in 14 **Del.C.** §512(16) and §515(i).

~~4-0~~ **5.0 Maintenance of the Education Records of Public Schools**

~~4-4~~ 5.1 The *Delaware School District General Records Retention Schedule* published by the Delaware Public Archives shall be followed as to the length of time and special considerations for the maintenance of education records.

~~4-2~~ 5.2 Contracts for storage of student records of graduates, withdrawals and special education students shall be initiated between the school district or charter school and the Delaware Public Archives.

~~4-3~~ 5.3 The Cumulative Record Files for students who have graduated from or who left school prior to graduation from high school shall be stored at the school or district of last attendance or in the Delaware Public Archives.

~~5-0~~ **6.0 Destruction of Education Records of Public Schools**

~~5-4~~ 6.1 The *Delaware School District General Records Retention Schedule* published by the Delaware Public Archives shall be followed as to the length of time and special considerations for the destruction of any education records.

~~5-2~~ 6.2 The destruction of educational records of children with disabilities shall also comply with the requirements of 14 **DE Admin. Code** 927.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122 and Chapter 5 (14 **Del.C.** §122 and Ch. 5)
14 **DE Admin. Code** 275

PUBLIC NOTICE

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

275 Charter Schools

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to of 14 **Del. C.** §122 and Chapter 5, the Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 275 Charter Schools. This regulation is being amended to remove reference to "Delaware Comprehensive Assessment System," include additional clarifying language regarding

debts of a charter school, update the definition of "Charter School" to align with 14 **DE Admin. Code** 255 Definitions of Types of Schools, and to make grammatical corrections to comply with the Delaware Administrative Code Manual.

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 February 1, 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 amended regulation does not specifically address the improvement of student achievement as measured against state achievement standards.

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

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

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

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

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

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

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

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

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

***Please Note:**

(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/january2023/proposed/26 DE Reg 512RFA 01-01-23.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/january2023/proposed/26 DE Reg 512 01-01-23.htm>

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 121(a)(1) and 3110 (14 **Del.C.** §§121(a)(1) & 3110)

14 **DE Admin. Code** 508

PUBLIC NOTICE

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

508 Multi-Tiered System of Support (MTSS)**A. TYPE OF REGULATORY ACTION REQUIRED**

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 **Del.C.** §121(a)(1) and §3110, the Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 508 Multi-Tiered System of Support. This regulation is being amended to comply with House Bill 301 with House Amendment 1 of the 151st General Assembly which requires the establishment and implementation of mental health education programs for kindergarten through grade 12. This regulation will be effective July 1, 2023 and should be implemented for the 2023-2024 school year.

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 February 3, 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 amended regulation will help improve student achievement as measured against state achievement standards by specifically supporting the social, emotional and mental health competencies of students.

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

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This Amendment increases student awareness of mental health by requiring the Department of Education, with the approval of the State Board of Education, to establish and implement statewide mental health educational programs for each grade, kindergarten through grade 12, in each school district and charter school in this State.

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

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

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

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

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

and not an impediment to the implementation of other state educational policies regarding the promotion of students.

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? There may be minimal cost to local education agencies to implement this amended regulation, however there are free mental health and social emotional learning resources which districts can access.

***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/january2023/proposed/26 DE Reg 514RFA 01-01-23.pdf>

508 Multi-Tiered System of Support (MTSS)

1.0 Purpose

Each local education agency shall implement procedures to determine when a student requires scientific, evidence-based interventions within a Multi-Tiered System of Support (MTSS) for: 1) Written Expression, 2) Reading, 3) Oral Expression, 4) Listening Comprehension, 5) Mathematics, 6) Behavior, and 7) Social-Emotional Skills.

2.0 Definitions

The following words and terms are applicable unless a specific regulation, statute or the context in which they are used clearly indicates otherwise terms, when used in this regulation, have the following meaning:

"Department" means the Delaware Department of Education.

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

"Evidence-informed" means practices that are consciously informed by evidence derived from formal research produced by researchers, practitioner inquiry (investigation), or routinely collected school or local system-level data through collaborative planning, testing, implementing and evaluating of approaches for improving practices.

"Local Education Agency" or "LEA" means a reorganized traditional school district, vocational-technical school district, or Charter School, legally constituted and established under Delaware law for either administrative control or direction of public elementary or secondary schools.

"Mental Health" means an individual's emotional, psychological, and social wellbeing and is based on how one thinks, feels and acts, including how one handles stress, relates to others, and makes healthy choices. Specifically, positive mental health in childhood includes reaching developmental and emotional milestones and learning healthy social and emotional skills to enhance wellbeing and employ strategies for coping adaptively with challenges.

"Multi-Tiered System of Support" or "MTSS" means a framework that is designed to meet the needs of the whole child through an integrated multi-level prevention system that optimizes team-based leadership and data-driven decision making to meet the academic and non-academic needs of all students. High quality core academic instruction and non-academic practices are provided as universal supports to all children. Evidence-based intervention and supports are matched to student needs and informed by ongoing progress monitoring and additional formative assessments.

"Parent" means a biological or adoptive parent of a child; a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives and for whom a Caregiver's School Authorization executed in compliance with 14 Del.C. §202 is on file; an individual who is otherwise legally responsible for the child's welfare; or a surrogate parent who has been appointed in accordance with 14 DE Admin. Code 926.19.0.

"Social and Emotional Learning" or "SEL" means the process through which students acquire the knowledge, attitudes, and skills needed to understand and manage emotions, set and achieve positive goals, feel and show empathy for others, establish and maintain positive relationships, and make responsible decisions.

3.0 Instructional Resources

- 3.1 LEAs shall evaluate and select instructional resources for Tier 1, and interventions for Tier 2 and Tier 3, for academic, behavioral and social-emotional skills which are of high quality, evidence-based and aligned with the State's appropriate content standards. areas and the non-academic areas of behavioral, social-emotional skills, and mental health which are of high quality, evidence-based or may be evidence-informed for the non-academic areas and aligned with the State's appropriate content standards or the Department's adopted competencies for mental health and SEL.
- 3.2 Social and Emotional Learning (Effective beginning with the 2023-2024 school year). LEAs shall provide age-appropriate and developmentally-appropriate instructional programming in social emotional learning for each grade K to 12 that demonstrate alignment to the Department's adopted SEL competencies.
- 3.3 Mental Health (Effective beginning with the 2023-2024 school year). LEAs shall provide age-appropriate and developmentally-appropriate instructional programming in mental health for each grade K to 12 that demonstrate alignment to the Department's adopted mental health competencies.

4.0 Assessment

Screening, diagnostic assessment and progress monitoring processes shall be used as part of MTSS procedures. Any tools used shall be norm-referenced, criterion-referenced, or curriculum-based as appropriate.

5.0 Problem Solving Team

- 5.1 LEAs ~~will~~ shall have a school-based problem-solving team at each of their schools consisting of three to five core members and shall include at least one of the student's classroom teachers. Additional members may be added as needed.
- 5.2 The team shall review student data to identify individual student needs and make evidence-based decisions.
- 5.3 Using the student data, the problem-solving team will design an intervention plan as outlined in Section 7.0, which shall include specific baseline data, learning targets, type and frequency of intervention, data collection, and ~~anything else~~ any other information the problem-solving team considers necessary.
- 5.4 The team shall collect progress monitoring data at regular intervals. Data collection must include documentation of fidelity of implementation, consisting of differentiated, evidence-based instruction, pacing and appropriateness of instructional groupings.
- 5.5 The team shall hold meetings after the six to eight-week intervention cycle to monitor progress toward identified targets, the fidelity of implementation and determine the next steps. Teams may meet earlier, as needed.
- 5.6 LEAs shall have a process for providing parents with the MTSS intervention plan and data collected as part of the MTSS framework as described in Section 7.0.

6.0 MTSS Framework and Procedures

- 6.1 The MTSS framework and procedures shall include the tiers, types and duration of services and interventions described in subsections 6.1.1 and 6.1.3.3.
- 6.1.1 Tier 1 - Core classroom instruction which is aligned to Delaware adopted state standards and practices, shall be designed and delivered with fidelity to all students. Tier 1 core classroom instruction should be high quality, evidence-based ~~and~~ or evidence-informed if non-academic.

differentiated within flexible groupings and responsive to all students' needs. A multiple-gating procedure shall be implemented as follows:

- 6.1.1.1 The first stage is a universal screening, which shall be conducted within the first four weeks of the school year or within four weeks of the student's entry into school. Universal screening will take place at least two more times during the school year at spaced intervals. For students who are identified through universal screening as needing additional supports, a second stage of screening is conducted within the next two weeks to specify the areas of need.
- 6.1.1.2 The second stage involves additional data analysis to confirm that there are specific areas of need for Tier 2 supports.
- 6.1.1.3 If ~~twenty percent (20%)~~ 20% of students in a classroom are not meeting benchmark on any instructional screening, a school-based team, which may be an existing team, including a building level administrator, shall meet to consider the need for additional classroom, instructional and ~~systems-level~~ systems-level supports and strategies.
- 6.1.1.4 Based on the results of the multiple-gating procedure, a problem-solving team shall design intervention plans for students who require Tier 2 support as described in subsection 6.1.2.
- 6.1.2 Tier 2 - Interventions shall be designed to be delivered in the student's primary, scheduled education setting, by the student's teacher or teachers, but may be delivered in other or additional settings or by other trained staff as appropriate to the specific intervention.
 - 6.1.2.1 After no more than six to eight school weeks of Tier 2 intervention, ~~six to eight school weeks of Tier 2 intervention~~ the problem-solving team shall conduct a review of the plan as described in Section 5.0 to determine whether additional assessments, as described in Section 4.0, are required, and whether changes to Tier 2 academic or non-academic methods are required; or the student should be provided Tier 3 intervention.
 - 6.1.2.1.1 If a student has made significant progress and is now on a trajectory to meet end-of-year benchmarks, a student may continue in Tier 2 intervention or be excused from Tier 2 intervention.
 - 6.1.2.1.2 After no more than six to eight school weeks of Tier 2 intervention, the problem-solving team shall conduct a review of the plan as described in Section 5.0 to determine whether additional assessments are required, changes to Tier 2 academic or non-academic methods are required.
 - 6.1.2.1.3 If a student has made no progress toward benchmarks, or has made progress but is not on a trajectory to meet end-of-year benchmarks, a student may continue in Tier 2 intervention with increased intensity (e.g. smaller group, increased time of academic or non-academic intervention) or receive Tier 3 interventions.
- 6.1.3 Tier 3 - Interventions shall be designed to be delivered in the student's primary (scheduled) education setting, by the student's teacher or teachers, but may be delivered in other or additional settings or by other trained staff as appropriate to the specific intervention.
 - 6.1.3.1 After no more than six to eight school weeks of Tier 3 intervention, six to eight school weeks of Tier 3 intervention the problem-solving team shall conduct a review of the plan as described in Section 5.0 to determine whether additional assessments are required, changes to Tier 3 academic or non-academic methods are required; or the student should be referred for an initial evaluation for special education.
 - 6.1.3.2 If a student has made significant progress towards established targets, a student may continue in Tier 3 intervention with a new target or be provided Tier 2 intervention.
 - 6.1.3.3 If a student has made no progress towards established targets, or has made progress, but is not on a trajectory to meet established targets, a student may continue in Tier 3 intervention with increased intensity (e.g. smaller group, increased time of academic or non-academic intervention) or be referred for an initial evaluation for special education services as outlined in Regulation 925.

7.0 Program Effectiveness

LEA LEAs shall provide a description of the methods used to implement and evaluate the effectiveness of the program upon the request of the Department.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 811

PUBLIC NOTICE**Education Impact Analysis Pursuant to 14 Del.C. Section 122(d)****811 School Health Record Keeping Requirements****A. TYPE OF REGULATORY ACTION REQUIRED**

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del.C. §122(b), the Secretary of Education intends to amend 14 DE Admin. Code 811 School Health Record Keeping Requirements. The Department is amending this regulation in order to comply with 29 Del.C. §10407 which requires regulations to be reviewed on a recurring basis every four years. The regulation is being amended to grammatically correct the title of the regulation, add a purpose statement, update the title of the Delaware Emergency Treatment Card, and to correct grammatical errors in order to comply with the *Delaware Administrative Code Drafting and Style Manual*.

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 February 3, 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 amended regulation does not specifically address the improvement of student achievement as measured against state achievement standards.

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

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

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

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

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

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

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state

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

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

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

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

<https://regulations.delaware.gov/register/january2023/proposed/26 DE Reg 518RFA 01-01-23.pdf>

811 School Health ~~Record Keeping~~ Recordkeeping Requirements

1.0 Purpose

The purpose of this regulation is to outline the required school health record documents and forms, and recordkeeping responsibilities, including entry into eSchool, in order to ensure student safety in schools.

~~4.0~~ 2.0 Definitions

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

"Delaware School Health Record" means an electronic document containing information about a student's health, which includes but is not limited to the student's name, gender, birthdate, immunizations, results of testing and screenings, medical diagnoses, issued or prescribed medications and treatments, student athlete health records compiled in compliance with DIAA regulations and referrals.

"Department" means the Delaware Department of Education.

~~Emergency/Nursing~~ Delaware Emergency Treatment Card means a form containing contact information and general school emergency procedures for the care of a student who becomes sick or injured at school. ~~The card contains the following information:~~ the student's name, birth date, school district, school, grade or class assignment, home address, and telephone number; the name, place of employment and work telephone number of the parent, guardian or Relative Caregiver; two other names, addresses, and telephone numbers of individuals who can be contacted at times when the parent, guardian or Relative Caregiver cannot be reached; the name and telephone number of the primary health care provider and family dentist; any medical conditions or allergies the student has; and the student's medical insurance. **NON REGULATORY NOTE: 14 DE Admin. Code 252 contains the same definition for "Delaware Emergency Treatment Card."**

"Student Accident Report Form" means a form developed by the Department that is used by the district or charter to review school accidents resulting in medical evaluation or referral.

"Student Health History Update" means a form developed by the Department that is used to obtain current student health information from the parent, guardian, or Relative Caregiver ~~Caregiver~~, or the student if 18 years or ~~older~~ older, or an unaccompanied homeless youth.

"Summary of School Health Services" means an annual report created by the Department on school health services that have been provided and electronically documented by school nurses.

~~2.0~~ 3.0 Emergency/Nursing Delaware Emergency Treatment Card

~~2.4~~ 3.1 ~~An Emergency/Nursing~~ A Delaware Emergency Treatment Card for each public school student shall be on file in the office of the school nurse electronic student health record.

~~2.4.4~~ 3.1.1 ~~The information on the Emergency/Nursing~~ The information on the Delaware Emergency Treatment Card shall be shared only on a need to know basis as related to the education and health needs of the student and consistent with state and federal laws.

PROPOSED REGULATIONS

~~2.1.2~~ 3.1.2 The parent, guardian or Relative Caregiver or the student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 U.S.C. 11434(a)) shall sign the ~~Emergency/Nursing Delaware Emergency~~ Treatment Card to assure they understand the purpose of the form and acknowledge the accuracy of the information.

~~2.1.3~~ 3.1.3 The ~~Emergency/Nursing Delaware Emergency~~ Treatment Card is used to update the student's medical information on the Delaware School Health Record and student's contact information in the district or charter electronic pupil accountability system.

~~2.1.4~~ 3.1.4 The contact information on the ~~Emergency/Nursing Delaware Emergency~~ Treatment Card shall be used by the school nurse to contact the parent, guardian or Relative Caregiver regarding any health-related matter and to identify a person to pick up or provide consultation regarding the student's acute illness or injury.

~~3.0~~ 4.0 Delaware School Health Record

~~3.4~~ 4.1 The Delaware School Health Record shall be current and shall be part of the student's health record within the Cumulative Record File (14 **DE Admin. Code** 252) which accompanies the student when ~~he or she~~ the student moves to another school.

~~3.2~~ 4.2 The Delaware School Health Record shall be maintained for the duration of the student's schooling and the school nurse shall use the Student Health History Update to keep health records current.

~~3.2.4~~ 4.2.1 The Delaware School Health Record shall be maintained within an electronic documentation program and transferred electronically with the student.

4.2.2 If the Delaware School Health Record cannot be transferred electronically, a hard copy shall be created and transferred to the receiving school.

~~3.3~~ 4.3 Documentation received on the student's health, including parent medication permission slips and immunization records, shall be recorded in ~~his or her~~ the student's electronic Delaware School Health Record. Hard copies of the documents shall be maintained in ~~an individual~~ the student's school health folder.

NON REGULATORY NOTE: also see 14 **DE Admin. Code** 251 and 252 and the Delaware Public Archives Document Delaware School Districts General Records Retention Schedule.

~~4.0~~ 5.0 Other Required Documentation

~~4.4~~ 5.1 The school nurse shall document in the state, district, or charter electronic health record system for individual student health data any nursing care provided including the school name, a three point date, the person's (student, staff or visitor) first and last name, the time of arrival and departure, the presenting complaint, the nurse's assessment intervention and the outcome, including the disposition of the situation, the parent or other contact, if appropriate, and the nurse's complete signature or initials.

~~4.1.4~~ 5.2 The school nurse shall document the care given at the time of a ~~school-based~~ school-based accident by completing the Student Accident Report Form if the student missed more than ~~one-half~~ one-half day because of the accident or if the school nurse ~~has~~ referred the student for a medical evaluation regardless of whether the parent, guardian or Relative Caregiver or student if 18 years or older, or an unaccompanied homeless youth (as defined by 42 U.S.C. 11434(a)) followed through on that request.

~~5.0~~ 6.0 Submission of Records

The Department will annually create the Summary of School Health Services report provided by districts and charters. Data from the previous school year shall be collected from the state's pupil accountability system after August 15th. Any district or charter using an alternative electronic health record shall submit an electronic version of the Summary of School Health Services report to the Department by August 31st of each year.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(8), 181(15), 183, 3402(c), and 3411 (14 Del.C. §§122(b)(8), 181(15), 183, 3402(c), & 3411)
14 DE Admin. Code 1203

PUBLIC NOTICE

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

1203 Scholarship Incentive Program (ScIP)

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del.C. §§122(b)(8), 181(15), 183, 3402(c), and 3411, the Delaware Department of Education ("Department"), through the Delaware Higher Education Office ("DHEO"), proposes to amend 14 DE Admin. Code 1203 Scholarship Incentive Program (ScIP). The Scholarship Incentive Program is a student financial assistance for higher education program that is administered by DHEO. The regulation provides the application process, eligibility criteria, and award process for the Scholarship Incentive Program. The proposed amendments include revising Section 2.0, revising the eligibility requirements for the program in subsections 4.1.2.3, 4.1.3, and 5.4, and making other clarifying changes throughout the regulation. The proposed amendments are consistent with House Bill 480 of the 151st General Assembly, which was signed into law on August 25, 2022. In addition, the Department proposes to renumber the regulation from 1203 to 1210.

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 February 2, 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 amended 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 amended regulation help ensure that all students receive an equitable education? The amended 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 amended regulation help to ensure all students' health and safety are adequately protected? The amended 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 amended regulation help to ensure that all students' legal rights are respected? The amended 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 amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended 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 amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended 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 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 adopted regulation? There is no expected cost to the state of complying with this amended 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/january2023/proposed/26 DE Reg 521RFA 01-01-23.pdf>

~~4203~~ 1210 Scholarship Incentive Program (SciP)

1.0 Purpose

The purpose of this regulation is to provide eligibility criteria and to delineate the application ~~process~~ and award processes for the Scholarship Incentive Program (SciP), pursuant to 14 Del.C. §3411.

2.0 Definitions

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

"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, ~~scholarship and loan~~ student financial assistance programs.

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

~~"Expected Family Contribution"~~ or **"EFC"** means ~~a number that is calculated using the financial information an applicant provides on the applicant's Free Application for Federal Student Aid (FAFSA) to determine an applicant's eligibility for federal student aid.~~

"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 a SciP scholarship.

"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 and for a graduate program, a minimum of 9 credit hours.

~~"Graduate Student"~~ means ~~a full-time student enrolled in a post baccalaureate program.~~

~~"Resident of the State"~~ means ~~an applicant who meets the definition of residency as defined in 14 Del.C. §3402(f).~~

"Satisfactory Academic Progress" means that a student is successfully completing coursework according to the standards of the college or university in which the student is enrolled and the student is eligible to continue to receive financial aid.

"Semester" means a half-year term in a school or college, typically lasting 15 to 18 weeks.

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

"Undergraduate Student" means a full-time student at a regionally accredited college or university who has not yet earned a bachelor's or equivalent degree.

3.0 Application Acceptance and Submission Period

- 3.1 The application acceptance and submission period for the SciP scholarship shall be posted on the DHEO's website by December 1 of each calendar year.
 - 3.1.1 Applications shall not be accepted outside of the posted application acceptance period under any circumstances.
 - 3.1.2 Incomplete applications shall not be accepted or processed.
- 3.2 In order for an application to be considered complete, an applicant must:
 - 3.2.1 Complete the FAFSA for the school year in which the scholarship is sought by the state deadline for Delaware that is posted online at FAFSA.ed.gov.
 - 3.2.2 Complete an online application through the Student Account Access Site by the last date of the application acceptance period.
 - 3.2.3 Submit the applicant's major and the name of the higher education institution with ~~regional~~ accreditation from an accrediting agency recognized by the U.S. Secretary of Education in which the applicant will be enrolled for the school year in which the scholarship is sought through the Student Account Access Site by the last date of the application acceptance period.
 - 3.2.3.1 Applicants may update their enrollment information on the Student Account Access Site through the last date of the application acceptance period.
 - 3.2.3.2 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 3.2.3 of this regulation.

4.0 Eligibility

- 4.1 Applicants must meet all of the following requirements to be eligible for the SciP:
 - 4.1.1 ~~Be a Resident of the State~~ Meet the definition of residency as defined in 14 Del.C. §3402(f); and
 - 4.1.2 Be a Full-Time Student enrolled in:
 - 4.1.2.1 An undergraduate degree program at a higher education institution that is located in Delaware and has ~~regional~~ accreditation from an accrediting agency recognized by the U.S. Secretary of Education; or
 - 4.1.2.2 An undergraduate degree program at a higher education institution that is located outside of Delaware and has ~~regional~~ accreditation from an accrediting agency recognized by the U.S. Secretary of Education and that is not offered by a publicly assisted college or university in Delaware; or
 - 4.1.2.3 A graduate ~~or professional education~~ degree program at a higher education institution that is located outside of Delaware and has ~~regional~~ accreditation from an accrediting agency recognized by the U.S. Secretary of Education and that is not offered by a publicly assisted college or university in Delaware ~~and is in pursuit of a degree that is deemed in the best interest of the State.~~
 - 4.1.3 ~~Be making Satisfactory Academic Progress.~~

5.0 Awards

- 5.1 DHEO determines the number and amount of scholarships to be awarded annually. The number and amount of awards each year will vary and is based on and subject to DHEO receiving funds appropriated for the SciP.
 - 5.1.1 ~~If DHEO receives funds appropriated for the SciP, DHEO may allocate up to 80% of the total amount of funds received for awards for eligible Undergraduate Students and up to 20% of the total amount of funds received for awards for eligible Graduate Students provided that DHEO receives applications from both Undergraduate and Graduate Students in a given year.~~
- 5.2 To determine an applicant's financial need for the purpose of SciP, DHEO will consider the applicant's EFC; the expense of attending the college or university in which the applicant is enrolled; and the applicant's eligibility for Pell grants and other federal, state, or private grant assistance. For the

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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, ~~Direct Educational Expenses~~ tuition, mandatory fees, room, board, books, and other direct and indirect educational expenses.
- 5.4 An award shall not be renewable. Students must submit a new application each school year, maintain Satisfactory Academic Progress at their educational institution, and continue to meet the other eligibility requirements set forth in Section 4.0.
- 5.5 No student may receive more than ~~five~~ 5 annual scholarships for either undergraduate or graduate study.

6.0 Award Payment

- 6.1 DHEO shall contact a recipient's college or university to verify the recipient's financial and enrollment status and to verify that the student is making Satisfactory Academic Progress each ~~Semester~~ semester prior to the scholarship funds being disbursed.
- 6.2 All payments shall be disbursed directly to the eligible recipient's college or university only.
- 6.3 If a recipient 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 ~~policy~~ policies set forth in 14 **Del.C.** §3402(k).

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(8), 181(15), 183, 3402(c), and 3437
(14 **Del.C.** §§ 122(b)(8), 181(15), 183, 3402(c), & 3437)
14 **DE Admin. Code** 1204

PUBLIC NOTICE

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

1204 High Needs Educator Student Loan Payment Program

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 **Del.C.** §§122(b)(8), 181(15), 183, 3402(c), and 3437, the Delaware Department of Education ("Department"), through the Delaware Higher Education Office ("DHEO"), proposes to amend 14 **DE Admin. Code** 1204 High Needs Educator Student Loan Payment Program. The High Needs Educator Student Loan Payment Program is a student financial assistance for higher education program that is administered by DHEO. The regulation provides the application process, eligibility criteria, and award process for the High Needs Educator Student Loan Payment Program. The proposed amendments include revising the eligibility requirements for the program in Section 3.0 and making other clarifying changes throughout the regulation. The proposed amendments are consistent with House Bill 480 of the 151st General Assembly, which was signed into law on August 25, 2022. In addition, the Department proposes to renumber the regulation from 1203 to 1215.

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 February 2, 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 amended 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 amended regulation help ensure that all students receive an equitable education? The amended 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 amended regulation help to ensure all students' health and safety are adequately protected? The amended 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 amended regulation help to ensure that all students' legal rights are respected? The amended 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 amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended 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 amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended 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 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 adopted regulation? There is no expected cost to the state of complying with this amended 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/january2023/proposed/26 DE Reg 524RFA 01-01-23.pdf>

4204 1215 High Needs Educator Student Loan Payment Program**1.0 Purpose**

The purpose of this regulation is to provide eligibility criteria and to delineate the application process for the High Needs Educator Student Loan Payment Program, pursuant to 14 ~~Del.C. Ch. 11A, §§1101A through 1114A~~ §3437.

2.0 Definitions

"Award" means the ~~Department's~~ Delaware Higher Education Office's decision to make a Loan Payment on an applicant's behalf.

"**Delaware Higher Education Office**" or "**DHEO**" means the Delaware Department of Education's office which administers specific programs related to higher education, including student financial assistance programs.

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

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"Educator" means a person licensed and certified by the ~~State Department~~ 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 Standards Board and approved by the State Board of Education. For purposes of this regulation, Educator also includes teachers employed by the Delaware Division for the Visually Impaired who teach ~~visually impaired~~ students with visual impairment.

"English Learner" ~~means a student with limited English proficiency and who meets the definition of English Learner as defined by the Department's rules and regulations.~~

"High Needs Area" means:

- (1) Any certification field ~~the Department~~ DHEO has identified as being difficult to staff or of critical need; or
- (2) Any school either:
 - (a) In the top quartile in ~~three~~ 3 or more of the following:
 - (1) Percentage of Low-Income Students or students within the statewide metric determined by the Department utilizing direct certification for Temporary Assistance for Needy Families (TANF) and Supplemental Nutrition Assistance Program (SNAP);
 - (2) Percentage of English Learners or students with limited English proficiency and who meet the definition of English Learner as defined by the Department's regulations;
 - (3) Percentage of Students with Disabilities or students who are determined to eligible for one or more of the educational classifications under the Department's regulations and who, by reason thereof, need special education and related services; or
 - (4) Percentage of Minority Students or students who are members of a racial or ethnic group other than the racial or ethnic group that represents the majority of the State's population; or
 - (b) Having 90% of its students classified as Low-Income, English Learners, or Minority; or
 - (c) Any facility operated by the Department of Services for Children, Youth and Their Families in which education programs are provided.

"Loan Payment" means a payment by the Department to a successful applicant's lending agency to retire a portion of the applicant's Qualified Educational Loan.

"Low Income Students" ~~means students within the statewide metric determined by the Department of Education utilizing direct certification for Temporary Assistance for Needy Families (TANF) and Supplemental Nutrition Assistance Program (SNAP).~~

"Minority Students" ~~means students who are members of a racial or ethnic group other than the racial or ethnic group that represents the majority of the State of Delaware's population.~~

"Program" means the High Needs Educator Student Loan Payment Program.

"Qualified Educational Loan" means a government, commercial, or foundation loan for actual costs paid for tuition and reasonable educational expenses related to an Educator's undergraduate or graduate degree program.

"School" means a Delaware public school, including a vocational-technical school and a charter school, or a facility operated by the Department of Services for Children, Youth and Their Families.

"Secretary" means the Delaware Secretary of Education.

"Students With Disabilities" ~~means students who because of mental, physical, emotional, developmental, speech or learning disability problems, as defined by the Department of Education, require special education and related services in order to develop their own capabilities.~~

3.0 Eligibility

3.1 In order to qualify to participate in the Program all of the following must apply:

3.1.1 The applicant shall be an Educator;

3.1.2 The applicant shall have secured a Qualified Educational Loan prior to submitting an application;

- 3.1.3 The applicant shall have obtained a license and certificate ~~through Delaware~~ issued by the Department;
- 3.1.4 ~~The applicant shall have received a rating of at least "effective" on the Delaware Performance Appraisal System II or an alternate state approved evaluation system in the most recent evaluation cycle; The applicant has not had an ineffective evaluation on the State's current evaluation system or the equivalent thereof on a State-approved alternative educator evaluation system;~~
- 3.1.5 The applicant shall instruct or provide educational support in an identified High Needs Area or School for one school year; and year.
- 3.1.6 ~~The applicant shall not be in default of any federal or state education loan.~~

4.0 Application

- 4.1 The application to participate in the Program shall require the applicant to certify that ~~he or she~~ the applicant meets all eligibility requirements.
- 4.2 The applicant must submit for review and approval a new, completed application each year, along with any additional information the Department ~~may request~~ requests.

5.0 Award Decision and Disbursement

- 5.1 The ability to make Awards each year is contingent upon the availability of funds.
- 5.2 If possible, ~~the Department~~ DHEO shall make an Award to every applicant who satisfies the requirements of this regulation, consistent with Section 6.0 Amount of Award of this regulation. Awards will be determined based on the pool of eligible applicants in the given year.
 - 5.2.1 Applicants seeking eligibility based on eligible school shall maintain continuous employment by the same School as in the previous school year in order to be eligible for the Award.
 - 5.2.1.1 Applicants shall still be eligible for an Award if they have separated from the School they were previously employed with if separation was involuntary, including reduction in force, or was otherwise beyond the applicant's control.
- 5.3 Where there are insufficient funds to make an Award to every applicant who satisfies Program requirements, ~~the Secretary~~ DHEO shall give priority to applicants who meet the following criteria:
 - 5.3.1 Applicants employed in both a certification field and a School that the Department has identified as a High Needs Area as defined in this regulation.
 - 5.3.2 Applicants having the greatest financial need.
- 5.4 The applicants having the greatest financial need shall be determined at the sole discretion of ~~the Secretary~~ DHEO. Such decision shall be based upon:
 - 5.4.1 The applicant's income;
 - 5.4.2 The applicant's spousal income;
 - 5.4.3 The number of applicant's dependents; and
 - 5.4.4 The total amount of the applicant's Qualified Educational Loans.
- 5.5 ~~The Secretary~~ DHEO shall have the sole discretion to prioritize applications and determine Awards consistent with the requirements of the Program as noted in this regulation.
- 5.6 ~~The Department~~ DHEO shall make a Loan Payment directly to the applicant's lending agency on behalf of the applicant.
- 5.7 An applicant may receive only ~~one~~ 1 Award per year, and may receive no more than ~~five~~ 5 Awards in their lifetime.

6.0 Amount of Award

An Award shall be a minimum of \$1,000 and shall not exceed \$2,000.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(8), 181(15), 183, 3402(c), and 3435(a)
(14 Del.C. §§ 122(b)(8), 181(15), 183, 3402(c), & 3435(a))
14 DE Admin. Code 1206

PUBLIC NOTICE

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

1206 Speech Language Pathologist Incentive Loan Program

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del.C. §§122(b)(8), 181(15), 183, 3402(c), and 3435(a), the Delaware Department of Education ("Department"), through the Delaware Higher Education Office ("DHEO"), proposes to amend 14 DE Admin. Code 1206 Speech Language Pathologist Incentive Loan Program. When House Bill 480 of the 151st General Assembly was signed into law on August 25, 2022, the Speech Language Pathologist Incentive Loan Program was repealed and the Speech-Language Pathologist Scholarship Program was enacted. The Speech-Language Pathologist Scholarship Program is a student financial assistance for higher education program that is administered by DHEO. The regulation provides the application process, eligibility criteria, and award process for the Speech-Language Pathologist Scholarship Program. The proposed amendments include revising the title of the regulation; revising the name of the program in Section 1.0; adding and striking definitions in Section 2.0; clarifying the application process in Section 3.0; revising the eligibility requirements in Section 4.0; and revising the awards process in Sections 5.0 and 6.0. The proposed amendments are consistent with House Bill 480 of the 151st General Assembly. In addition, the Department proposes to renumber the regulation from 1203 to 1212.

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 February 2, 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 amended 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 amended regulation help ensure that all students receive an equitable education? The amended 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 amended regulation help to ensure all students' health and safety are adequately protected? The amended 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 amended regulation help to ensure that all students' legal rights are respected? The amended 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 amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended 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 amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended 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 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 adopted regulation? There is no expected cost to the state of complying with this amended 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/january2023/proposed/26 DE Reg 528RFA 01-01-23.pdf>

~~4206 1212~~ Speech-Language Pathologist Incentive Loan Scholarship Program

1.0 Purpose

The purpose of this regulation is to provide eligibility criteria and application procedures for the ~~Speech Language~~ Speech-Language Pathologist Incentive Loan Scholarship Program pursuant to 14 ~~Del.C. §3422~~ §3435(a).

2.0 Definitions

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

~~“Academic Record” means the applicant’s unofficial transcript from college or graduate school for the most recent academic year.~~

~~“Award” means a loan scholarship under the Speech-Language Pathologist Incentive Loan Program, the repayment of which is forgiven when the borrower is employed as a licensed speech language pathologist in a Delaware public school or by a provider or its contractors for Delaware programs serving infants and toddlers under Part C of the Individuals with Disabilities Education Act (Birth to Three Early Intervention) for the period of time specified in 14 Del.C. §3422(e)(2) Scholarship.~~

~~“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, scholarship and loan programs.~~

~~“Direct Educational Expenses” means tuition, mandatory fees, room, board, books, and supplies.~~

~~“Full-Time Student” means a graduate student enrolled in nine (9) or more credit hours.~~

~~“Institution” means a post-secondary institution or institution of higher education in Delaware that is accredited, or a candidate for accreditation, by the Council on Academic Accreditation in Audiology and Speech-Language Pathology of the American Speech-Language-Hearing Association.~~

~~“Part Time Student” means a student enrolled in a graduate program that is at least five (5) and less than nine (9) credit hours per term.~~

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

3.0 Application Acceptance and Submission Period

- 3.1 The application acceptance and submission period for the ~~Speech-Language Pathologist Incentive Loan Scholarship~~ Speech-Language Pathologist Scholarship Program shall be posted on the DHEO's website by ~~April 1~~ December 1 of each calendar year.
- 3.1.1 Applications shall not be accepted outside of the posted application acceptance period under any circumstances.
- 3.1.2 Incomplete applications shall not be accepted or processed.
- 3.2 In order for an application to be considered complete, an applicant ~~must:~~ must
- 3.2.1 ~~Submit the applicant's Academic Record to DHEO by mail, fax, or email by the last date of the application acceptance period.~~
- 3.2.2 ~~Complete~~ complete an application through the Student Account Access Site by the last date of the application acceptance period. The application shall include:
- 3.2.2.1 ~~3.2.1~~ 3.2.1The applicant's major, name of the applicant's Institution, and the school year in which the applicant was most recently enrolled.
- 3.2.2.2 ~~3.2.2~~ 3.2.2Applicants may update their enrollment information on the Student Account Access Site through the last date of the application acceptance period.
- 3.2.2.3 ~~3.2.3~~ 3.2.3A first time applicant must establish an account and provide ~~his or her~~ the applicant's valid email address and permanent mailing address before being permitted to submit the information required in subsection ~~3.2.2~~ 3.2 of this regulation.

4.0 Eligibility for Awards

- 4.1 ~~Applicants shall meet the following requirements to be considered for the Speech-Language Pathologist Incentive Loan Program:~~ In order to be eligible for an Award through the Speech-Language Pathologist Scholarship Program, the applicant shall meet the requirements in subsections 4.1.1 and 4.1.2.
- 4.1.1 The applicant shall meet the definition of residency as provided in 14 Del.C. §3402(f).
- 4.1.1.1 ~~4.1.2~~ 4.1.2~~Be either a Part-Time or~~ The applicant shall be a Full-Time Student enrolled in a graduate program in Delaware that will satisfy the educational requirements to become licensed by the Delaware Board of Speech Pathologists, Audiologists, and Hearing Aid Dispensers as a ~~speech/ language pathologist; and speech-language pathologist.~~
- 4.1.2 ~~Demonstrate strong academic merit.~~

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 ~~Speech-Language Pathologist Incentive Loan Scholarship~~ Speech-Language Pathologist Scholarship Program.
- 5.2 An Award shall be used for, and not in excess of, Direct Educational Expenses.
- 5.3 An Award may be renewed annually for up to ~~two (2)~~ 2 years.
- 5.3.1 ~~To be eligible to renew an Award, students are required to submit an Academic Record and updated enrollment information~~ shall complete an application by the date required by the DHEO, meet the requirements of Section 4.0, and maintain Satisfactory Academy Progress. For the purpose of this regulation, Satisfactory Academy Progress means that a student is successfully completing coursework according to the standards of the college or university in which the student is enrolled and the student is eligible to continue to receive financial aid.
- 5.3.2 ~~An Award may be renewed annually as long as students maintain satisfactory academic progress as defined by the Institution.~~
- 5.4 An Award may be pro-rated for Part-Time Students.

6.0 Award Payment

- 6.1 ~~A signed promissory note, which includes the terms of repayment and loan forgiveness, shall be executed before disbursement of funds.~~
- 6.2 All payments Awards shall be disbursed directly to the eligible recipient's college or university only.
-

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), 1305(l), and 1305(o) (14 **Del.C.** §§1203, 1205(b), 1305(l), & 1305(o)
14 **DE Admin. Code** 1501

PUBLIC NOTICE

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

1501 Salary Supplements for Educators

A. TYPE OF REGULATORY ACTION REQUESTED

Adoption of a New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 **Del.C.** §§1203, 1205(b), 1305(l), and 1305(o), the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1501 Salary Supplements for Educators. The regulation concerns knowledge and skills salary supplements pursuant to 14 **Del.C.** §1305(k), national certification salary supplements pursuant to 14 **Del.C.** §1305(l), and additional responsibility assignment salary supplements pursuant to 14 **Del.C.** §1305(n). In accordance with 14 **Del.C.** §1305(o), the Board is required to annually review the supplements and promulgate recommendations as necessary. The proposed amendments to this regulation are to add two certifications to subsection 4.1 as a result of HB 348 of the 151st General Assembly. HB 348 amended 14 **Del.C.** §1305(l) to allow salary supplements for nationally certified occupational therapists and nationally certified physical therapists and was signed into law on October 26, 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 February 2, 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? In accordance with 14 **Del.C.** §1305(o), the national certifications in Section 4.0 and the additional responsibility assignment in Section 5.0 are intended to lead to improvements in teacher effectiveness and student achievement. The Board is proposing to add two certifications to Section 4.0. The Board is not proposing any amendments to additional responsibility assignment salary supplements in Section 5.0.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses salary supplements for educators and is not designed to help ensure students receive an equitable education.

3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation addresses salary supplements for educators and is not designed to help ensure students' health and safety are protected.

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

regulation addresses salary supplements for educators and is not designed to address students' legal rights.

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

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels. The Board is not proposing any changes to Section 6.0, which provides that an educator is responsible for providing information to the employing school or district to verify the educator has fulfilled the requirements for an additional responsibility assignment salary supplement for mentors.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? By statute (14 **Del.C.** §1305(b)), the Department implements the rules and regulations developed under 14 **Del.C.** Ch. 12.

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

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

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? The Department provides for funding salary supplements in its annual budget. The proposed amendments are consistent with the FY23 Appropriations Act (Senate Bill No. 250) that went into effect on June 28, 2022 and HB 348 that went into effect on October 26, 2022.

***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/january2023/proposed/26 DE Reg 531RFA 01-01-23.pdf>

1501 Salary Supplements for Educators

1.0 Content

- 1.1 The following requirements shall be met in order to receive the salary supplements established by 14 **Del.C.** §1305. This regulation shall apply to the awarding of salary supplements as a percentage of the State portion of an Educator's annual salary paid in accordance with the provisions of 14 **Del.C.** §1305 for gaining knowledge and skills that lead to more effective instruction, for achieving national certification from the National Board for Professional Teaching Standards or from an equivalent program, and for accepting Additional Responsibility Assignments that impact student achievement.
- 1.2 Supplements are available subject to an annual appropriation from the General Assembly.

2.0 Definitions

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

"Additional Responsibility Assignments" means additional assignments for Educators that are academic in nature and that impact student achievement. For purposes of this regulation and pursuant to 14 **Del.C.** §1305(n), extracurricular or noninstructional supervisory activities are specifically excluded from additional responsibility assignments.

"Administrator Mentor" means a certified administrator who holds a Continuing License, is currently employed as an administrator, performs the duties and responsibilities in the State's administrator mentor program, and is rated as satisfactory on the State's current evaluation system or the equivalent thereof on a state-approved alternative educator evaluation system. A certified administrator is an Educator who holds at least one of the following Standard Certificates: School Principal and Assistant School Principal Standard Certificate (14 **DE Admin. Code** 1591), Certified Central Office Personnel Standard Certificate (14 **DE Admin. Code** 1592), Superintendent and Assistant Superintendent

Standard Certificate (14 **DE Admin. Code** 1593), and Special Education Director Standard Certificate (14 **DE Admin. Code** 1594).

"**Base Salary**" means the salary earned by an Educator as determined by the Educator's level of education and years of service on the Delaware educators' salary schedule pursuant to 14 **Del.C.** §1305.

"**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 the rules and regulations developed by the Professional Standards Board, in consultation and cooperation with the Department, and approved by the State Board of Education. The term 'educator' does not include substitute teachers.

"**Knowledge and Skills**" means understandings and abilities that, when acquired by Educators, lead to more effective instruction.

"**National Certification**" means an Educator has achieved and maintains a current national certification as provided in 14 **Del.C.** §1305(l).

"**Salary Supplement**", when referring to knowledge, skills, national certification, and additional responsibility based supplements, means additional State salary as described in 14 **Del.C.** §1305.

"**Teacher or Specialist Lead Mentor**" means a teacher or specialist who holds a Continuing or Advanced License, has participated in the training approved by the Department for Teacher or Specialist Lead Mentors, is employed by an employing authority as a Teacher or Specialist Lead Mentor, and performs the duties and responsibilities assigned to that position. Educators serving as Teacher or Specialist Lead Mentors must have all satisfactory evaluations on the State's current evaluation system, or the equivalent thereof on a state-approved alternative educator evaluation system, during the school year in which they are mentors and may not be on an improvement plan, or the equivalent therefore in a state-approved alternative educator evaluation system. Teacher or Specialist Lead Mentors oversee the comprehensive induction program at the building level, train Teacher or Specialist Mentors, and provide support to teachers or specialists in years three and four of the program. Teacher or Specialist Lead Mentors may mentor an Educator in years one and two of the program.

"**Teacher or Specialist Mentor**" means an Educator who holds a Continuing or Advanced License and has participated in the training for mentors of teachers and specialists specified by the Department and the employing authority. Educators serving as Teacher or Specialist Mentors must have satisfactory evaluations on the State's current evaluation system, or the equivalent thereof on a state-approved alternative educator evaluation system, during the school year in which they are mentors and may not be on an improvement plan, or the equivalent therefore in a state-approved alternative educator evaluation system. Teacher or Specialist Mentors provide one to one support for Educators in years one and two of the program.

3.0 Knowledge and Skills Salary Supplements

Currently, there are not any approved Knowledge and Skills Salary Supplements.

4.0 National Certification

4.1 An Educator may receive a Salary Supplement for achieving and currently maintaining the following certifications as provided in 14 **Del.C.** §1305(l):

- 4.1.1 National Board Certification from the National Board for Professional Teaching Standards;
- 4.1.2 Certificate of Clinical Competence in Audiology (CCC-A) or Certificate of Clinical Competence Speech-Language Pathology (CCC-SLP) from the American Speech-Language-Hearing Association;
- 4.1.3 National Certified School Counselor from the National Board for Certified Counselors;
- 4.1.4 Music Therapist – Board Certified (MT-BC) from the Certification Board for Music Therapists;

PROPOSED REGULATIONS

- 4.1.5 Nationally Certified School Psychologist (NCSP) from the National Association of School Psychologists; ~~or~~
 - 4.1.6 Nationally Certified School Nurse (NCSN) from the National Board for Certification of School Nurses; Nurses;
 - 4.1.7 Nationally Certified Physical Therapy Specialist in any specialty area from the American Board of Physical Therapy Specialists.
 - 4.1.8 Occupational Therapist Advanced Certification from the American Occupational Therapy Association.
- 4.2 In order to be eligible for a National Certification Salary Supplement, the Educator shall maintain current certification through the applicable national organization.
- 4.3 An Educator who is employed as a superintendent, assistant superintendent, or director or in a non-instructional area of transportation, finance/business management, human resources/personnel management, purchasing, community/public relations, administrative services, pupil services, audiology, occupational therapist, physical therapist, psychologist, speech language pathologist, human relations, nurse, social work/services, information technology, or a specialized assignment comparable to these non-instructional areas shall not be eligible for a Salary Supplement for National Certification from the National Board for Professional Teaching Standards.
- 4.4 An Educator who achieves and maintains National Certification shall receive an annual Salary Supplement equal to 12 percent of the Educator's Base Salary for the certification in subsection 4.1.1 or 6 percent of the Educator's Base Salary for the certifications in subsections ~~4.1.2 through 4.1.6~~ 4.1.8.

5.0 Additional Responsibility Assignments

- 5.1 Additional Responsibility Assignments shall be:
- 5.1.1 Focused on school improvement issues that impact student achievement;
 - 5.1.2 Supported by high quality, targeted professional development; and
 - 5.1.3 Academic in nature.
- 5.2 In order to qualify for an Additional Responsibility Assignment Salary Supplement, an Educator shall have completed the State approved training program for the position or, in the absence of a training program, shall meet the criteria set forth for the position by the State, school district, charter school, or other employing authority and shall provide State, school district, charter school, or other employing authority approved levels of service, participate in designated activities throughout the period of responsibility, and document the satisfactory fulfillment of the specified assignment.
- 5.3 Additional Responsibility Assignment Salary Supplements may be renewed.
- 5.4 The following assignments are currently an approved Additional Responsibility Assignment:
- 5.4.1 Administrator Mentor, Teacher or Specialist Lead Mentor, and Teacher or Specialist Mentor as provided in 14 **DE Admin. Code** 1503.

6.0 Educators' Eligibility for Salary Supplements

Additional Responsibility Assignments: An Educator shall provide the school district, charter school, or other employing authority with such information as may be required to enable the school district, charter school, or other employing authority to verify that the Educator has fulfilled the requirements of subsection 5.2 of this regulation.

7.0 Payment of Salary Supplements

- 7.1 Salary Supplements for Additional Responsibility Assignments
- 7.1.1 Salary supplements earned by Educators who are paid in accordance with the provisions of 14 **Del.C.** §1305 as a result of fulfilling Additional Responsibility Assignments shall be effective following receipt by the Department of documentation from the school district, charter school, or other employing authority of satisfactory completion of the duties associated with the Additional Responsibility Assignment and shall be paid annually.

8.0 Limits on Salary Supplements

Salary supplements shall be paid to an Educator in accordance with the provisions of 14 Del.C. §1305.

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

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

PUBLIC NOTICE**Medicaid and CHIP coverage of COVID-19 Treatment, Vaccines, & Testing**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of 31 Del. C. §512, Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DHSS/DMMA) is proposing to amend Title XIX Medicaid State Plan and Title XXI CHIP State Plan regarding the coverage of COVID-19 treatment, vaccines, & testing. Specifically, to assure coverage of COVID-19 treatment, vaccines, vaccine administration, vaccine counseling, and testing consistent with the Centers for Disease Control and Prevention (CDC) definitions of screening, testing, and diagnosis for COVID-19 and its recommendations for who should receive diagnostic and screening tests for COVID-19 with no cost sharing for Medicaid and CHIP plans.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning and Policy Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to DHSS_DMMA_Publiccomment@Delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on January 31, 2023. Please identify in the subject line: CHIP ARP & COVID-19 Treatment, Vaccines & Testing.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan and Title XXI CHIP State Plan regarding the coverage of COVID-19 treatment, vaccines, & testing. Specifically, to assure coverage of COVID-19 treatment, vaccines, vaccine administration, vaccine counseling, and testing consistent with the Centers for Disease Control and Prevention (CDC) definitions of screening, testing, and diagnosis for COVID-19 and its recommendations for who should receive diagnostic and screening tests for COVID-19 with no cost sharing for Medicaid and CHIP plans.

Statutory Authority

- American Rescue Plan Act of 2021
- Section 1135(b)(1)(C) and section 1135(b)(5) of the Social Security Act

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 by the authorities vested in him by the Constitution and the laws of the United States, including sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 et seq.), and consistent with section 1135 of the Social Security Act (Act). 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 COVID-19 pandemic, to the extent necessary, as determined by the Centers for Medicare & Medicaid Services (CMS), 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.

CMS has issued subsequent guidance that required states to assure coverage of COVID-19 testing, vaccines, vaccine administration, and vaccine counseling without cost sharing. CMS also issued guidance that required states to assure coverage of COVID-19 treatment, including specialized equipment and therapies (including preventive therapies). Delaware has been compliant with this requirement for the duration of the PHE and is publishing these pages to attest to this assurance.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to amend Delaware's Medicaid State Plan by modifying language on Attachment 7.7-A Pages 1-3, Attachment 7.7-B Pages 1-3, and Attachment 7.7-C Pages 1-3. Also, the Delaware Health Children's Program State Plan will be amended by modifying language in Sections 1.4 and 6.2.27.

Summary of Proposed Changes

Effective March 11, 2021, Delaware's State Plan will be amended by modifying language on Attachment 7.7-A Pages 1-3 regarding COVID-19 vaccines, vaccine administration, and vaccine counseling; Attachment 7.7-B Pages 1-3 regarding COVID-19 testing; and Attachment 7.7-C Pages 1-3 regarding COVID-19 treatment. The Delaware Health Children's Program State Plan will be amended by modifying language in Sections 1.4 and 6.2.27 regarding COVID-19 testing, vaccines, and treatment for CHIP plans.

Effective on and after April 1, 2021, Delaware's State Plan will be amended by modifying language in Section 7.7-A Page 3, regarding rates for any medically necessary stand-alone COVID-19 vaccine counseling.

Public Notice

In accordance with the federal public notice requirements established in 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 gives public notice and provides an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on January 31, 2023.

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 provide 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

	Federal Fiscal Year 2022	Federal Fiscal Year 2023
Federal funds	\$ 8,206,000	\$ 7,584,000
General (State) funds	\$ 4,633,000	\$ 5,383,000

***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/january2023/proposed/26 DE Reg 535RFA 01-01-23.pdf>

Medicaid and CHIP coverage of COVID-19 Treatment, Vaccines, & Testing

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

<http://regulations.delaware.gov/register/january2023/proposed/Attachment 7.7-A Amended.pdf>

<http://regulations.delaware.gov/register/january2023/proposed/Attachment 7.7-B Amended.pdf>

<http://regulations.delaware.gov/register/january2023/proposed/Attachment 7.7-C Amended.pdf>

<http://regulations.delaware.gov/register/january2023/proposed/CHIP COVID coverage Amended.pdf>

DEPARTMENT OF INSURANCE**OFFICE OF THE COMMISSIONER**

Statutory Authority: 18 Delaware Code, Sections 311, 7105 and 7107 (18 **Del.C.** §§311, 7105 & 7107)

18 **DE Admin. Code** 1404

PUBLIC NOTICE**1404 Long-Term Care Insurance****A. Type of Regulatory Action Required**

Re-proposal of amendments to Regulation 1404 - Long-Term Care Insurance.

B. Synopsis of Subject Matter of Regulation

In the October 1, 2022 edition of the *Register of Regulations*, at 26 **DE Reg.** 300 (10/01/22) the Commissioner of the Delaware Department of Insurance (Commissioner) published a proposal to amend Regulation 1404, the regulation that implements 18 **Del.C.** Ch. 71, by setting forth standards that apply to long term care insurance coverage in Delaware. The purpose of the proposed amendments was to move subsections 8.2.5.1.4 through 8.2.5.1.6 to new subsections 8.5.1 through 8.5.3 and add language that is designed to make it easier for policyholders to access information about rate increases that affect their policies. The Department also proposed adding an effective date of these proposed amendments at Section 33.0.

The Department received timely-submitted comments from the American Council of Life Insurance and America's Health Insurance Plans, both of which are representatives of the life insurance industry (together, the commenter). The commenter applauded the Department's efforts to increase transparency around rate increases to the consumer. However, the commenter pointed out that, as currently worded, subsection 8.5.1 does not account for those policies that have payouts that occur on periods other than daily or monthly, and suggested the addition of the word "certificate" to accommodate group policies.

The commenter also pointed out that the proposed reference to "daily" benefit options in subsection 8.5.2 should be stricken because with traditional long term care policies, there are typically multiple "levers" that can be "pulled" to reduce coverage and minimize the impact of a premium rate increase. For example, a policyholder could reduce their daily benefit, their benefit period, their inflation protection, lengthen their elimination period, or

drop riders on their policy, any one or more of which might help mitigate a rate increase.

Lastly, the commenter advised that while the intent to provide the contingent non-forfeiture benefit available in subsection 8.5.3 is good, the non-forfeiture benefit is not a static number. Accordingly, the commenter requested that the subsection 8.5.3 language be adjusted accordingly.

The Department has determined that it is appropriate to adopt the changes proposed by the commenter and accordingly is republishing the proposed amendments to the regulation to now include the commenter's suggestions. The Department is also taking the opportunity to update the regulation to conform with current Delaware Administrative Code Style conventions.

C. Notice and Public Comment

The proposed regulation appears below and may also be viewed on the Department of Insurance Website at <http://insurance.delaware.gov/information/proposedregs/>. The Department will not be holding a public hearing on the proposed regulation.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed regulation. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EDT, the 31st day of January, 2023 and should be directed to:

Alisa Pritchard, Regulatory Specialist
Delaware Department of Insurance
1351 West North Street, Suite 101
Dover, DE 19904
(302) 674-7379
Email: DOI_Legal@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/january2023/proposed/26 DE Reg 537RFA 01-01-23.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/january2023/proposed/26 DE Reg 537 01-01-23.htm>

DEPARTMENT OF LABOR
DIVISION OF INDUSTRIAL AFFAIRS
Industrial Accident Board

Statutory Authority: 19 Delaware Code, Sections 105 and 2301A (19 Del.C. §§105 & 2301A)
19 DE Admin. Code 1331

PUBLIC NOTICE

1331 Industrial Accident Board Regulations

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 19 Del.C. §§105 and 2301A, the Delaware Department of Labor, Industrial Accident Board ("Board") proposes to modify 19 DE Admin. Code 1331, Section 9.0 regarding Pre-Trial Memorandums. The Industrial Accident Board administers and enforces the Workers Compensation Act ("Act") and related rules.

In accordance with 29 Del.C. §10116, persons wishing to submit written comments, suggestions, briefs, and compilations of data or other written materials concerning the proposed modifications to Rule No. 9 should direct them to the following address:

Allison Stein
Delaware Department of Labor
Division of Industrial Affairs / Office of Workers' Compensation
4425 North Market Street, 3rd Floor
Wilmington, DE 19802

Comments may also be directed via electronic mail to Allison.stein@Delaware.gov. Any written submission in response to this notice and relevant to the proposed rules must be received by the above contact at the Delaware Department of Labor no later than 4 p.m. EST, January 31, 2023.

The action concerning determination of whether to adopt the proposed changes to this rule will be based upon the Board's consideration of the written comments and any other written materials filed by the public.

Background

The Delaware Department of Labor, Industrial Accident Board ("Board") is authorized by the General Assembly of the State of Delaware, to promulgate its own rules of procedure for carrying out its duties consistent with Part II of Title 19 and the provisions of the Administrative Procedures Act. Such rules shall be for the purpose of securing the just, speedy and inexpensive determination of every petition pursuant to Part II of Title 19. The rules shall not abridge, enlarge or modify any substantive right of any party and they shall preserve the rights of parties as declared by Part II of Title 19. The Delaware Department of Labor ("Department") is further authorized to adopt and promulgate rules and regulations not inconsistent with Title 19 or of any other law of the state; provided, however that no such rule or regulation shall extend, modify or conflict with any law of this state or the reasonable implications thereof; and provided further, however, that such rules and regulations, as established by the Department, shall focus primarily on the Act, its related rules, and the Board.

Summary of Proposal

Recently, the Department underwent modernization of its procedures to allow electronic submissions, which enhanced its process and forms. Pre-Trial Memorandums are an existing part of the Board's Hearing process regarding workers' compensation insurance benefits and have been filled out and filed in paper form. The proposed change will allow Pre-Trial Memorandums to be received electronically to a central location. Because Pre-Trial Memorandums now will be in electronic format through an online process of completion, it is necessary to update the existing provisions at 19 **DE Admin. Code** 1331, Section 9.0.

The proposed changes to Section 9.0 of this regulation set forth the new electronic format and process to fill out and file the Pre-Trial Memorandum. Specifically, when the Department notifies parties of the date and time of the Pre-Trial Scheduling Conference, the Department will also electronically send a link of the online Pre-Trial Memorandum form to petitioner's counsel and notice to opposing party or parties. Petitioner's counsel must fill out petitioner's portion of the memorandum and provide notice of completion to opposing party or parties 15 days after counsel's receipt of the link. The opposing party or parties must fill out their portion of the memorandum and provide notice of completion 15 days after receiving petitioner's notice that petitioner completed the form. Electronic signatures are accepted. Should a Pre-Trial Memorandum not be timely filed, the other party may move to compel its completion. Should any party not complete the memorandum, the Board may remove witnesses, reschedule the Hearing, strike issues and defenses, and take any other actions deemed appropriate to remedy prejudice to an opposing party and to facilitate the fair and orderly presentation of issues.

Statutory Authority

19 Del.C. §105

19 **Del.C.** §105 enables the Delaware Department of Labor to adopt and promulgate rules and regulations not inconsistent with Title 19 of the Delaware Code; provided, that no such rule or regulation shall extend, modify or conflict with any law of the State of Delaware or the reasonable implications thereof.

19 Del.C. §2301A

19 **Del.C.** §2301A enables the Industrial Accident Board to promulgate its own rules of procedure for carrying out its duties consistent with Part II of Title 19 and the provisions of the Administrative Procedures Act. Such rules shall be for the purpose of securing the just, speedy and inexpensive determination of every petition pursuant to

Part II of Title 19.

***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/january2023/proposed/26 DE Reg 538RFA 01-01-23.pdf>

1331 Industrial Accident Board Regulations (Break in Continuity of Sections)

9.0 Pre-Trial Scheduling Conference and Pre-Trial Memorandum

9.1 Pre-Trial Scheduling Conference

- 9.1.1 In any action, including remands, a pre-trial scheduling conference shall be held. The Department shall designate an employee to arrange the time and date for the pre-trial conference. The designated employee will have discretionary power to re-schedule the pre-trial scheduling conference, if necessary. The employee designated by the Department in accord with this Rule shall be responsible for noticing such pre-trial scheduling conference.
- 9.1.2 The pre-trial scheduling conference shall be held on a date not later than 30 days after the date of the issuance of proper notice of a pre-trial scheduling conference regarding the petition at issue. The designated employee of the Department may grant a continuance of the pre-trial scheduling conference.
- 9.1.3 Such pre-trial scheduling conference may be held telephonically or by email, unless a party is unrepresented by counsel, in which case, the pre-trial scheduling conference shall be held at the Department of Labor offices servicing the county where the accident occurred.
- 9.1.4 The Department shall set a date and time for the hearing on the issues that are the subject of the petition, subject to the provisions of 19 **Del.C.** §2348.

9.2 Pre-Trial Memorandum

- 9.2.1 In any action, including remands, a ~~joint~~ Pre-Trial Memorandum shall be completed by the parties and filed with the Department. The Department will issue notice of the pre-trial scheduling conference. Along with this notice the Department will electronically send a link to the online Pre-Trial Memorandum form to counsel for the moving party (petitioner), with notice to the opposing parties.
- 9.2.2 ~~At the time the Department issues the notice of pre trial scheduling conference, the Department will send an original Pre Trial Memorandum form with the notice of the pre trial scheduling conference to counsel for petitioner. Petitioner's counsel shall complete the form and send it to respondent's counsel. Respondent's counsel shall complete respondent's portion and return it to petitioner's counsel who shall file it with the Department and send a copy to respondent's counsel. Fifteen days after receipt of the link counsel for the moving party shall complete the online Pre-trial Memorandum form and provide notice of its submission to the opposing parties. The opposing or non-moving parties shall complete their forms with notice of completion to petitioner's counsel 15 days after receiving notice that the petitioner has submitted their portion of the form. Electronic signature is acceptable for submission of the form.~~ Should any party be unrepresented, the Pre-Trial Memorandum shall be completed by that party.
- 9.2.3 In the event the Pre-Trial Memorandum has not been filed with the Department ~~before the pre trial scheduling conference or within the time specified in the notice provided by the Department in the time specified in subsection 9.2.2,~~ either party may file a motion pursuant to Rule 8 Section 8.0 seeking an Order from the Board to compel the opposing party to complete and/or file a completed Pre-Trial Memorandum by a date ~~certain~~. certain providing notice of the filing to the moving party. Should any party fail to complete a Pre-Trial Memorandum the Board may remedy the deficiency by removing witnesses, rescheduling the Hearing, striking issues and/or defenses, and/or taking any other actions deemed appropriate to remedy prejudice to an opposing party and to facilitate the fair and orderly presentation of issues.

- 9.2.4 Any party may object to any matter in the Pre-Trial Memorandum. If the parties cannot agree to resolve the objection, any party may file a motion in accordance with ~~Rule 8~~ Section 8.0. The basis for an objection may include, but is not limited to, that an item in the Pre-Trial Memorandum is not permitted, or that a matter stated in the Pre-Trial Memorandum should be dismissed, altered, supplemented or filed as another petition under ~~Rule 26~~ Section 26.0.
- 9.3 The Pre-Trial Memorandum shall contain:
- 9.3.1 ~~names~~ Names (and, if requested, the addresses) of prospective medical and lay witnesses;
- 9.3.2 a A complete statement of what the petitioner seeks and alleges. When a claimant seeks an order for payment of medical expenses either by petition or when raised as an issue at the pre-trial hearing or in the Pre-Trial Memorandum on the employer's petition, copies of the bills shall be provided to counsel with the petition or at least 30 days before the hearing;
- 9.3.3 a A complete statement of defenses to be used by the opposing party;
- 9.3.4 a A copy of the medical report upon which a petition for benefits under 19 **Del.C.** §2326 is based shall be provided;
- 9.3.5 a A clear statement of the basis for a petition under 19 **Del.C.** §2347;
- 9.3.6 ~~notice~~ Notice of the intent to use any movie, video or still picture and either a copy of the same or information as to where the same may be viewed;
- 9.3.7 ~~an~~ An accurate estimate of the time necessary for hearing. This requirement includes an ongoing responsibility to update to Board as to any changes in the estimated trial time that may arise before hearing.
- 9.4 Amendments:
- 9.4.1 Either party may modify a Pre-Trial Memorandum at any time prior to ~~thirty (30)~~ 30 days before the hearing. Amending the Pre-Trial Memorandum by written notice to the opposing party and the designated employee of the Department of Labor may be made in accord with this ~~Rule~~ regulation. If a party objects to an amendment, the party requesting relief shall file a motion in accord with ~~Rule 8~~ Section 8.0.
- 9.4.2 If the thirtieth day prior to a hearing falls on a weekend or legal holiday, the last day to amend the Pre-Trial Memorandum shall be the next business day following that date.
- 9.4.3 Should a party wish to amend the Pre-Trial Memorandum to list additional witnesses, the party shall provide the names (and, if requested, the addresses) of such witnesses.
- 9.4.4 Notice of any modification to the Pre-Trial Memorandum shall be sent to the opposing counsel or unrepresented party in the same manner and on the same day as it is submitted to the Department.
- 9.4.5 The ~~thirty-day~~ 30-day notice requirement regarding amendments to the Pre-Trial Memorandum may be waived or modified by consent of the parties upon written stipulation, or by the Board upon written motion pursuant to ~~Rule 8~~ Section 8.0.
- 9.5 The designated employee of the Department of Labor will review the Pre-Trial Memorandum, note a time and date for the hearing, sign the form and send copies of the completed Pre-Trial Memorandum to the Parties. Such Pre-Trial Memorandum controls the subsequent course of the action unless amended by the Board to prevent manifest injustice.
- 9.6 Parties are responsible for arranging the appearance of noticed witnesses including the issuance of any subpoenas and the sending of notices of date and place of the hearing as well as the scheduled time of that witness' testimony.

***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/january2023/proposed/26 DE Reg 538 01-01-23.htm>

PROPOSED REGULATIONS

DEPARTMENT OF STATE PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 Del.C. §209(a))
26 DE Admin. Code 1002

PUBLIC NOTICE

1002 Minimum Filing Requirements for All Regulated Companies Subject to the Jurisdiction of the Public Service Commission

IN THE MATTER OF THE REGULATION
ESTABLISHING THE MINIMUM FILING
REQUIREMENTS FOR ALL REGULATED
COMPANIES SUBJECT TO THE JURISDICTION
OF THE PUBLIC SERVICE COMMISSION
(REOPENED DECEMBER 14, 2022)

PSC REGULATION DOCKET NO. 4

In 1981, the Delaware Public Service Commission (the "Commission" or "PSC") adopted "Minimum Filing Requirements for All Regulated Companies" to govern applications to the Commission by regulated public utilities. Parts A of the Minimum Filing Requirements describe the filing and content of rate increase applications made by large utilities subject to the Commission's jurisdiction. These portions of the Minimum Filing Requirements are reproduced in their present form as Exhibit "B".

Rate increase applications submitted to the Commission are reviewed and evaluated by the Commission's Staff for the justness and reasonableness of the rates proposed. The Commission is informed by Staff that, in recent years, the frequency and number of such applications has increased significantly, resulting in a corresponding increase in the administrative burdens associated with Staff's review. Staff has also identified certain practices that tend to add significantly and unreasonably to these administrative burdens. According to Staff, these practices typically involve changes made by the utility to data on which the application relies, including changes to the test year (as that term is used in the Minimum Filing Requirements) and changes in rate base items, expenses, or revenues. Staff contends that the burden occasioned by such practices is most severe where multiple and material changes are made at different points in time during the pendency of a single application. Staff further contends that, where such changes are sought, they are often of a type that is avoidable through the applicant's exercise of ordinary diligence in preparing its rate increase application.

Staff now seeks certain changes and additions to Parts A to the Minimum Filing Requirements that are designed to curtail the undesirable practices. In this way, the efficiency of the rate review process will be increased, and its administrative burdens reduced. The text of the proposed Minimum Filing Requirements, as modified by Staff's changes and additions, is attached as Exhibit "C". The Commission has authority to issue such rules, and to effect the proposed changes and additions, under 26 Del. C. § 209(a).

Copies of the filing may be inspected at the Commission during normal business hours, or may be viewed by going to Delafile (<http://depsec.delaware.gov/>), the Commission's file management system, and by searching Reg. 4.

The Commission hereby solicits written comments, suggestions, compilations of data, briefs, or other written materials concerning Staff's proposed changes and additions to the Minimum Filing Requirements. These such materials shall be filed with the Commission in Delafile or can be mailed to its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware 19904. Public comment will be accepted through March 3, 2023. In addition, the Commission's duly appointed Hearing Examiner will conduct a public hearing concerning Staff's proposed changes and additions on February 16, 2023 at 10:00 AM in the Commission's hearing room at the above address. **To be considered at the public hearing, all such materials shall be filed on or before February 1, 2023.**

The Minimum Filing Requirements, Staff's proposed changes and additions to the same, and the materials submitted in connection therewith will be available for public inspection and copying at the Commission's Dover

office during normal business hours. The fee for copying is \$0.25 per page.

Any individual with disabilities who wishes to participate in these proceedings should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, telephonically (including use of the Telecommunications Relay Service), or otherwise. The Commission's toll-free telephone number in Delaware is (800) 282-8574. Persons with questions concerning this application may contact the Commission by either Text Telephone ("TT") or by regular telephone at (302) 736-7500.

IN THE MATTER OF THE REGULATION
ESTABLISHING THE MINIMUM FILING
REQUIREMENTS FOR ALL REGULATED
COMPANIES SUBJECT TO THE JURISDICTION
OF THE PUBLIC SERVICE COMMISSION
(REOPENED DECEMBER 14, 2022)

PSC REGULATION DOCKET NO. 4

ORDER NO. 10155

AND NOW, this 14th day of December 2022, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, the Commission has previously adopted "Minimum Filing Requirements for All Regulated Companies" ("Minimum Filing Requirements") to ensure uniform content in many of the submissions made to the Commission, including applications for rate adjustments; and

WHEREAS, the Commission's Staff seeks changes and additions to the Minimum Filing Requirements for the stated purpose of increasing the procedural and practical efficiency of its oversight of the ratemaking process, and to lessen the administrative burdens of the same; and

WHEREAS, Staff is proposing changes to Parts A of the Minimum Filing Requirements as shown in Exhibit C attached; and

WHEREAS, the Commission believes that, in light of Staff's Exhibit C, the provisions of the Minimum Filing Requirements to which those changes are directed should be re-examined and, if appropriate, amended; and

WHEREAS, under 26 *Del. C.* § 209(a), the Commission may "[f]ix just and reasonable standards, classifications, regulations, practices, measurements, or services to be furnished, imposed, observed, and followed thereafter by any public utility. . .;" and

WHEREAS, the Commission desires to give public notice, pursuant to 29 *Del. C.* §§ 1133, 10115, and 10118(a), of its intention to re-examine the subject Part A of the Minimum Filing Requirements, and to solicit comment concerning the efficacy, reasonableness, and propriety of Staff's proposed changes.

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

1. That the Secretary of the Commission shall transmit to the Registrar of Regulations for publication in the Delaware Register the notice attached hereto as Exhibit "A.". Such notice shall be accompanied by a copy of the proposed and existing Minimum Filing Requirements (Exhibits "B" and "C")
2. That the Secretary of the Commission shall cause the notice attached hereto as Exhibit "A" to be published in *The News Journal* and *Delaware State News* newspapers on or before January 1, 2023, omitting, however, the notice's reference to documentary exhibits, and omitting such documentary exhibits themselves.
3. That the Secretary shall cause the notice attached hereto as Exhibit "A" (as modified pursuant to paragraph 2 above) to be sent by e-mail to all Class A public utilities who currently file rate applications under Parts A of the Minimum Filing Requirements for All Regulated Companies Subject to the Jurisdiction of the Commission and all persons who have made timely written requests for advance notice of the Commission's regulation-making proceedings.
4. That Glenn Kenton is designated as the Hearing Examiner for this matter pursuant to 26 *Del. C.* §502 and 29 *Del. C.* 101, and is authorized to organize, classify, and summarize all materials, evidence, and testimony filed in

PROPOSED REGULATIONS

this docket, to conduct the public hearing contemplated under the attached notice, and to make proposed findings and recommendations to the Commission concerning Staff's proposed changes on the basis of the materials, evidence, and testimony submitted. Hearing Examiner Kenton is specifically authorized, in his discretion, to solicit additional comment and to conduct, on due notice, such public hearings as may be required to develop further materials and evidence concerning any later-submitted proposed changes. James Mc. Geddes, Esquire, is designated as Staff Counsel for this matter.

5. That the public utilities regulated by the Commission are notified that they may be charged for the cost of this proceeding under 21 *Del. C.* § 114.

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

BY ORDER OF THE COMMISSION::

Dallas Winslow, Chairman

Joann T. Conaway, Commissioner

Harold B. Gray, Commissioner

Manubhai "Mike" Karia, Commissioner

K. F. Drexler, Commissioner

ATTEST: Donna Nickerson, Secretary

*Please Note:

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

<https://regulations.delaware.gov/register/january2023/proposed/26 DE Reg 542RFA 01-01-23.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/january2023/proposed/26 DE Reg 542 01-01-23.htm>

OFFICE OF THE CHILD ADVOCATE

Statutory Authority: 29 Delaware Code, Section 9011A (29 *Del.C.* §9011A)

PUBLIC NOTICE

904 Driver Education, Driver's License, and Motor Vehicle Insurance Program for Individuals who have Experienced Foster Care

A. TYPE OF REGULATORY ACTION REQUIRED

Enactment of New Regulations

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 29 *Del.C.* §9011A, the Office of the Child Advocate ("Office") proposes to enact regulations regarding the administration of the Driver Education, Driver's License, and Motor Vehicle Insurance Program. This program was established by the General Assembly in June 2022 to assist youth and young adults who have experienced foster care to overcome barriers to obtaining a driver's license and motor vehicle insurance. The costs of driver education, costs incidental to obtaining a driver's license, and motor vehicle insurance for an individual who has experienced foster care serve as an additional barrier to gaining independence and engaging in normal, age-appropriate activities and limit opportunities for obtaining employment and completing educational goals. It is the intent and purpose of the General Assembly to establish a program to help pay these costs for eligible individuals who have experienced foster care in Delaware. This program is administered by the Office of the Child Advocate. This is the first time regulations for this program have been submitted.

There will be no Public Hearing regarding these regulations, but Public Comments can be sent by email to:

oca.scholarships@delaware.gov.

Public comments will be accepted until February 1st, 2023.

***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/january2023/proposed/26 DE Reg 544RFA 01-01-23.pdf>

904 Driver Education, Driver's License, and Motor Vehicle Insurance Program for Individuals who have Experienced Foster Care

1.0 Legal Basis and Purpose

The purpose of this regulation is to provide criteria for the Driver Education, Driver's License, and Motor Vehicle Insurance Program under 29 **Del.C.** §9011A, and to encourage individuals who have been in the custody of DSCYF to obtain a driver's license and motor vehicle insurance coverage.

2.0 Definitions

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

"DSCYF" means the Delaware Department of Services for Children, Youth and their Families as established under Title 29, Chapter 90 of the Delaware Code.

"DSCYF Custody" means legal custody of a child that is granted to DSCYF by Delaware's Family Court under Title 13, Chapter 25 of the Delaware Code.

"Office" means the Office of the Child Advocate as established under Title 29, Chapter 90A of the Delaware Code.

"Program" means the Driver Education, Driver's License, and Motor Vehicle Insurance Program as established 29 **Del.C.** §9011A.

"Permanency" means guardianship, permanent guardianship, adoption, or placement with a fit and willing relative.

"Youth in Transition Unit" means the unit within the Office of the Child Advocate designated to administer the Program.

3.0 Eligibility

3.1 Applicants must meet one of the following eligibility requirements to be considered for the Program:

3.1.1 Children in DSCYF custody who are at least 15 years old are eligible to be considered for the Program until they turn 18 years old or achieve permanency.

3.1.2 Individuals who were in DSCYF custody when they turned 18 years old are eligible to be considered for the Program as follows:

3.1.2.1 For 1 year after turning 18, if the individual is not receiving independent living services.

3.1.2.2 For any period of time the individual is receiving independent living services.

3.1.3 Individuals who were in DSCYF custody and were at least 16 years old when they achieved permanency are eligible to be considered for the Program as follows:

3.1.3.1 For 1 year after achieving permanency, if the individual is not receiving independent living services.

3.1.3.2 For any period of time the individual is receiving independent living services.

4.0 Eligible Expenses

4.1 Expenses eligible under the Program are as follows:

4.1.1 Costs related to a driver education course if the individual did not complete such a course in school.

4.1.2 Costs related to driving lessons if necessary for the individual to achieve the required number of driving hours to be eligible for licensure or if the individual needs additional driving practice.

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4.1.3 Costs related to motor vehicle insurance premiums for individuals with a motor vehicle insurance policy or individuals added to the private passenger motor vehicle insurance policy of another person or agency. If a person or agency adds an individual eligible for the Program to the person's or the agency's motor vehicle insurance policy, the Office will not pay an amount that exceeds the increase in cost attributable to the addition of the individual.

4.1.4 At the discretion of the Youth in Transition Unit, costs related to vehicle purchase, maintenance, or repair.

5.0 Application Submission and Acceptance

5.1 Applications must be submitted online via the Office's website.

5.2 Applications will be accepted on a continuous basis.

6.0 Funding Determination and Payment

6.1 There is no fixed funding amount. The Youth in Transition Unit determines the funding amount, if any, based on the available funds and financial needs of the applicants. The Office may set a maximum funding amount per individual in its discretion.

6.2 The Office will issue a written communication that reflects the amount of funding, if any, to the individual.

6.3 Payment for costs related to driver education and driving classes may be made directly to the institution providing the service or may be reimbursed to the person or agency responsible for payment.

6.4 Payment for costs related to motor vehicle insurance premiums for a person or agency who adds an eligible individual to the person's or the agency's motor vehicle insurance policy may be made directly to the insurance company or may be reimbursed to the person or agency.

6.5 Payment for costs related to motor vehicle insurance premiums for an individual who carries the individual's own insurance policy may be made directly to the insurance company or may be reimbursed to the individual.

6.6 The Office may terminate an individual's participation in the program if the individual demonstrates unsafe driving practices resulting in increased insurance premiums. The Office will maintain and distribute a policy that outlines safe driving expectations and the consequences of failure to meet these expectations. This policy will be distributed with an individual's funding communication and will be available to the public via the Office's website.

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.

DELAWARE RIVER BASIN COMMISSION

Statutory Authority: 53 Delaware Laws, Chapter 71, Approved May 26, 1961 (Delaware River Basin Compact); United States Public Law 87-328, approved September 27, 1961, 75 Statutes at Large 688.

FINAL RULE

Importations of Water Into and Exportations of Water From the Delaware River Basin; Discharges of Wastewater from High Volume Hydraulic Fracturing and Related Activities

Proposed: *Delaware Register of Regulations* on December 1, 2021 (25 Del. Reg. 559-566).

Adopted: December 7, 2022, by the Delaware River Basin Commission, Pamela M. Bush, Esq., Commission Secretary.

Filed: December 15, 2022, as a final regulation.

Effective: Thirty days after publication in the *Federal Register*.

Summary: By Resolution No. 2022 - 04 on December 7, 2022, the Delaware River Basin Commission ("DRBC" or "Commission") approved amendments to its Comprehensive Plan and the Delaware River Basin Water Code concerning importations of water into and exportations of water from the Delaware River Basin; its Special Regulations - High Volume Hydraulic Fracturing, to prohibit discharges to waters or land within the basin of wastewater from high volume hydraulic fracturing ("HVHF") and HVHF-related activities; and its Water Quality Regulations, to facilitate the implementation in state-issued permits of the prohibition on such discharges.

Contact: Pamela M. Bush, Esquire, Commission Secretary and Assistant General Counsel, at pam.bush@drbc.gov (preferred) or 609-477-7203.

Supplementary Information: The Delaware River Basin Commission ("DRBC" or "Commission") is a Federal-interstate compact agency charged with managing the water resources of the Delaware River Basin on a regional basis without regard to political boundaries. Its members are the governors of the four basin states - Delaware, New Jersey, New York and Pennsylvania - and the Division Engineer, North Atlantic Division of the U.S. Army

Corps of Engineers, representing the Federal Government. The Commission is not subject to the requirements of the Delaware Administrative Procedure Act. The purpose of this notice is to advise the public that duly adopted regulations of the Commission have been filed with the state in accordance with Section 14.2 of the Delaware River Basin Compact.

Background

By a Resolution for the Minutes on February 25, 2021, the DRBC Commissioners directed the Executive Director to prepare and publish for public comment a set of amendments to the Comprehensive Plan and implementing regulations to update the Commission's policies and provisions concerning inter-basin transfers of water and wastewater from and into the basin and to "include in the draft regulations such other proposed amendments . . . as [the Executive Director, in consultation with the Commissioners] deem necessary or appropriate." The directive accompanied the Commission's decision not to include in its final rule adopted on the same date, portions of a proposed rule published in the Federal Register in January 2018 that concerned the exportation of water to support high volume hydraulic fracturing ("HVHF") and the importation, treatment, and discharge of "produced water" and "CWT wastewater"(with accompanying definitions).¹ In accordance with the Commission's February 25, 2021 directive, the Commission published a new proposed rule on its website on October 28, 2021.² A notice of proposed rulemaking and accompanying rule text appeared in the Federal Register, 86 Fed. Reg. 66250, on November 22, 2021; the Delaware Register of Regulations, 25 Del. Reg. 548, 559, on December 1, 2021; the New Jersey Register, 53 N.J.R. 1994, on December 6, 2021; the New York Register on November 17, 2021, p. 2; and the Pennsylvania Bulletin, 51 Pa. B. 7471 on December 4, 2021.

Opportunity for public input on the proposed rules was provided during a comment period that ran from October 28, 2021, through February 28, 2022. In addition to accepting written comments, the Commission accepted oral comment at five hearings conducted via Zoom and telephone. The fifth hearing included toll-free telephone access and real-time English-to-Spanish and Spanish-to-English professional translation, which allowed attendees to listen and participate in either English or Spanish. The Commission received a total of 2,461 public comment submissions, consisting of 2,388 in writing and 73 oral comments. Notably, in many cases, a single written submission consisted of comments with multiple signatories or parts, and many similar or identical comments were separately submitted by multiple commenters using form letters or template language provided by organizations.

The Commission reviewed the statements, consultant reports, scientific literature and other materials submitted by commenters. The staff, in consultation with the Commissioners, prepared a Comment and Response Document summarizing the comments on the proposed rule and setting forth the Commission's responses and revisions in detail. By Resolution No. 2022 - 04 on December 7, 2022, the Commission adopted the Comment and Response Document simultaneously with its adoption of the final rule.

Final Rule

The elements of the Commission's final rule are summarized below.

Water Code. With respect to imports and exports of water into and from the Delaware River Basin, the Commission in its proposed and final rule reaffirms and expands on findings and policies it previously added to the Water Code (at Section 2.30) and Comprehensive Plan by Resolution No. 1991-9 in June of 1991. The December 2022 amendments restate and provide for the implementation of these policies with greater specificity.

Special Regulations - High Volume Hydraulic Fracturing. The final amendments to the Special Regulations at 18 CFR part 440 include as proposed a new Section 440.4(a) comprising the Commission's determination that "[t]he discharge of wastewater from HVHF and HVHF-related activities poses significant, immediate and long-term risks to the development, conservation, utilization, management, and preservation of the basin's water resources" and further, that "[c]ontrolling future pollution by prohibiting discharges of wastewater from HVHF and HVHF-related activities to waters or land within the basin is required to effectuate the Comprehensive Plan, avoid injury to the waters of the basin as contemplated by the Comprehensive Plan, and protect the public health and preserve the

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1. See 86 FR 20628 (April 21, 2021) and 83 FR 1586, pp. 1589, 1591 (January 12, 2018).
 2. By a Resolution for the Minutes dated September 9, 2021, the DRBC Commissioners extended from September 30, 2021 to November 30, 2021 the date by which draft regulations would be published.

waters of the basin for uses in accordance with the Comprehensive Plan." The final amendments at new Section 440.4(b) prohibit the discharge of wastewater from high volume hydraulic fracturing and HVHF-related activities (hereinafter "HVHF wastewater") to waters or land within the basin.

Water Quality Regulations. The amendments to the Commission's Water Quality Regulations, consisting of a new Section 4.50, facilitate the implementation in state-issued permits of the prohibition set forth in the Special Regulations at 18 CFR 440.4.

Incorporation by Reference. The final rule incorporates by reference into the Code of Federal Regulations at 18 CFR part 410 the Commission's Water Quality Regulations and the Delaware River Basin Water Code as amended by the Commission on December 7, 2022.

Changes From the Proposed Rule

Water Code. After careful consideration of the comments received, the Commission revised its proposed amendments to Section 2.30 of the Delaware River Basin Water Code (the "Water Code") concerning the exportation of wastewater to better align these aspects of the rule with the Commission's policies for water conservation and pollution prevention.

The language originally proposed at Section 2.30.2 C.3 of the Water Code would have allowed the Commission to approve any exportation of wastewater, subject to an evaluation of factors designed to ensure no harm to the basin's water resources or the health and safety of the basin community. Many commenters were concerned that this exception was too broad. Upon further consideration, the Commission agrees. It concluded that to consider and, subject to an evaluation of the factors set forth at Section 2.30.3, approve any exportation of wastewater risks undercutting the conservation objectives served by limiting exportations of basin water in accordance with the introductory paragraph and paragraphs 1. and 2. of Section 2.30.2 C. of the proposed, now final, amendments. Accordingly, the final language of section 2.30.2 C.3 narrows the circumstances in which the Commission may approve an exportation of wastewater to instances in which the project sponsor demonstrates either (i) that the wastewater is to be conveyed to a straddled or adjacent public wastewater collection system; or (ii) that the wastewater may not lawfully be discharged to a public wastewater collection system and is being exported to a waste management facility that has all state and federal approvals required to lawfully receive it.

Thus, the final rule subjects proposed exportations of wastewater to limitations that are consistent with those applicable to exportations of water generally. Because water and wastewater service areas often straddle basin boundaries, the final rule also ensures that straddled and adjacent wastewater collection systems, including for both sewered and hauled septage, may continue to operate, and if necessary, expand, normally. And it recognizes that in the interest of preserving water quality, state-permitted facilities and federal-permitted facilities for the proper treatment and disposal of difficult-to-treat wastewater that may be located outside the basin must remain available to wastewater generators within the basin.

To clarify the changes to Section 2.30.2 C.3 of the Water Code, Section 2.30.1 of the final rule includes definitions of "Public wastewater collection system," "Adjacent public wastewater collection system," and "Straddled public wastewater collection system" that were not included in the proposed rule. The definitions are designed to parallel those previously proposed for "Public water system," "Adjacent public water system," and "Straddled public water system," respectively.

The final rule includes additional non-substantive changes in two sections. Language in Section 2.30.1 A., defining "Adjacent public water system," was revised for greater stylistic consistency and clarity. The wording of Section 2.30.2 C.2. was changed slightly to make clear that any exportation under that provision must be for the purpose of meeting public health and safety needs of the receiving system regardless of whether the exportation is intended to be temporary, short-term, or in response to an emergency.

Special Regulations - High Volume Hydraulic Fracturing. The final rule in § 440.2 includes a new defined term, "Discharge of wastewater from HVHF and HVHF-related activities," to make the meaning of the rules more explicit. In the same section, the definition of "Wastewater from HVHF and HVHF-related activities" was altered by the addition of two words. The words "or" and "containing" were inserted in subsection (1) of the definition to clarify that the definition refers to wastewater, brine, or sludge *containing* (as opposed to constituting) the various listed contaminants. Additional non-substantive changes were made to conform proposed rule text in § 440.2 to Code of Federal Regulations standards.

Water Quality Regulations. The final rule includes no changes from the amendments proposed to the Water Quality Regulations.

Activities Prohibited and Activities not Regulated by the Final Rule

Many commenters urged the Commission to prohibit activities that were prohibited by the language of the rule as proposed and are now prohibited by the final rule at 18 CFR 440.4. The final rule at Section 440.4(b) prohibits the discharge of wastewater "from high volume hydraulic fracturing and HVHF-related activities to waters or land within the basin." The terms "HVHF-related activities" and "wastewater from HVHF and HVHF-related activities" are defined in detail in Section 440.2. Activities about which multiple commenters expressed concern and that are prohibited by the final rule include (but are not necessarily limited to) the following:

- discharge of HVHF wastewater to waters or land within the basin;
- road spreading of HVHF wastewater;
- injection of HVHF wastewater into deep wells within the basin;
- disposal of HVHF wastewater in basin landfills;
- discharge of leachate from any landfill in the basin that accepts HVHF waste after the effective date of the final regulations, including after treatment at an onsite or off-site leachate or wastewater treatment plant; and
- spills and leaks during transport, transfer, or storage of HVHF wastewater within the basin if not fully captured by a containment system in place throughout the duration of the spill or leak and thereafter promptly removed or remediated.

Other commenters urged the Commission to prohibit activities that are beyond the scope of the proposed rule. As explained in detail in the Commission's Comment and Response document, the final rule does not:

- regulate air emissions from HVHF activities;
- categorically prohibit the transfer of HVHF wastewater into the basin when no resulting discharge is proposed;
- regulate the transportation and storage of HVHF materials, which are regulated under detailed state and federal programs focused on these activities;
- categorically prohibit the transfer of water from the basin if it would be used to support HVHF (or any other specified activity). However, the rule does limit the circumstances under which transfers of water from the basin will be considered and provides for an evaluation of such proposals based on factors designed to ensure no harm to the basin's water resources or the health and safety of the basin community; or
- prohibit road spreading of wastewater from conventional drilling activities, an activity not within the scope of DRBC's proposed rulemaking. The Commission will continue to coordinate with the basin states to review the scientific evidence regarding harm to water resources caused by road spreading of conventional oil and gas production wastewater and may in the future consider whether additional regulation of the practice is needed in the basin.

Additional Materials

Additional materials can be found on the Commission's website, www.drbc.gov, at https://www.nj.gov/drbc/about/regulations/final-rule_import-export-hvfh-discharge.html. These include links to Resolution No. 2022 - 04 of December 7, 2022 adopting the final rule; the Commission's Comment and Response Document; mark-ups comparing the final to the proposed rule text for Section 2.30 of the Water Code and for the Commission's Special Regulations at 18 CFR part 440; mark-ups comparing the amended to the existing rule text for 18 CFR part 440 and the Commission's Water Quality Regulations; and clean drafts of the amended and existing Section 2.30 of the Water Code for comparison.

The Commission's notice of proposed rulemaking, proposed rule text, written comments received, and transcripts of public hearings can be found on the DRBC website at https://www.state.nj.us/drbc/meetings/proposed/notice_import-export-rules.html.

Pamela M. Bush,
Commission Secretary and Assistant General Counsel.
Dated: December 15, 2022

For the reasons set forth in the preamble, effective thirty days after publication in the *Federal Register*, the Commission's final rule amends the Delaware River Basin Water Code, the Commission's Water Quality Regulations, and chapter III of Title 18 of the Code of Federal Regulations. The rule text is set forth below:

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

<https://regulations.delaware.gov/register/january2023/final/26 DE Reg 547 01-01-23.htm>

DEPARTMENT OF AGRICULTURE DELAWARE STANDARDBRED BREEDERS' FUND

Statutory Authority: 3 Delaware Code, Section 10081(c) (3 **Del.C.** §10081(c))
3 DE Admin. Code 502

ORDER

502 Delaware Standardbred Breeders' Fund Regulations

I. NATURE OF PROCEEDINGS

Pursuant to its authority granted by 3 **Del.C.** §10081(c), the Department of Agriculture's Standardbred Breeders' Fund (herein "the Fund") proposed to amend its regulations. The purpose of the amended regulations is to address the fiduciary responsibility of "the Fund" to sustain the program into the future while maintaining the current status. This includes consolidating payment requirements to simplify process for eligible two year-olds participating in the Program. Additional technical changes are also being made.

Notice of a public comment period of thirty (30) days on the Fund's proposed amended regulations was published in the Delaware Register of Regulations for August 1, 2022 in accordance with 29 **Del.C.** §10118(a). This is the Fund's Decision and Order adopting the proposed amended regulations.

II. PUBLIC COMMENTS

The Fund received no public comments in response to its notice of intention to adopt the proposed amended regulation.

III. FINDINGS AND CONCLUSIONS

The public was given the required notice of the Fund's intention to adopt the proposed amended regulation and was given ample opportunity to provide the Fund with comments opposing the Fund's plan. Thus, the Fund concludes that its consideration of the proposed amended regulation was entirely within its prerogatives and statutory authority and, having received no comments opposed to adoption, is now free to adopt the proposed amended regulation(s).

IV. ORDER

AND NOW this 14th day of December, 2022, it is hereby ordered that:

1. The proposed amendments to the Fund's regulations are adopted;
2. The text of the final regulations shall be in the form attached hereto as Exhibit A, which remains unchanged as initially published in the August 1, 2022 *Delaware Register of Regulations*;
3. The effective date of this Order is ten days from the date of its publication in the *Delaware Register of Regulations* in accordance with 29 **Del.C.** §10081(g); and
4. The Fund reserves to itself the authority to issue such other and further orders concerning its Regulations as it deems appropriate.

IT IS SO ORDERED.

/s/ Michael T. Scuse
/s/ William Carson
/s/ Jack Burke.
/s/ Wayne Givens
/s/ George Teague
/s/ Matt Sparacino

/s/ Rick Geisenberger
/s/ Kyra Hoffner
/s/ Linda MacDonald
/s/ Carlo Poliseno
/s/ John Hensley

*Please note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).

*Please note that no changes were made to the regulation as originally proposed and published in the August 2022 issue of the *Register* at page 81 (26 DE Reg. 81). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

<https://regulations.delaware.gov/register/january2023/final/26 DE Reg 551 01-01-23.htm>

DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(15), 303, and 304(2) and 29 Delaware Code, Section 10113(b)(2)-(b)(4) (14 **Del.C.** §§122(b)(15), 303, & 304(2) and 29 **Del.C.** §10113(b)(2)-(b)(4))
14 **DE Admin. Code** 1021

ORDER

1021 DIAA Committees

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§122(b)(15), 303, and 304(2) and 29 **Del.C.** §§10113(b)(2), 10113(b)(3), and 10113(b)(4), the Delaware Interscholastic Athletic Association ("DIAA") Board of Directors proposes to amend 14 **DE Admin. Code** 1021 DIAA Committees. The proposed regulation concerns DIAA Board of Directors' committees, which are subordinates to the DIAA Board, and sets forth rules of practice and procedure of the concerning the DIAA Board of Directors' committees. The DIAA Board of Directors proposes to change the number of recognized committees to 27 in Section 1.0 and add one committee (awards) to subsection 3.1.2. In addition, the DIAA Board of Directors proposes to correct a technical error in Section 2.0.

The proposed regulation is exempt from the requirement of public notice and comment and is adopted informally in accordance with 29 **Del.C.** §§10113(b)(2), 10113(b)(3), and 10113(b)(4).

II. FINDINGS OF FACTS

On December 8, 2022, the DIAA Board of Directors proposed 14 **DE Admin. Code** 1021 DIAA Committees, in the form attached hereto as Exhibit A, to the Department to adopt informally pursuant to 29 **Del.C.** §§10113(b)(2), 10113(b)(3), and 10113(b)(4).

The Department finds that the proposed regulation relates to interscholastic athletics at the middle and high school levels and is necessary to implement 14 **Del.C.** Ch. 3. The Department further finds that the proposed regulation sets forth rules of practice and procedure of the DIAA Board of Directors' committees. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1021 DIAA Committees.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1021 DIAA Committees. Therefore, pursuant to 14 **Del.C.** §§122(b)(15), 303, and 304(2) and 29 **Del. C.** §§10113(b)(2), 10113(b)(3), and 10113(b)(4), 14 **DE Admin. Code** 1021 DIAA Committees, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1021 DIAA Committees amended hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1021 DIAA Committees 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 15th day of December, 2022.

Department of Education

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

1021 DIAA Committees**1.0 Content**

This regulation sets forth the process for an individual to be appointed or removed as a member of 1 of the ~~26~~ **27** standing committees or another committee established by the Delaware Interscholastic Athletic Association's Board of Directors pursuant to 14 **Del.C.** §304(2). In addition, this regulation outlines committees' reporting requirements to the Board.

2.0 Definitions

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

"**Board**" means the Delaware Interscholastic Athletic Association Board of Directors established pursuant to 14 **Del.C.** ch. 3.

"**Department**" means the Delaware Department of Education established pursuant to 14 **Del.C.** §101.

"**DIAA**" means the Delaware Interscholastic Athletic Association established pursuant to 14 **Del.C.** §301.

3.0 Standing Committees

3.1 The Board has established the following standing committees:

3.1.1 The recognized sport committees are:

- 3.1.1.1 Baseball Committee
- 3.1.1.2 Boys' Basketball Committee
- 3.1.1.3 Boys' Lacrosse Committee
- 3.1.1.4 Boys' Soccer Committee
- 3.1.1.5 Boys' Volleyball Committee
- 3.1.1.6 Cross Country Committee
- 3.1.1.7 Field Hockey Committee
- 3.1.1.8 Football Committee
- 3.1.1.9 Girls' Basketball Committee

- 3.1.1.10 Girls' Lacrosse Committee
- 3.1.1.11 Girls' Soccer Committee
- 3.1.1.12 Girls' Volleyball Committee
- 3.1.1.13 Golf Committee
- 3.1.1.14 Softball Committee
- 3.1.1.15 Swimming and Diving Committee
- 3.1.1.16 Tennis Committee
- 3.1.1.17 Track and Field Committee
- 3.1.1.18 Wrestling Committee
- 3.1.2 The other committees are:
 - 3.1.2.1 Awards Committee
 - ~~3.1.2.1~~ 3.1.2.2 Classification Committee
 - ~~3.1.2.2~~ 3.1.2.3 Officials Committee
 - ~~3.1.2.3~~ 3.1.2.4 Rules and Regulations Committee
 - ~~3.1.2.4~~ 3.1.2.5 Scheduling Committee
 - ~~3.1.2.5~~ 3.1.2.6 Sports Medicine Advisory Committee
 - ~~3.1.2.6~~ 3.1.2.7 Sportsmanship Committee
 - ~~3.1.2.7~~ 3.1.2.8 Student-Athlete Development Committee and Student-Athlete Advisory Subcommittee
 - ~~3.1.2.8~~ 3.1.2.9 Unified Sports® Committee
- 3.2 The Board may appoint additional committees to assist in the performance of its duties.

4.0 Committee and Subcommittee Membership

- 4.1 Committees shall consist of no less than 10 and no more than 15 committee members in addition to 1 current Board member. The Student-Athlete Advisory Subcommittee shall consist of no less than 10 and no more than 21 subcommittee members.
- 4.2 Committee members shall have expertise in the committee's subject matter.
- 4.3 Committee membership shall be geographically representative of the DIAA Member Schools located within all 3 counties and may include administrators, athletic directors, coaches, local school board members, officials, public members, licensed physicians and sports medicine professionals, school staff, state interpreters, coaches' association representatives, and mental health professionals.
 - 4.3.1 Each committee shall include a current Board member as a member of the committee.
 - 4.3.2 Each recognized sport committee, as provided in subsection 3.1.1, shall consist of the following:
 - 4.3.2.1 At least one athletic director;
 - 4.3.2.2 One representative each from the Blue Hen, Diamond State, Henlopen, and Independent Conferences;
 - 4.3.2.3 One non-conference representative;
 - 4.3.2.4 One coaches' association representative;
 - 4.3.2.5 One officials' association representative from each DIAA-recognized association in the applicable sport; and
 - 4.3.2.6 At least one public member.
 - 4.3.3 The Student-Athlete Development Committee shall also include school counselors, mental health professionals, and school climate or student discipline personnel.
- 4.4 The Student-Athlete Advisory Subcommittee shall be comprised of student-athletes only and shall be geographically representative of the three counties.
- 4.5 The Executive Director shall make a call for applications to fill vacancies on committees. Prospective and current committee members shall submit a DIAA Committee Application to the DIAA Office. The Executive Director and the committee's chairperson shall review the applications and make recommendations to the Board for approval and appointment or reappointment.

- 4.6 Except for the Sports Medicine Advisory Committee, each committee shall elect a chairperson, vice chairperson, and secretary annually. The Sports Medicine Advisory Committee shall elect a chairperson, vice chairperson, and secretary every 2 years.
- 4.6.1 The committee chairperson shall preside over all meetings of the committee.
- 4.6.2 The committee's vice chairperson shall serve in the capacity of the committee's chairperson in the chairperson's absence.
- 4.7 The Executive Director shall make a call for applications to fill vacancies on the Student-Athlete Advisory Subcommittee. Prospective and current subcommittee members shall submit a DIAA Committee Application to the DIAA Office. The Student-Athlete Development Committee shall review the applications and appoint or reappoint members.
- 4.8 Committee and subcommittee members shall serve staggered 4-year terms.
- 4.9 Committee members who miss three consecutive meetings shall be reported to the Board, which may appoint replacement committee members.
- 4.10 Members of the Student-Athlete Advisory Subcommittee who miss 3 consecutive meetings shall be reported to the Student-Athlete Development Committee, which may appoint replacement subcommittee members.
- 4.11 The Board may remove a committee member whose actions are contradictory to the committee's purpose or DIAA's purpose or are in violation of applicable law. In such case, the Board shall appoint a replacement committee member.
- 4.12 The Student-Athlete Development Committee may remove a member of the Student-Athlete Advisory Subcommittee whose actions are contradictory to the subcommittee's purpose or DIAA's purpose or are in violation of applicable law. In such case, the Student-Athlete Development Committee shall appoint a replacement subcommittee member.

5.0 Committee Reports and Recommendations

- 5.1 The recognized sport committees, as provided in subsection 3.1.1, shall provide a report to the Board at the conclusion of the state tournament for their sport. The other committees, as provided in subsection 3.1.2, shall provide a progress report to the Board after each meeting.
- 5.2 Committees shall submit the report in writing to the DIAA Office or designate at least 1 committee member to deliver the report in writing at the Board's next regularly scheduled meeting.
- 5.3 Recommendations to the Board from committees shall be submitted in writing to the DIAA Office at least 1 week prior to the Board's next regularly scheduled meeting. The committee shall designate at least 1 committee member to attend the Board's meeting and present the committee's recommendation to the Board.

6.0 Administrative Assistance from DIAA Office

The Executive Director and the Coordinator of Interscholastic Athletics shall provide administrative assistance to the committees before, during, and after committee meetings subject to the Department's approval and supervision.

FINAL REGULATIONS

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), and 1220 (14 **Del.C.** §§1203, 1205(b), & 1220)

ORDER

1519 Multiple Measures for Demonstrating Content Knowledge

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, the Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed 14 **DE Admin. Code** 1519 Multiple Measures for Demonstrating Content Knowledge. The proposed regulation sets forth alternative means of demonstrating content knowledge for applicants of certain content area Standard Certificates who do not achieve the minimum score specified in the regulation for the Standard Certificate sought. The proposed regulation is consistent with HB 441, which amended 14 **Del.C.** §1220 and was signed into law on August 4, 2022.

Notice of the proposed regulation was published in the *Register of Regulations* on October 1, 2022. The Professional Standards Board received two written submittals concerning the proposed regulation. Benjamin Shrader, Chairperson of the State Council for Persons with Disabilities ("SCPD") commented that "SCPD endorses the proposed regulation with the current exception of NOT allowing special education teachers to be alternately certified." Ann C. Fisher, Chairperson of the Governor's Advisory Council for Exceptional Citizens ("GACEC") commented that it "appreciates that the alternative standards will not apply to certain categories of educators such as Early Childhood Special Education Teachers, Teachers of Students Who are Gifted and Talented, Teachers of Students with Autism, Severe Intellectual Disabilities, Hearing or Visual Impairments" and it supports the proposed regulation.

II. FINDINGS OF FACTS

On November 3, 2022, the Professional Standards Board considered the written submittals. The Professional Standards Board decided not to make further changes as a result of the written submittals and voted to propose 14 **DE Admin. Code** 1519 Multiple Measures for Demonstrating Content Knowledge, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed regulation is necessary to implement 14 **Del.C.** Ch. 12 and is designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to adopt 14 **DE Admin. Code** 1519 Multiple Measures for Demonstrating Content Knowledge.

III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to adopt 14 **DE Admin. Code** 1519 Multiple Measures for Demonstrating Content Knowledge subject to the State Board of Education's approval. On November 17, 2022, the State Board of Education approved adopting 14 **DE Admin. Code** 1519 Multiple Measures for Demonstrating Content Knowledge. Therefore, pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, 14 **DE Admin. Code** 1519 Multiple Measures for Demonstrating Content Knowledge, attached hereto as Exhibit A, is hereby adopted.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1519 Multiple Measures for Demonstrating Content Knowledge adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1519 Multiple Measures for Demonstrating Content Knowledge 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 November, 2022.

Department of Education

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

Approved this 17th day of November, 2022.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Rev. Provey Powell, Jr.

/s/ Vincent Lofink, Vice President

Wali W. Rushdan, II (Absent)

/s/ Candice Fifer

/s/ Deborah Stevens

/s/ Audrey J. Noble, Ph.D.

***Please note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

***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 254 (26 DE Reg. 254). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/january2023/final/26 DE Reg 556 01-01-23.htm>

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), and 1220 (14 Del.C. §§1203, 1205(b), & 1220)
14 DE Admin. Code 1520

ORDER

1520 Early Childhood Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §§1203, 1205(b), and 1220, the Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1520 Early Childhood Teacher. The regulation concerns the requirements for an Early Childhood Teacher Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include revising subsection 5.2, which concerns the disclosure of an applicant's criminal conviction history, and adding language concerning 14 DE Admin. Code 1519, which is being simultaneously proposed with this regulation. Proposed 14 DE Admin. Code 1519 sets forth alternative means of demonstrating content knowledge for an applicant of the Early Childhood Teacher Standard Certificate who does not achieve the minimum score specified in Section 4.0 of this regulation. Proposed 14 DE Admin. Code 1519 is consistent with HB 441, which amended 14 Del.C. §1220 and was signed into law on August 4, 2022. In addition, the proposed amendments include changes that have been made to other Standard Certificate regulations.

Notice of the proposed regulation was published in the *Register of Regulations* on October 1, 2022. The Professional Standards Board received one written submittal concerning the proposed regulation. Ann C. Fisher, Chairperson of the Governor's Advisory Council for Exceptional Citizens ("GACEC"), commented that GACEC supports the proposed regulation.

II. FINDINGS OF FACTS

On November 3, 2022, the Professional Standards Board considered the written submittal. The Professional Standards Board decided not to make further changes as a result of the written submittal and voted to propose 14 **DE Admin. Code** 1520 Early Childhood Teacher, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1520 Early Childhood Teacher.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1520 Early Childhood Teacher subject to the State Board of Education's approval. On November 17, 2022, the State Board of Education approved amending 14 **DE Admin. Code** 1520 Early Childhood Teacher. Therefore, pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, 14 **DE Admin. Code** 1520 Early Childhood Teacher, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1520 Early Childhood Teacher adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1520 Early Childhood Teacher in the *Administrative Code 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 November, 2022.

Department of Education

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

Approved this 17th day of November, 2022.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Vincent Lofink, Vice President

/s/ Candice Fifer

/s/ Audrey J. Noble, Ph.D.

/s/ Rev. Provey Powell, Jr.

Wali W. Rushdan, II (Absent)

/s/ Deborah Stevens

*Please note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).

*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 255 (26 DE Reg. 255). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

<https://regulations.delaware.gov/register/january2023/final/26 DE Reg 557 01-01-23.htm>

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), and 1220 (14 **Del.C.** §§1203, 1205(b), & 1220)
14 **DE Admin. Code** 1521

ORDER

1521 Elementary Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1521 Elementary Teacher. The regulation concerns the requirements for an Elementary Teacher Standard Certificate in accordance with 14 **Del.C.** §1220. The proposed amendments include revising subsection 5.2, which concerns the disclosure of an applicant's criminal conviction history, and adding language concerning 14 **DE Admin. Code** 1519, which is being simultaneously proposed with this regulation. Proposed 14 **DE Admin. Code** 1519 sets forth alternative means of demonstrating content knowledge for an applicant of the Elementary Teacher Standard Certificate who does not achieve the minimum score specified in Section 4.0 of this regulation. Proposed 14 **DE Admin. Code** 1519 is consistent with HB 441, which amended 14 **Del.C.** §1220 and was signed into law on August 4, 2022. In addition, the proposed amendments include changes that have been made to other Standard Certificate regulations.

Notice of the proposed regulation was published in the *Register of Regulations* on October 1, 2022. The Professional Standards Board did not receive any written submittals concerning the proposed regulation.

II. FINDINGS OF FACTS

On November 3, 2022, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1521 Elementary Teacher, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1521 Elementary Teacher.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1521 Elementary Teacher subject to the State Board of Education's approval. On November 17, 2022, the State Board of Education approved amending 14 **DE Admin. Code** 1521 Elementary Teacher. Therefore, pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, 14 **DE Admin. Code** 1521 Elementary Teacher, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1521 Elementary Teacher adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1521 Elementary Teacher 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*.

FINAL REGULATIONS

IT IS SO ORDERED the 17th day of November, 2022.

Department of Education

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

Approved this 17th day of November, 2022.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Rev. Provey Powell, Jr.

/s/ Vincent Lofink, Vice President

Wali W. Rushdan, II (Absent)

/s/ Candice Fifer

/s/ Deborah Stevens

/s/ Audrey J. Noble, Ph.D.

*Please note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).

*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 257 (26 DE Reg. 257). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

<https://regulations.delaware.gov/register/january2023/final/26 DE Reg 559 01-01-23.htm>

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), and 1220 (14 Del.C. §§1203, 1205(b), & 1220)

14 DE Admin. Code 1531

ORDER

1531 Middle Level English Language Arts Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §§1203, 1205(b), and 1220, the Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1531 Middle Level English Language Arts Teacher. The regulation concerns the requirements for a Middle Level English Language Arts Teacher Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include revising subsection 5.2, which concerns the disclosure of an applicant's criminal conviction history, and adding language concerning 14 DE Admin. Code 1519, which is being simultaneously proposed with this regulation. Proposed 14 DE Admin. Code 1519 sets forth alternative means of demonstrating content knowledge for an applicant of the Middle Level English Language Arts Teacher Standard Certificate who does not achieve the minimum score specified in Section 4.0 of this regulation. Proposed 14 DE Admin. Code 1519 is consistent with HB 441, which amended 14 Del.C. §1220 and was signed into law on August 4, 2022. In addition, the proposed amendments include the addition of subsection 4.1.1.5, which has been added as a result of the passage of HB 315 w/ HA 2. HB 315 w/ HA 2 removed the exclusion of teaching experience in core content areas from 14 Del.C. §1210(a)(1) and was signed into law on August 4, 2022. The proposed amendments also include changes that have been made to other Standard Certificate regulations.

Notice of the proposed regulation was published in the *Register of Regulations* on October 1, 2022. The Professional Standards Board did not receive any written submittals concerning the proposed regulation.

II. FINDINGS OF FACTS

On November 3, 2022, the Professional Standards Board voted to propose 14 DE Admin. Code 1531 Middle

Level English Language Arts Teacher, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1531 Middle Level English Language Arts Teacher.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1531 Middle Level English Language Arts Teacher subject to the State Board of Education's approval. On November 17, 2022, the State Board of Education approved amending 14 **DE Admin. Code** 1531 Middle Level English Language Arts Teacher. Therefore, pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, 14 **DE Admin. Code** 1531 Middle Level English Language Arts Teacher, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1531 Middle Level English Language Arts Teacher adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1531 Middle Level English Language Arts Teacher in the *Administrative Code 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 November, 2022.

Department of Education

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

Approved this 17th day of November, 2022.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Vincent Lofink, Vice President

/s/ Candice Fifer

/s/ Audrey J. Noble, Ph.D.

/s/ Rev. Provey Powell, Jr.

Wali W. Rushdan, II (Absent)

/s/ Deborah Stevens

***Please note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

***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 258 (26 DE Reg. 258). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/january2023/final/26 DE Reg 560 01-01-23.htm>

FINAL REGULATIONS

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), and 1220 (14 **Del.C.** §§1203, 1205(b), & 1220)
14 **DE Admin. Code** 1532

ORDER

1532 Middle Level Mathematics Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1532 Middle Level Mathematics Teacher. The regulation concerns the requirements for a Middle Level Mathematics Teacher Standard Certificate in accordance with 14 **Del.C.** §1220. The proposed amendments include revising subsection 5.2, which concerns the disclosure of an applicant's criminal conviction history, and adding language concerning 14 **DE Admin. Code** 1519, which is being simultaneously proposed with this regulation. Proposed 14 **DE Admin. Code** 1519 sets forth alternative means of demonstrating content knowledge for an applicant of the Middle Level Mathematics Teacher Standard Certificate who does not achieve the minimum score specified in Section 4.0 of this regulation. Proposed 14 **DE Admin. Code** 1519 is consistent with HB 441, which amended 14 **Del.C.** §1220 and was signed into law on August 4, 2022. In addition, the proposed amendments include the addition of subsection 4.1.1.5, which has been added as a result of the passage of HB 315 w/ HA 2. HB 315 w/ HA 2 removed the exclusion of teaching experience in core content areas from 14 **Del.C.** §1210(a)(1) and was signed into law on August 4, 2022. The proposed amendments also include changes that have been made to other Standard Certificate regulations.

Notice of the proposed regulation was published in the *Register of Regulations* on October 1, 2022. The Professional Standards Board did not receive any written submittals concerning the proposed regulation.

II. FINDINGS OF FACTS

On November 3, 2022, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1532 Middle Level Mathematics Teacher, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1532 Middle Level Mathematics Teacher.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1532 Middle Level Mathematics Teacher subject to the State Board of Education's approval. On November 17, 2022, the State Board of Education approved amending 14 **DE Admin. Code** 1532 Middle Level Mathematics Teacher. Therefore, pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, 14 **DE Admin. Code** 1532 Middle Level Mathematics Teacher, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1532 Middle Level Mathematics Teacher adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1532 Middle Level Mathematics Teacher in the *Administrative Code 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 November, 2022.

Department of Education

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

Approved this 17th day of November, 2022.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Rev. Provey Powell, Jr.

/s/ Vincent Lofink, Vice President

Wali W. Rushdan, II (Absent)

/s/ Candice Fifer

/s/ Deborah Stevens

/s/ Audrey J. Noble, Ph.D.

***Please note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

***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 260 (26 DE Reg. 260). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/january2023/final/26 DE Reg 562 01-01-23.htm>

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), and 1220 (14 Del.C. §§1203, 1205(b), & 1220)
14 DE Admin. Code 1533

ORDER

1533 Middle Level Science Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §§1203, 1205(b), and 1220, the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1533 Middle Level Science Teacher. The regulation concerns the requirements for a Middle Level Science Teacher Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include revising subsection 5.2, which concerns the disclosure of an applicant's criminal conviction history, and adding language concerning 14 DE Admin. Code 1519, which is being simultaneously proposed with this regulation. Proposed 14 DE Admin. Code 1519 sets forth alternative means of demonstrating content knowledge for an applicant of the Middle Level Science Teacher Standard Certificate who does not achieve the minimum score specified in Section 4.0 of this regulation. Proposed 14 DE Admin. Code 1519 is consistent with HB 441, which amended 14 Del.C. §1220 and was signed into law on August 4, 2022. In addition, the proposed amendments include the addition of subsection 4.1.1.5, which has been added as a result of the passage of HB 315 w/ HA 2. HB 315 w/ HA 2 removed the exclusion of teaching experience in core content areas from 14 Del.C. §1210(a)(1) and was signed into law on August 4, 2022. The proposed amendments also include changes that have been made to other Standard Certificate regulations.

Notice of the proposed regulation was published in the *Register of Regulations* on October 1, 2022. The

Professional Standards Board did not receive any written submittals concerning the proposed regulation.

II. FINDINGS OF FACTS

On November 3, 2022, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1533 Middle Level Science Teacher, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1533 Middle Level Science Teacher.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1533 Middle Level Science Teacher subject to the State Board of Education's approval. On November 17, 2022, the State Board of Education approved amending 14 **DE Admin. Code** 1533 Middle Level Science Teacher. Therefore, pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, 14 **DE Admin. Code** 1533 Middle Level Science Teacher, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 14 **DE Admin. Code** 1533 Middle Level Science Teacher adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1533 Middle Level Science Teacher in the *Administrative Code 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 November, 2022.

Department of Education

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

Approved this 17th day of November, 2022.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Vincent Lofink, Vice President

/s/ Candice Fifer

/s/ Audrey J. Noble, Ph.D.

/s/ Rev. Provey Powell, Jr.

Wali W. Rushdan, II (Absent)

/s/ Deborah Stevens

***Please note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

***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 264 (26 DE Reg. 264). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/january2023/final/26 DE Reg 563 01-01-23.htm>

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), and 1220 (14 Del.C. §§1203, 1205(b), & 1220)
14 DE Admin. Code 1534

ORDER

1534 Middle Level Social Studies Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §§1203, 1205(b), and 1220, the Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1534 Middle Level Social Studies Teacher. The regulation concerns the requirements for a Middle Level Social Studies Teacher Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include revising subsection 5.2, which concerns the disclosure of an applicant's criminal conviction history, and adding language concerning 14 DE Admin. Code 1519, which is being simultaneously proposed with this regulation. Proposed 14 DE Admin. Code 1519 sets forth alternative means of demonstrating content knowledge for an applicant of the Middle Level Social Studies Teacher Standard Certificate who does not achieve the minimum score specified in Section 4.0 of this regulation. Proposed 14 DE Admin. Code 1519 is consistent with HB 441, which amended 14 Del.C. §1220 and was signed into law on August 4, 2022. In addition, the proposed amendments include the addition of subsection 4.1.1.5, which has been added as a result of the passage of HB 315 w/ HA 2. HB 315 w/ HA 2 removed the exclusion of teaching experience in core content areas from 14 Del.C. §1210(a)(1) and was signed into law on August 4, 2022. The proposed amendments also include changes that have been made to other Standard Certificate regulations.

Notice of the proposed regulation was published in the *Register of Regulations* on October 1, 2022. The Professional Standards Board did not receive any written submittals concerning the proposed regulation.

II. FINDINGS OF FACTS

On November 3, 2022, the Professional Standards Board voted to propose 14 DE Admin. Code 1534 Middle Level Social Studies Teacher, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 Del.C. Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 DE Admin. Code 1534 Middle Level Social Studies Teacher.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 DE Admin. Code 1534 Middle Level Social Studies Teacher subject to the State Board of Education's approval. On November 17, 2022, the State Board of Education approved amending 14 DE Admin. Code 1534 Middle Level Social Studies Teacher. Therefore, pursuant to 14 Del.C. §§1203, 1205(b), and 1220, 14 DE Admin. Code 1534 Middle Level Social Studies Teacher, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 DE Admin. Code 1534 Middle Level Social Studies Teacher adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 DE Admin. Code 1534 Middle Level Social Studies Teacher in the *Administrative Code 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 November, 2022.

Department of Education

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

Approved this 17th day of November, 2022.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Rev. Provey Powell, Jr.

/s/ Vincent Lofink, Vice President

Wali W. Rushdan, II (Absent)

/s/ Candice Fifer

/s/ Deborah Stevens

/s/ Audrey J. Noble, Ph.D.

*Please note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).

*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 265 (26 DE Reg. 265). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

<https://regulations.delaware.gov/register/january2023/final/26 DE Reg 565 01-01-23.htm>

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), and 1220 (14 Del.C. §§1203, 1205(b), & 1220)
14 DE Admin. Code 1539

ORDER

1539 Health Education Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §§1203, 1205(b), and 1220, the Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1539 Health Education Teacher. The regulation concerns the requirements for a Health Education Teacher Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include revising subsection 5.2, which concerns the disclosure of an applicant's criminal conviction history, and adding language concerning 14 DE Admin. Code 1519, which is being simultaneously proposed with this regulation. Proposed 14 DE Admin. Code 1519 sets forth alternative means of demonstrating content knowledge for an applicant of the Health Education Teacher Standard Certificate who does not achieve the minimum score specified in Section 4.0 of this regulation. Proposed 14 DE Admin. Code 1519 is consistent with HB 441, which amended 14 Del.C. §1220 and was signed into law on August 4, 2022. In addition, the proposed amendments include changes that have been made to other Standard Certificate regulations.

Notice of the proposed regulation was published in the *Register of Regulations* on October 1, 2022. The Professional Standards Board did not receive any written submittals concerning the proposed regulation.

II. FINDINGS OF FACTS

On November 3, 2022, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1539 Health Education Teacher, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1539 Health Education Teacher.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1539 Health Education Teacher subject to the State Board of Education's approval. On November 17, 2022, the State Board of Education approved amending 14 **DE Admin. Code** 1539 Health Education Teacher. Therefore, pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, 14 **DE Admin. Code** 1539 Health Education Teacher, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1539 Health Education Teacher adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1539 Health Education Teacher in the *Administrative Code 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 November, 2022.

Department of Education

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

Approved this 17th day of November, 2022.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Rev. Provey Powell, Jr.

/s/ Vincent Lofink, Vice President

Wali W. Rushdan, II (Absent)

/s/ Candice Fifer

/s/ Deborah Stevens

/s/ Audrey J. Noble, Ph.D.

***Please note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

***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 267 (26 DE Reg. 267). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/january2023/final/26 DE Reg 566 01-01-23.htm>

FINAL REGULATIONS

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), and 1220 (14 **Del.C.** §§1203, 1205(b), & 1220)
14 **DE Admin. Code** 1540

ORDER

1540 Secondary English Language Arts Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1540 Secondary English Language Arts Teacher. The regulation concerns the requirements for a Secondary English Language Arts Teacher Standard Certificate in accordance with 14 **Del.C.** §1220. The proposed amendments include revising subsection 5.2, which concerns the disclosure of an applicant's criminal conviction history, and adding language concerning 14 **DE Admin. Code** 1519, which is being simultaneously proposed with this regulation. Proposed 14 **DE Admin. Code** 1519 sets forth alternative means of demonstrating content knowledge for an applicant of the Secondary English Language Arts Teacher Standard Certificate who does not achieve the minimum score specified in Section 4.0 of this regulation. Proposed 14 **DE Admin. Code** 1519 is consistent with HB 441, which amended 14 **Del.C.** §1220 and was signed into law on August 4, 2022. In addition, the proposed amendments include the addition of subsection 4.1.1.5, which has been added as a result of the passage of HB 315 w/ HA 2. HB 315 w/ HA 2 removed the exclusion of teaching experience in core content areas from 14 **Del.C.** §1210(a)(1) and was signed into law on August 4, 2022. The proposed amendments also include changes that have been made to other Standard Certificate regulations.

Notice of the proposed regulation was published in the *Register of Regulations* on October 1, 2022. The Professional Standards Board did not receive any written submittals concerning the proposed regulation.

II. FINDINGS OF FACTS

On November 3, 2022, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1540 Secondary English Language Arts Teacher, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1540 Secondary English Language Arts Teacher.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1540 Secondary English Language Arts Teacher subject to the State Board of Education's approval. On November 17, 2022, the State Board of Education approved amending 14 **DE Admin. Code** 1540 Secondary English Language Arts Teacher. Therefore, pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, 14 **DE Admin. Code** 1540 Secondary English Language Arts Teacher, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1540 Secondary English Language Arts Teacher adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1540 Secondary English Language Arts Teacher in the *Administrative Code 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 November, 2022.

Department of Education

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

Approved this 17th day of November, 2022.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Rev. Provey Powell, Jr.

/s/ Vincent Lofink, Vice President

Wali W. Rushdan, II (Absent)

/s/ Candice Fifer

/s/ Deborah Stevens

/s/ Audrey J. Noble, Ph.D.

***Please note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

***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 268 (26 DE Reg. 268). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/january2023/final/26 DE Reg 568 01-01-23.htm>

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), and 1220 (14 Del.C. §§1203, 1205(b), & 1220)
14 DE Admin. Code 1542

ORDER**1542 Secondary Mathematics Teacher****I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

Pursuant to 14 Del.C. §§1203, 1205(b), and 1220, the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1542 Secondary Mathematics Teacher. The regulation concerns the requirements for a Secondary Mathematics Teacher Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include revising subsection 5.2, which concerns the disclosure of an applicant's criminal conviction history, and adding language concerning 14 DE Admin. Code 1519, which is being simultaneously proposed with this regulation. Proposed 14 DE Admin. Code 1519 sets forth alternative means of demonstrating content knowledge for an applicant of the Secondary Mathematics Teacher Standard Certificate who does not achieve the minimum score specified in Section 4.0 of this regulation. Proposed 14 DE Admin. Code 1519 is consistent with HB 441, which amended 14 Del.C. §1220 and was signed into law on August 4, 2022. In addition, the proposed amendments include the addition of subsection 4.1.1.5, which has been added as a result of the passage of HB 315 w/ HA 2. HB 315 w/ HA 2 removed the exclusion of teaching experience in core content areas from 14 Del.C. §1210(a)(1) and was signed into law on August 4, 2022. The proposed amendments also include changes that have been made to other Standard Certificate regulations.

Notice of the proposed regulation was published in the *Register of Regulations* on October 1, 2022. The

Professional Standards Board did not receive any written submittals concerning the proposed regulation.

II. FINDINGS OF FACTS

On November 3, 2022, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1542 Secondary Mathematics Teacher, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1542 Secondary Mathematics Teacher.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 DE Admin. Code 1542 Secondary Mathematics Teacher subject to the State Board of Education's approval. On November 17, 2022, the State Board of Education approved amending 14 **DE Admin. Code** 1542 Secondary Mathematics Teacher. Therefore, pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, 14 **DE Admin. Code** 1542 Secondary Mathematics Teacher, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1542 Secondary Mathematics Teacher adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1542 Secondary Mathematics Teacher in the *Administrative Code 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 November, 2022.

Department of Education

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

Approved this 17th day of November, 2022.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Vincent Lofink, Vice President

/s/ Candice Fifer

/s/ Audrey J. Noble, Ph.D.

/s/ Rev. Provey Powell, Jr.

Wali W. Rushdan, II (Absent)

/s/ Deborah Stevens

***Please note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

***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 270 (26 DE Reg. 270). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/january2023/final/26 DE Reg 569 01-01-23.htm>

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), and 1220 (14 Del.C. §§1203, 1205(b), & 1220)
14 DE Admin. Code 1543

ORDER

1543 Secondary Science Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §§1203, 1205(b), and 1220, the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1543 Secondary Science Teacher. The regulation concerns the requirements for a Secondary Science Teacher Standard Certificate in accordance with 14 Del.C. §1220. The Board published proposed changes to the regulation on July 1, 2022. The proposed amendments included striking and revising defined terms in Section 2.0; clarifying subsection 3.1.2, which concerns applicants who hold an educator's license or certificate from another state or jurisdiction; adding new Praxis Subject Assessments as an option in subsection 4.1.2; adding subsection 5.2, which concerns an applicant's criminal conviction history; moving the section concerning Secretary of Education review up to Section 6.0 and renumbering the existing subsequent subsections; and adding Section 10.0, which concerns applicants' and Educators' contact information with the Department and specifies how they can change their name or address. The Board did not receive any written submittals concerning these proposed amendments.

On August 15, 2022, the Board voted to withdraw proposed regulation that was published on July 1, 2022 and to publish the amendments in this proposed regulation. The proposed amendments include revising subsection 5.2, which concerns the disclosure of an applicant's criminal conviction history, and adding language concerning 14 DE Admin. Code 1519, which is being simultaneously proposed with this regulation. Proposed 14 DE Admin. Code 1519 sets forth alternative means of demonstrating content knowledge for an applicant of the Secondary Science Teacher Standard Certificate who does not achieve the minimum score specified in Section 4.0 of this regulation. Proposed 14 DE Admin. Code 1519 is consistent with HB 441, which amended 14 Del.C. §1220 and was signed into law on August 4, 2022. In addition, the proposed amendments include the addition of subsection 4.1.1.5, which has been added as a result of the passage of HB 315 w/ HA 2. HB 315 w/ HA 2 removed the exclusion of teaching experience in core content areas from 14 Del.C. §1210(a)(1) and was signed into law on August 4, 2022. The proposed amendments also include changes that have been made to other Standard Certificate regulations.

Notice of the proposed regulation was published in the *Register of Regulations* on October 1, 2022. The Professional Standards Board did not receive any written submittals concerning the proposed regulation.

II. FINDINGS OF FACTS

On November 3, 2022, the Professional Standards Board voted to propose 14 DE Admin. Code 1543 Secondary Science Teacher, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 Del.C. Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 DE Admin. Code 1543 Secondary Science Teacher.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 DE Admin. Code 1543 Secondary Science Teacher subject to the State Board of Education's approval. On November 17, 2022, the State Board of Education approved amending 14 DE Admin. Code 1543 Secondary Science Teacher. Therefore,

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pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, 14 **DE Admin. Code** 1543 Secondary Science Teacher, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1543 Secondary Science Teacher adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1543 Secondary Science Teacher 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 November, 2022.

Department of Education

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

Approved this 17th day of November, 2022.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Rev. Provey Powell, Jr.

/s/ Vincent Lofink, Vice President

Wali W. Rushdan, II (Absent)

/s/ Candice Fifer

/s/ Deborah Stevens

/s/ Audrey J. Noble, Ph.D.

***Please note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

***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 272 (26 DE Reg. 272). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/january2023/final/26 DE Reg 571 01-01-23.htm>

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), and 1220 (14 **Del.C.** §§1203, 1205(b), & 1220)
14 **DE Admin. Code** 1544

ORDER

1544 Secondary Social Studies Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, the Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1544 Secondary Social Studies Teacher. The regulation concerns the requirements for a Secondary Social Studies Teacher Standard Certificate in accordance with 14 **Del.C.** §1220. The proposed amendments include revising subsection 5.2, which concerns the disclosure of an applicant's criminal conviction history, and adding language concerning 14 **DE Admin. Code** 1519, which is being simultaneously proposed with this

regulation. Proposed 14 **DE Admin. Code** 1519 sets forth alternative means of demonstrating content knowledge for an applicant of the Secondary Social Studies Teacher Standard Certificate who does not achieve the minimum score specified in Section 4.0 of this regulation. Proposed 14 **DE Admin. Code** 1519 is consistent with HB 441, which amended 14 **Del.C.** §1220 and was signed into law on August 4, 2022. In addition, the proposed amendments include the addition of subsection 4.1.1.5, which has been added as a result of the passage of HB 315 w/ HA 2. HB 315 w/ HA 2 removed the exclusion of teaching experience in core content areas from 14 **Del.C.** §1210(a)(1) and was signed into law on August 4, 2022. The proposed amendments also include changes that have been made to other Standard Certificate regulations.

Notice of the proposed regulation was published in the *Register of Regulations* on October 1, 2022. The Professional Standards Board did not receive any written submittals concerning the proposed regulation.

II. FINDINGS OF FACTS

On November 3, 2022, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1544 Secondary Social Studies Teacher, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1544 Secondary Social Studies Teacher.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1544 Secondary Social Studies Teacher subject to the State Board of Education's approval. On November 17, 2022, the State Board of Education approved amending 14 **DE Admin. Code** 1544 Secondary Social Studies Teacher. Therefore, pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, 14 **DE Admin. Code** 1544 Secondary Social Studies Teacher, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1544 Secondary Social Studies Teacher adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1544 Secondary Social Studies Teacher in the *Administrative Code 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 November, 2022.

Department of Education

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

Approved this 17th day of November, 2022.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Rev. Provey Powell, Jr.

/s/ Vincent Lofink, Vice President

Wali W. Rushdan, II (Absent)

/s/ Candice Fifer

/s/ Deborah Stevens

/s/ Audrey J. Noble, Ph.D.

*Please note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).

*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 274 (26 DE Reg. 274). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

<https://regulations.delaware.gov/register/january2023/final/26 DE Reg 572 01-01-23.htm>

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), and 1220 (14 Del.C. §§1203, 1205(b), & 1220)
14 DE Admin. Code 1550

ORDER

1550 Agriscience Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §§1203, 1205(b), and 1220, the Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1550 Agriscience Teacher. The regulation concerns the requirements for an Agriscience Teacher Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include revising subsection 5.2, which concerns the disclosure of an applicant's criminal conviction history, and adding language concerning 14 DE Admin. Code 1519, which is being simultaneously proposed with this regulation. Proposed 14 DE Admin. Code 1519 sets forth alternative means of demonstrating content knowledge for an applicant of the Agriscience Teacher Standard Certificate who does not achieve the minimum score specified in Section 4.0 of this regulation. Proposed 14 DE Admin. Code 1519 is consistent with HB 441, which amended 14 Del.C. §1220 and was signed into law on August 4, 2022. In addition, the proposed amendments include changes that have been made to other Standard Certificate regulations.

Notice of the proposed regulation was published in the *Register of Regulations* on October 1, 2022. The Professional Standards Board did not receive any written submittals concerning the proposed regulation.

II. FINDINGS OF FACTS

On November 3, 2022, the Professional Standards Board voted to propose 14 DE Admin. Code 1550 Agriscience Teacher, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 Del.C. Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 DE Admin. Code 1550 Agriscience Teacher.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 DE Admin. Code 1550 Agriscience Teacher subject to the State Board of Education's approval. On November 17, 2022, the State Board of Education approved amending 14 DE Admin. Code 1550 Agriscience Teacher. Therefore, pursuant to 14 Del.C. §§1203, 1205(b), and 1220, 14 DE Admin. Code 1550 Agriscience Teacher, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1550 Agriscience Teacher adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1550 Agriscience Teacher in the *Administrative Code 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 November, 2022.

Department of Education

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

Approved this 17th day of November, 2022.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Rev. Provey Powell, Jr.

/s/ Vincent Lofink, Vice President

Wali W. Rushdan, II (Absent)

/s/ Candice Fifer

/s/ Deborah Stevens

/s/ Audrey J. Noble, Ph.D.

***Please note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

***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 275 (26 DE Reg. 275). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/january2023/final/26 DE Reg 574 01-01-23.htm>

DEPARTMENT OF EDUCATION
PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), and 1220 (14 **Del.C.** §§1203, 1205(b), & 1220)

14 **DE Admin. Code** 1551

ORDER**1551 Business Education Teacher****I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

Pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1551 Business Education Teacher. The regulation concerns the requirements for a Business, Finance, or Marketing Education Teacher Standard Certificate in accordance with 14 **Del.C.** §1220. The Board published proposed changes to the regulation on June 1, 2022. The proposed amendments included revising the title of the regulation; clarifying Section 1.0; adding and striking defined terms in Section 2.0; clarifying the requirements for issuing a Business, Finance, or Marketing Education Teacher Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Business, Finance, or Marketing

Education Teacher Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns requests for the Secretary of Education to review standard certificate applications; adding Section 7.0, which concerns the validity of a Business, Finance, or Marketing Education Teacher Standard Certificate; adding Section 8.0, which concerns disciplinary actions; adding Section 9.0, which concerns recognizing past certificates that were issued by the Department; and adding Section 10.0, which concerns applicants' and Educators' contact information with the Department and specifies how they can change their name or address. The Board did not receive any written submittals concerning these proposed amendments.

On August 15, 2022, the Board voted to withdraw the proposed regulation that was published on June 1, 2022 and to publish the amendments in this proposed regulation. The proposed amendments include revising subsection 5.2, which concerns the disclosure of an applicant's criminal conviction history, and adding language concerning 14 **DE Admin. Code** 1519, which is being simultaneously proposed with this regulation. Proposed 14 **DE Admin. Code** 1519 sets forth alternative means of demonstrating content knowledge for an applicant of the Business, Finance, or Marketing Education Teacher Standard Certificate who does not achieve the minimum score specified in Section 4.0 of this regulation. Pro-proposed 14 **DE Admin. Code** 1519 is consistent with HB 441, which amended 14 **Del.C.** §1220 and was signed into law on August 4, 2022. In addition, the proposed amendments include changes that have been made to other Standard Certificate regulations.

Notice of the proposed regulation was published in the *Register of Regulations* on October 1, 2022. The Professional Standards Board did not receive any written submittals concerning the proposed regulation.

II. FINDINGS OF FACTS

On November 3, 2022, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1551 Business Education Teacher, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1551 Business Education Teacher.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1551 Business Education Teacher subject to the State Board of Education's approval. On November 17, 2022, the State Board of Education approved amending 14 **DE Admin. Code** 1551 Business Education Teacher. Therefore, pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, 14 **DE Admin. Code** 1551 Business Education Teacher, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1551 Business Education Teacher adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1551 Business, Finance, or Marketing Education Teacher 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 November, 2022.

Department of Education

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

Approved this 17th day of November, 2022.

State Board of Education

/s/ Shawn Brittingham, President
/s/ Vincent Lofink, Vice President
/s/ Candice Fifer
/s/ Audrey J. Noble, Ph.D.

/s/ Rev. Provey Powell, Jr.
Wali W. Rushdan, II (Absent)
/s/ Deborah Stevens

***Please note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

***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 277 (26 DE Reg. 277). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/january2023/final/26 DE Reg 575 01-01-23.htm>

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), and 1220 (14 Del.C. §§1203, 1205(b), & 1220)

14 DE Admin. Code 1554

ORDER

1554 Family and Consumer Sciences Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §§1203, 1205(b), and 1220, the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1554 Family and Consumer Sciences Teacher. The regulation concerns the requirements for a Family and Consumer Sciences Teacher Standard Certificate in accordance with 14 Del.C. §1220. The Board published proposed changes to the regulation on July 1, 2022. The proposed amendments included clarifying Section 1.0; adding and striking defined terms in Section 2.0; clarifying the requirements for issuing a Family and Consumer Sciences Teacher Standard Certificate in Section 3.0; specifying the education, knowledge, and skill requirements for obtaining a Family and Consumer Sciences Teacher Standard Certificate in Section 4.0; specifying the application requirements in Section 5.0; adding Section 6.0, which concerns requests for the Secretary of Education to review standard certificate applications; adding Section 7.0, which concerns the validity of a Family and Consumer Sciences Teacher Standard Certificate; adding Section 8.0, which concerns disciplinary actions; adding Section 9.0, which concerns recognizing past certificates that were issued by the Department; and adding Section 10.0, which concerns applicants' and Educators' contact information with the Department and specifies how they can change their name or address. The Board did not receive any written submittals concerning these proposed amendments.

On August 15, 2022, the Board voted to withdraw proposed regulation that was published on July 1, 2022 and to publish the amendments in this proposed regulation. The proposed amendments include revising subsection 5.2, which concerns the disclosure of an applicant's criminal conviction history, and adding language concerning 14 DE Admin. Code 1519, which is being simultaneously proposed with this regulation. Proposed 14 DE Admin. Code 1519 sets forth alternative means of demonstrating content knowledge for an applicant of the Family and Consumer Sciences Teacher Standard Certificate who does not achieve the minimum score specified in Section 4.0 of this regulation. Proposed 14 DE Admin. Code 1519 is consistent with HB 441, which amended 14 Del.C. §1220 and was signed into law on August 4, 2022. In addition, the proposed amendments include changes that have been made to other Standard Certificate regulations.

Notice of the proposed regulation was published in the *Register of Regulations* on October 1, 2022. The Professional Standards Board did not receive any written submittals concerning the proposed regulation.

II. FINDINGS OF FACTS

On November 3, 2022, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1554 Family and Consumer Sciences Teacher, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1554 Family and Consumer Sciences Teacher.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1554 Family and Consumer Sciences Teacher subject to the State Board of Education's approval. On November 17, 2022, the State Board of Education approved amending 14 **DE Admin. Code** 1554 Family and Consumer Sciences Teacher. Therefore, pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, 14 **DE Admin. Code** 1554 Family and Consumer Sciences Teacher, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1554 Family and Consumer Sciences Teacher adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1554 Family and Consumer Sciences Teacher in the *Administrative Code 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 November, 2022.

Department of Education

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

Approved this 17th day of November, 2022.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Vincent Lofink, Vice President

/s/ Candice Fifer

/s/ Audrey J. Noble, Ph.D.

/s/ Rev. Provey Powell, Jr.

Wali W. Rushdan, II (Absent)

/s/ Deborah Stevens

***Please note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

***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 279 (26 DE Reg. 279). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/january2023/final/26 DE Reg 577 01-01-23.htm>

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 & 1205(b))
14 **DE Admin. Code** 1555

ORDER

1555 Marketing Education Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§1203 and 1205(b), the Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1555 Marketing Education Teacher. The proposed amendments include revising Section 1.0 to specify that the Department will no longer issue a Marketing Education Teacher Standard Certificate and revising Section 9.0, which concerns recognizing past certificates that were issued by the Department.

Notice of the proposed regulation was published in the *Register of Regulations* on June 1, 2022. The Professional Standards Board did not receive any written submittals concerning the proposed amendments.

II. FINDINGS OF FACTS

On November 3, 2022, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1555 Marketing Education Teacher, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1555 Marketing Education Teacher.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1555 Marketing Education Teacher subject to the State Board of Education's approval. On November 17, 2022, the State Board of Education approved amending 14 **DE Admin. Code** 1555 Marketing Education Teacher. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1555 Marketing Education Teacher, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1555 Marketing Education Teacher adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1555 Marketing Education Teacher in the *Administrative Code 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 November, 2022.

Department of Education

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

FINAL REGULATIONS

Approved this 17th day of November, 2022.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Rev. Provey Powell, Jr.

/s/ Vincent Lofink, Vice President

Wali W. Rushdan, II (Absent)

/s/ Candice Fifer

/s/ Deborah Stevens

/s/ Audrey J. Noble, Ph.D.

***Please note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

***Please note that no changes were made to the regulation as originally proposed and published in the June 2022 issue of the *Register* at page 1097 (25 DE Reg. 1097). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/january2023/final/26 DE Reg 579 01-01-23.htm>

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), and 1220 (14 Del.C. §§1203, 1205(b), & 1220)

14 DE Admin. Code 1557

ORDER

1557 Technology and Engineering Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §§1203, 1205(b), and 1220, the Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1557 Technology and Engineering Teacher. The regulation concerns the requirements for a Technology and Engineering Teacher Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include revising subsection 5.2, which concerns the disclosure of an applicant's criminal conviction history, and adding language concerning 14 DE Admin. Code 1519, which is being simultaneously proposed with this regulation. Proposed 14 DE Admin. Code 1519 sets forth alternative means of demonstrating content knowledge for an applicant of the Technology and Engineering Teacher Standard Certificate who does not achieve the minimum score specified in Section 4.0 of this regulation. Proposed 14 DE Admin. Code 1519 is consistent with HB 441, which amended 14 Del.C. §1220 and was signed into law on August 4, 2022. In addition, the proposed amendments include changes that have been made to other Standard Certificate regulations.

Notice of the proposed regulation was published in the *Register of Regulations* on October 1, 2022. The Professional Standards Board did not receive any written submittals concerning the proposed regulation.

II. FINDINGS OF FACTS

On November 3, 2022, the Professional Standards Board voted to propose 14 DE Admin. Code 1557 Technology and Engineering Teacher, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 Del.C. Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 DE Admin. Code 1557 Technology and Engineering Teacher.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1557 Technology and Engineering Teacher subject to the State Board of Education's approval. On November 17, 2022, the State Board of Education approved amending 14 **DE Admin. Code** 1557 Technology and Engineering Teacher. Therefore, pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, 14 **DE Admin. Code** 1557 Technology and Engineering Teacher, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1557 Technology and Engineering Teacher adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1557 Technology and Engineering Teacher 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 November, 2022.

Department of Education

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

Approved this 17th day of November, 2022.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Vincent Lofink, Vice President

/s/ Candice Fifer

/s/ Audrey J. Noble, Ph.D.

/s/ Rev. Provey Powell, Jr.

Wali W. Rushdan, II (Absent)

/s/ Deborah Stevens

***Please note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

***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 281 (26 DE Reg. 281). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/january2023/final/26 DE Reg 580 01-01-23.htm>

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), and 1220 (14 **Del.C.** §§1203, 1205(b), & 1220)
14 **DE Admin. Code** 1558

ORDER**1558 Theatre Teacher****I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

Pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, the Professional Standards Board, acting in consultation

and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1558 Theatre Teacher. The regulation concerns the requirements for a Theatre Teacher Standard Certificate in accordance with 14 **Del.C.** §1220. The proposed amendments include revising subsection 5.2, which concerns the disclosure of an applicant's criminal conviction history, and adding language concerning 14 **DE Admin. Code** 1519, which is being simultaneously proposed with this regulation. Proposed 14 **DE Admin. Code** 1519 sets forth alternative means of demonstrating content knowledge for an applicant of the Theatre Teacher Standard Certificate who does not achieve the minimum score specified in Section 4.0 of this regulation. Proposed 14 **DE Admin. Code** 1519 is consistent with HB 441, which amended 14 **Del.C.** §1220 and was signed into law on August 4, 2022. In addition, the proposed amendments include changes that have been made to other Standard Certificate regulations.

Notice of the proposed regulation was published in the *Register of Regulations* on October 1, 2022. The Professional Standards Board did not receive any written submittals concerning the proposed regulation.

II. FINDINGS OF FACTS

On November 3, 2022, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1558 Theatre Teacher, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1558 Theatre Teacher.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1558 Theatre Teacher subject to the State Board of Education's approval. On November 17, 2022, the State Board of Education approved amending 14 **DE Admin. Code** 1558 Theatre Teacher. Therefore, pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, 14 **DE Admin. Code** 1558 Theatre Teacher, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1558 Theatre Teacher adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1558 Theatre Teacher 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 November, 2022.

Department of Education

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

Approved this 17th day of November, 2022.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Vincent Lofink, Vice President

/s/ Candice Fifer

/s/ Rev. Provey Powell, Jr.

Wali W. Rushdan, II (Absent)

/s/ Deborah Stevens

/s/ Audrey J. Noble, Ph.D.

***Please note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

***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 283 (26 DE Reg. 283). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/january2023/final/26 DE Reg 581 01-01-23.htm>

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), and 1220 (14 Del.C. §§1203, 1205(b), & 1220)
14 DE Admin. Code 1560

ORDER

1560 Visual Arts Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §§1203, 1205(b), and 1220, the Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1560 Visual Arts Teacher. The regulation concerns the requirements for a Visual Arts Teacher Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include revising subsection 5.2, which concerns the disclosure of an applicant's criminal conviction history, and adding language concerning 14 DE Admin. Code 1519, which is being simultaneously proposed with this regulation. Proposed 14 DE Admin. Code 1519 sets forth alternative means of demonstrating content knowledge for an applicant of the Visual Arts Teacher Standard Certificate who does not achieve the minimum score specified in Section 4.0 of this regulation. Proposed 14 DE Admin. Code 1519 is consistent with HB 441, which amended 14 Del.C. §1220 and was signed into law on August 4, 2022. In addition, the proposed amendments include changes that have been made to other Standard Certificate regulations.

Notice of the proposed regulation was published in the *Register of Regulations* on October 1, 2022. The Professional Standards Board did not receive any written submittals concerning the proposed regulation.

II. FINDINGS OF FACTS

On November 3, 2022, the Professional Standards Board voted to propose 14 DE Admin. Code 1560 Visual Arts Teacher, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 Del.C. Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 DE Admin. Code 1560 Visual Arts Teacher.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 DE Admin. Code 1560 Visual Arts Teacher subject to the State Board of Education's approval. On November 17, 2022, the State Board of Education approved amending 14 DE Admin. Code 1560 Visual Arts Teacher. Therefore, pursuant to 14 Del.C. §§1203, 1205(b), and 1220, 14 DE Admin. Code 1560 Visual Arts Teacher, attached hereto as Exhibit A, is hereby amended.

FINAL REGULATIONS

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1560 Visual Arts Teacher adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1560 Visual Arts Teacher 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 November, 2022.

Department of Education

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

Approved this 17th day of November, 2022.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Vincent Lofink, Vice President

/s/ Candice Fifer

/s/ Audrey J. Noble, Ph.D.

/s/ Rev. Provey Powell, Jr.

Wali W. Rushdan, II (Absent)

/s/ Deborah Stevens

***Please note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

***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 285 (26 DE Reg. 285). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/january2023/final/26 DE Reg 583 01-01-23.htm>

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), and 1220 (14 **Del.C.** §§1203, 1205(b), & 1220)

14 **DE Admin. Code** 1562

ORDER

1562 Teacher of English Learners

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1562 Teacher of English Learners. The regulation concerns the requirements for a Teacher of English Learners Standard Certificate in accordance with 14 **Del.C.** §1220. The proposed amendments include revising subsection 5.2, which concerns the disclosure of an applicant's criminal conviction history, and adding language concerning 14 **DE Admin. Code** 1519, which is being simultaneously proposed with this regulation. Proposed 14 **DE Admin. Code** 1519 sets forth alternative means of demonstrating content knowledge for an applicant of the Teacher of English Learners Standard Certificate who does not achieve the minimum score specified in Section 4.0 of this regulation. Proposed 14 **DE Admin. Code** 1519 is consistent with HB 441, which

amended 14 **Del.C.** §1220 and was signed into law on August 4, 2022. In addition, the proposed amendments include changes that have been made to other Standard Certificate regulations.

Notice of the proposed regulation was published in the *Register of Regulations* on October 1, 2022. The Professional Standards Board did not receive any written submittals concerning the proposed regulation.

II. FINDINGS OF FACTS

On November 3, 2022, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1562 Teacher of English Learners, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1562 Teacher of English Learners.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1562 Teacher of English Learners subject to the State Board of Education's approval. On November 17, 2022, the State Board of Education approved amending 14 **DE Admin. Code** 1562 Teacher of English Learners. Therefore, pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, 14 **DE Admin. Code** 1562 Teacher of English Learners, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1562 Teacher of English Learners adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1562 Teacher of English Learners in the *Administrative Code 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 November, 2022.

Department of Education

Mark A. Holodick, Ed.D., Secretary of Education
Approved this 17th day of November, 2022.

State Board of Education

/s/ Shawn Brittingham, President
/s/ Vincent Lofink, Vice President
/s/ Candice Fifer
/s/ Audrey J. Noble, Ph.D.

/s/ Rev. Provey Powell, Jr.
Wali W. Rushdan, II (Absent)
/s/ Deborah Stevens

***Please note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

***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 286 (26 DE Reg. 286). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/january2023/final/26 DE Reg 584 01-01-23.htm>

FINAL REGULATIONS

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), and 1220 (14 **Del.C.** §§1203, 1205(b), & 1220)
14 **DE Admin. Code** 1563

ORDER

1563 Music Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, the Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1563 Music Teacher. The regulation concerns the requirements for a Music Teacher Standard Certificate in accordance with 14 **Del.C.** §1220. The proposed amendments include revising subsection 5.2, which concerns the disclosure of an applicant's criminal conviction history, and adding language concerning 14 **DE Admin. Code** 1519, which is being simultaneously proposed with this regulation. Proposed 14 **DE Admin. Code** 1519 sets forth alternative means of demonstrating content knowledge for an applicant of the Music Teacher Standard Certificate who does not achieve the minimum score specified in Section 4.0 of this regulation. Proposed 14 **DE Admin. Code** 1519 is consistent with HB 441, which amended 14 **Del.C.** §1220 and was signed into law on August 4, 2022. In addition, the proposed amendments include changes that have been made to other Standard Certificate regulations.

Notice of the proposed regulation was published in the *Register of Regulations* on October 1, 2022. The Professional Standards Board did not receive any written submittals concerning the proposed regulation.

II. FINDINGS OF FACTS

On November 3, 2022, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1563 Music Teacher, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C. Ch.** 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1563 Music Teacher.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1563 Music Teacher subject to the State Board of Education's approval. On November 17, 2022, the State Board of Education approved amending 14 **DE Admin. Code** 1563 Music Teacher. Therefore, pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, 14 **DE Admin. Code** 1563 Music Teacher, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1563 Music Teacher adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1563 Music Teacher 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 November, 2022.

Department of Education

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

Approved this 17th day of November, 2022.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Vincent Lofink, Vice President

/s/ Candice Fifer

/s/ Audrey J. Noble, Ph.D.

/s/ Rev. Provey Powell, Jr.

Wali W. Rushdan, II (Absent)

/s/ Deborah Stevens

***Please note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

***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 288 (26 DE Reg. 288). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/january2023/final/26 DE Reg 586 01-01-23.htm>

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), and 1220 (14 Del.C. §§1203, 1205(b), & 1220)

14 DE Admin. Code 1564

ORDER

1564 Physical Education Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §§1203, 1205(b), and 1220, the Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1564 Physical Education Teacher. The regulation concerns the requirements for a Physical Education Teacher Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include revising subsection 5.2, which concerns the disclosure of an applicant's criminal conviction history, and adding language concerning 14 DE Admin. Code 1519, which is being simultaneously proposed with this regulation. Proposed 14 DE Admin. Code 1519 sets forth alternative means of demonstrating content knowledge for an applicant of the Physical Education Teacher Standard Certificate who does not achieve the minimum score specified in Section 4.0 of this regulation. Proposed 14 DE Admin. Code 1519 is consistent with HB 441, which amended 14 Del.C. §1220 and was signed into law on August 4, 2022. In addition, the proposed amendments include changes that have been made to other Standard Certificate regulations.

Notice of the proposed regulation was published in the *Register of Regulations* on October 1, 2022. The Professional Standards Board did not receive any written submittals concerning the proposed regulation.

II. FINDINGS OF FACTS

On November 3, 2022, the Professional Standards Board voted to propose 14 DE Admin. Code 1564 Physical Education Teacher, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 Del.C.

Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1564 Physical Education Teacher.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1564 Physical Education Teacher subject to the State Board of Education's approval. On November 17, 2022, the State Board of Education approved amending 14 **DE Admin. Code** 1564 Physical Education Teacher. Therefore, pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, 14 **DE Admin. Code** 1564 Physical Education Teacher, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1564 Physical Education Teacher adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1564 Physical Education Teacher 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 November, 2022.

Department of Education

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

Approved this 17th day of November, 2022.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Vincent Lofink, Vice President

/s/ Candice Fifer

/s/ Audrey J. Noble, Ph.D.

/s/ Rev. Provey Powell, Jr.

Wali W. Rushdan, II (Absent)

/s/ Deborah Stevens

***Please note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

***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 289 (26 DE Reg. 289). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/january2023/final/26 DE Reg 587 01-01-23.htm>

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), and 1220 (14 **Del.C.** §§1203, 1205(b), & 1220)
14 **DE Admin. Code** 1565

ORDER

1565 World Language Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, the Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1565 World Language Teacher. The regulation concerns the requirements for a World Language Teacher Standard Certificate in accordance with 14 **Del.C.** §1220. The proposed amendments include revising subsection 5.2, which concerns the disclosure of an applicant's criminal conviction history, and adding language concerning 14 **DE Admin. Code** 1519, which is being simultaneously proposed with this regulation. Proposed 14 **DE Admin. Code** 1519 sets forth alternative means of demonstrating content knowledge for an applicant of the World Language Teacher Standard Certificate who does not achieve the minimum score specified in Section 4.0 of this regulation. Proposed 14 **DE Admin. Code** 1519 is consistent with HB 441, which amended 14 **Del.C.** §1220 and was signed into law on August 4, 2022.

Notice of the proposed regulation was published in the *Register of Regulations* on October 1, 2022. The Professional Standards Board did not receive any written submittals concerning the proposed regulation.

II. FINDINGS OF FACTS

On November 3, 2022, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1565 World Language Teacher, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1565 World Language Teacher.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1565 World Language Teacher subject to the State Board of Education's approval. On November 17, 2022, the State Board of Education approved amending 14 **DE Admin. Code** 1565 World Language Teacher. Therefore, pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, 14 **DE Admin. Code** 1565 World Language Teacher, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1565 World Language Teacher adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1565 World Language Teacher 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*.

FINAL REGULATIONS

IT IS SO ORDERED the 17th day of November, 2022.

Department of Education

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

Approved this 17th day of November, 2022.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Rev. Provey Powell, Jr.

/s/ Vincent Lofink, Vice President

Wali W. Rushdan, II (Absent)

/s/ Candice Fifer

/s/ Deborah Stevens

/s/ Audrey J. Noble, Ph.D.

*Please note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).

*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 292 (26 DE Reg. 292). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

<https://regulations.delaware.gov/register/january2023/final/26 DE Reg 589 01-01-23.htm>

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

16 DE Admin. Code 14800

ORDER

Reasonable Income Compatibility Threshold

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) 14800 regarding Reasonable Income Compatibility Threshold, specifically, to align the Verification Plan to change the Reasonable Compatibility for income from 10% to 25%. 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 November *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by December 1, 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

Effective for services provided on and after November 1, 2022, Delaware Health and Social Services (DHSS)/ Division of Medicaid and Medical Assistance (DMMA) proposes to amend Delaware Social Services Manual (DSSM) section 14800 regarding Reasonable Income Compatibility Threshold.

Background

Affordable Care Act (ACA) regulations require that states compare electronic data sources to income information attested to by an applicant or beneficiary to determine whether the attestation and electronic data are "reasonably compatible." States do not have to obtain additional documents from applicants or beneficiaries to determine

eligibility if their attestations are "reasonably compatible" with the electronic data. Under the regulations, Medicaid agencies must compare the applicant's or beneficiary's attestation to available electronic data sources and evaluate whether any difference affects eligibility. If both the attestation and the data source are at or below the eligibility threshold, the Medicaid agency finds the individual eligible. In these situations, the difference between the attestation and data source does not affect eligibility, because the individual would be eligible using either the electronic data or the attestation. With the approval of the Centers for Medicare & Medicaid Services (CMS), states can establish a reasonable compatibility standard, which applies when an attestation is at or below the eligibility threshold, but data sources show income above the threshold. States may set an acceptable level of variance - either a percentage of income or a specific dollar amount - when the difference between the attestation and data source does not have to be reconciled.

CMS issued the Medicaid and CHIP COVID-19 Health Emergency Eligibility and Enrollment Pending Actions Resolution Planning Tool to states in March 2022 to assist states in developing a comprehensive unwinding operational plan to restore routine operations in Medicaid and CHIP once the COVID-19 Public Health Emergency (PHE) ends. The plan should describe how the state will complete outstanding work, ensure continuity of coverage for eligible individuals, and facilitate seamless transitions for individuals who become eligible for other forms of coverage. This unwinding planning tool provides various risk mitigation strategies that states can implement to ensure there are no inappropriate coverage losses among eligible beneficiaries once the unwinding period begins. One of these options is to assess and adjust the current reasonable compatibility threshold for income.

As a result, DMMA is proposing to change the reasonable compatibility threshold for income from 10% to 25%. This change will aide in the passive renewal process of Medicaid members during the PHE and the unwinding period of the PHE. This will decrease the need for manual intervention, decrease the risk for inappropriate terminations, and allow staff the ability to focus on the large caseload of renewals that are unable to be passively renewed.

Statutory Authority

42 CFR 435.949

Purpose

The purpose of this proposed regulation is to align the Verification Plan to change the Reasonable Compatibility for income from 10% to 25%.

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 1, 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.

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) supports these regulations since it will assist individuals with the recertification process. It will also ease the administrative burden on DMMA as it processes all of the recertifications that must take place when the public health emergency (PHE) ends.

Agency Response: DMMA appreciates the support.

Comment: The State Council for Persons with Disabilities (SCPD) supports these regulations as it will assist individuals in recertification and also ease the administrative burden on DMMA as it processes all of the recertifications that must take place when the PHE "unwinds".

Agency Response: DMMA appreciates the support.

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

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Delaware Social Services Manual (DSSM) 14800 regarding Reasonable Income Compatibility Threshold, specifically, to align the Verification Plan to change the Reasonable Compatibility for income from 10% to 25%, is adopted and shall be final effective January 11, 2023.

12/14/2022

Date of Signature

Molly Magarik, Secretary, DHSS

14000 Medicaid General Eligibility Requirements

14800 Verifications of Factors of Eligibility

Regulatory Statute

42 CFR 435.948

42 CFR 435.949

42 CFR 435.952

42 CFR 435.956

Attestation will be accepted for most factors of eligibility at application, renewal, and for a change in circumstances. Attestation will be accepted by the individual; an adult who is in the applicant's household; an authorized representative; or if the individual is a minor or incapacitated someone acting responsibly for the individual. Certain factors of eligibility will be verified post-enrollment, post-renewal, and after a redetermination of eligibility due to a change in circumstances.

Verification will be obtained electronically using the Federal Data Services Hub (FDSH) and other electronic data sources. The FDSH is a service that enables access to multiple data bases via a single electronic transaction. Data will be available from the Social Security Administration (SSA), Department of Homeland Security (DHS), Internal Revenue Service (IRS), and Equifax Workforce Solutions (also known as TALX). TALX is a contracted service that verifies earned income as reported by employers. The agency will not be obtaining IRS data.

Other electronic data sources include the following:

- State Wage Information Collection Agency (SWICA)
- State Unemployment Compensation
- General Assistance Program
- Supplemental Nutrition Assistance Program (SNAP)
- Temporary Assistance for Needy Families (TANF)
- Child Care Subsidy Program
- Office of Vital Statistics
- Department of Motor Vehicles
- Office of Child Support Enforcement
- Public Assistance Reporting Information System (PARIS).

Attestation will be accepted without post-enrollment verification for the following factors of eligibility:

- residency
- date of birth
- household composition
- household relationships
- application for other benefits
- pregnancy – unless other available information, such as a medical claim, is not reasonably compatible with such attestation.

Attestation will be accepted with post-enrollment verification for the following factors of eligibility:

- income
- Medicare.

Attestation will not be accepted and must be verified via the FDSH for the following factors of eligibility:

- citizenship and identity
- immigration status
- Social Security number (SSN).

If citizenship and immigration status cannot be verified via the FDSH, the individual will be provided with a 90-day reasonable opportunity period to submit other documentation and may be found eligible during that time period. The reasonable opportunity period will be extended beyond 90 days if the individual is making a good faith effort to obtain the documentation.

Verification of SSN will be in accordance with Sections 14105-14105.1.

Individuals will not be required to provide additional information or documentation unless the information cannot be obtained electronically or is not reasonably compatible with the attested information.

Reasonably compatible means that the information provided by an electronic data source is generally consistent with the information reported by the applicant or beneficiary. Income verification obtained through an electronic data source shall be considered reasonably compatible when:

- attestation of income and the electronic verification are at or below the income standard;
- attestation of income and the electronic verification are above the income standard; and
- attestation of income is at or below the income standard and the electronic verification is above the income standard and the difference between the two is ~~40%~~ 25% or less.

When the difference between the attestation of income and the electronic verification is more than ~~40%~~ 25%, a reasonable explanation will be sought from the applicant or beneficiary. A reasonable explanation may include, but is not limited to, a loss of employment or reduced hours of employment. If both the reported income and the data source indicate that the income is below the applicable standard then no additional information is needed.

Post-enrollment verification will be completed in accordance with the agency's verification plan approved by the Centers for Medicare & Medicaid Services (CMS). Post-enrollment verification of income and Medicare will be completed within thirty (30) days of the date of enrollment. When additional information is needed to complete the eligibility determination, the agency will request such additional information from the individual. The individual will be provided thirty (30) days to respond to the request for additional information. If the additional information requested is not provided, eligibility will be terminated.

Exceptions to the verification requirements will be permitted on a case-by-case basis when documentation does not exist or is not reasonably available, such as for individuals who are homeless or have experienced

domestic violence or a natural disaster. The exception does not apply to the verification requirements for citizenship and immigration status.

DEPARTMENT OF INSURANCE
OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and Chapter 33A (18 **Del.C.** §311 & c.
33A)
18 **DE Admin. Code** 1411

FINAL REGULATORY IMPLEMENTING ORDER

1411 Registration of Pharmacy Benefits Managers

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

A. Publication Background

On October 1, 2022, the Delaware Department of Insurance (the Department) published in the *Register of Regulations* (see 26 **DE Reg.** 303 (10/01/22)) its proposal to amend Regulation 1411. The purpose of the proposed amendments is to implement House Bill 219 (151st General Assembly) (the Act), which includes additional requirements on PBMs that apply to "contracts between pharmacy benefit managers and pharmacies or pharmacists that are entered into, renewed, or extended on or after the effective date of this Act" (see Section 15 of the Act). The Department solicited comments for the requisite 30-day comment period and received one set of timely submitted comments, submitted by a group that represents the pharmacy benefit management (PBM) industry (the commenter).

B. Summary of timely submitted comments and Department responses

The commenter requested that the Department clarify the scope of the regulation to exclude any coverage administered by the Department of Health and Human Services in the performance of its duties for the Medicaid program (see 18 **Del.C.** § 3322A) and to exclude plans of health insurance or health benefits designed for issuance to persons eligible for Medicare, Medicaid, or any other similar coverage under a state or federal government health plan (see 18 **Del.C.** § 3352A). This suggestion is unnecessary because the statutes that provide the underlying authority for Regulation 1411 are sufficiently clear as to the exclusions.

The commenter objected to the network adequacy provisions in Sections 2.0 (Definitions) and 10.0 (Network Adequacy Annual Reporting Requirements), claiming that the provisions delineate new restrictions pertaining to networks. The commenter opined that these provisions exceed the Department's statutory authority because the statute only requires that PBMs provide a network with "convenient patient access to pharmacies within a reasonable distance from a patient's residence" (see 18 **Del.C.** § 3362A).

The Department disagrees with the commenter's characterization of Sections 2.0 and 10.0 as imposing new restrictions on PBM networks. As an initial matter, Section 2.0 is simply a definitional section defining terms used later in Regulation 1411. Section 10.0 sets forth the manner in which PBMs are to report on their network, including the information to be included in the report. Section 10.0 is the implementation of the reporting requirements of 18 **Del.C.** § 3363A and does not establish any minimum network requirements that PBMs must meet in order to demonstrate an adequate network under 18 **Del.C.** § 3362A. Through reporting, the Department will seek to gain a better understanding of PBM networks, which it intends to use to help it understand what constitutes an adequate pharmacy network in Delaware. As the Department gains a better understanding of pharmacy networks in and across Delaware, it may propose amendments to this regulation for public comment that will address through regulation metrics for demonstrating an adequate network.

Similarly, the commenter specifically objected to the definitions of "rural service area," "suburban service area," and "urban service area." The commenter objected to these definitions, which are based on numbers of residents within zip codes, as too granular, stating that creating a standard for reporting by zip code is problematic and not consistent with industry standard.

Again, the Department points out that Section 10.0, in which the defined terms "rural service area," "suburban service area," and "urban service area" are used, only contains reporting requirements. Moreover, Section 10.0 requires reporting by all rural, suburban, and urban service areas, not by zip code as the commenter suggests.

The commenter requested that the last sentence of the definition for "rebate" be stricken because it "is confusing" and "does not provide clarity" regarding the use of the term "reasonable estimates." The Department declines to take this suggestion. This definition, which includes "incentives, disbursements, and reasonable estimates of a volume-based or category-based discount" is taken verbatim from the statute. Moreover, the listing of types of rebates contained in the statutory definition is not exclusive, and a PBM may include other types of rebates in the reports submitted to the Department.

The commenter requested that the proposed language in Section 3.0 be stricken as unnecessary, redundant, and unsupported by the underlying statute because insurers are already regulated by the Department and the underlying statute says nothing specific on subjecting insurers to PBM laws, nor was it the intent of the legislature to apply the law to insurers.

The Department disagrees with the commenter's characterization of Section 3.0. This section serves as a regulatory reminder to insurers, as potential purchasers under 18 **Del.C.** Ch. 33A, of their continued responsibilities under the Insurance Code as insurers.

At subsection 9.1, the commenter objected to the requirement that a PBM list a single point of contact with whom the Department can correspond when it receives a maximum allowable cost pricing (MACP) appeal, stating that it is highly unlikely that one person would be handling a large number of appeals.

The Department understands that a PBM may have more than one person in its complaint handling division but points out that requiring a single point of contact prevents complaints from getting lost in the morass of the company's general email.

The commenter also requested that appeals-related submissions should not be submitted by "electronic mail" as electronic mail is not a secure method. The commenter indicated that it prefers a system for submission that requires a password, at the very least, to access the data.

The Department appreciates this comment and maintains that, to the extent that a PBM uses a secure system on its end, the PBM may use that system when it submits appeals-related documentation to the Department. The Department is willing to work with PBMs to gain access to their secured systems.

The commenter requested that the entirety of subsection 9.3 be stricken because the commenter inferred that this subsection somehow applies a PBM's internal appeal processing procedure. The Department points out that subsection 9.1 makes it clear that Section 9.0 only applies to appeals filed with the Department under 18 **Del.C.** § 3324A(h).

The commenter also requested that subsection 9.4 be clarified to explicitly state that the appeals at issue are to the Department. However, as pointed out above, subsection 9.1 and the context of Section 9.0 in its entirety already indicates this, and therefore the Department maintains that this suggestion is unnecessary.

At subsection 9.5, the commenter suggested that requiring the use of a form when submitting information in connection with a MACP appeal would increase costs and burdens on a PBM and suggested that a PBM should be allowed to provide the necessary information on its own with a certain set of data elements included. The Department declines to accept this request. The use of standardized appeal and response forms provides for

consistency in the appeals that are submitted to the Department and allows the staff who are in charge of processing the appeals to quickly access the pertinent information and efficiently process those appeals.

The commenter requested that the time limits set forth at subsection 9.5.2 be extended from "5 business days" to "14," opining that five days are not enough time for a PBM to file a response via the Department's form after receipt of the notice of appeal.

The Department points out that when a claim is at the stage that it is being appealed to the Department, the claim should have already gone through the PBM's internal appeals process, and therefore, all of the information needed to be submitted to the Department should already be compiled in the PBM's internal claims file. Therefore, the Department maintains that the 5-business day period reflected in the proposal is sufficient and declines to adopt the commenter's suggested revisions. The Department also notes that there is no language in the proposed regulation that prevents a PBM from making a reasonable request for a filing deadline extension if needed.

The commenter requested that all references to "covered" in subsection 10.2, concerning Network Adequacy Annual Reporting Requirements, be stricken in favor of the use of the phrase "individuals residing in." The Department declines this request because it is not interested in a report that includes people residing in a particular service area unless the people who reside in that service area are actually utilizing the services of the PBM. Again, this is only a reporting requirement.

The commenter also objected to the requirement that PBMs file information about their "preferred networks," citing to 18 **Del.C.** § 3362A as only requiring adequate networks "within a reasonable distance from a patient's residence." The Department directs the commenter to 18 **Del.C.** § 3363A(a), which requires a PBM's network adequacy report to describe both its network and its network's accessibility in the State. As a PBM's network may include preferred and non-preferred statuses for network pharmacies, it would be appropriate for the network adequacy report to include information on its preferred network.

The commenter requested that the reporting deadlines set forth in subsection 11.1 be extended to allow PBMs greater time to report the quarterly data and also requested that subsection 11.2 be amended to allow for PBMs to request an extension on the reporting deadline. The Department declines to extend the reporting deadlines and points out that the regulation does not prohibit a PBM from submitting a reasonable request for an extension, even though not expressly provided for in the regulation, which is consistent with Department practices.

The commenter requested that subsection 12.2.5, which requires a PBM to provide its "anticipated revenue from the fee" when the PBM applies to the Department to impose certain fees on pharmacies, be stricken because this information is confidential and proprietary financial information, and that this requirement is beyond the scope of the underlying statute. The underlying statute at 18 **Del.C.** § 3372A(3) requires the Commissioner to review and approve fees charged to pharmacies related to the adjudication of claims. In order to properly review a proposed fee, the Department needs the relevant information to evaluate the reasonableness of the proposed fee. The information requested under subsection 12.2 of the regulation will be used by the Department to make that determination. The PBM may identify any information as proprietary financial information and request that this information be kept confidential, subject to Delaware's Freedom of Information Act (FOIA).

The commenter expressed concerns with subsection 12.4 concerning information that is collected by the Department and is then forwarded to the Board of Pharmacy. The commenter pointed out that the Board membership includes licensed pharmacists who would be considered market actors and competitors that may be in many PBMs' networks and as such, may have a vested personal interest in the outcome of the process. Additionally, the commenter suggests that such information should not be disclosed to the public in any setting, especially the Board of Pharmacy public meetings, due to the competitive nature of the information. Lastly, the commenter noted that the Board should not be permitted to request information independent of the Commissioner as the statute does not authorize this, "likely due to the potential for a conflict of interest and the competitive nature of the information."

The Department declines to accept any of the proposed changes to subsection 12.4, as the proposed changes

operate to circumvent the PBM statute and FOIA. The underlying statute requires that the Commissioner work "in coordination" with the Board of Pharmacy in reviewing and approving additional accreditation standards or certification requirements. As a public body with multiple members, the Board of Pharmacy conducts business in accordance with the open meeting requirements of FOIA. If a PBM believes certain information submitted for purposes of review under subsection 12.3 does not meet the definition of "public record" under 29 **Del.C.** § 10002, it can identify those documents in its submission and provide a reasoned explanation justifying its position so that the Board of Pharmacy can determine whether review of the information during an executive session is warranted. The Department also rejects the notion that a conflict of interest may exist because of the makeup of the Board of Pharmacy given that licensing boards always have professional members. If Board member has a conflict of interest related to a specific filing/PBM, that issue can be addressed at the time the Board considers the filing.

As its final comment, the commenter requested that the effective date of the Proposed Regulation be pushed out to allow PBMs to put new implementation processes in place, including new processes and/or systems for fee approvals and accreditation requirements. The Department declines this request. The effective date of the regulation has already been extended beyond the Department's anticipated timeframe and the Department is not receptive to any further extension of the effective date.

II. FINDINGS

1. The proposed amendments to Regulation 1411 effectively implement the Act.
2. The Department declines to make the edits to the proposed language for the reasons set forth in Section I.B of this order.
3. The Department met the public notice requirements of the Administrative Procedures Act.

III. DECISION TO ADOPT PROPOSED AMENDMENTS TO REGULATION 1411

For the foregoing reasons, the Commissioner concludes that it is appropriate to adopt the amendments to 18 **DE Admin. Code** 1411 as proposed.

IV. EFFECTIVE DATE OF ORDER

The actions referred to hereinabove were taken by the Commissioner pursuant to 18 **Del.C.** §311 and Chapter 33A on the date indicated below. The effective date of this Order and of the amendments to this regulation shall be January 11, 2023.

IT IS SO ORDERED.

The 15th day of December 2022.

Trinidad Navarro
Commissioner, Delaware Department of Insurance

***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 303 (26 DE Reg. 303). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/january2023/final/26 DE Reg 594 01-01-23.htm>

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

Secretary's Order No.: 2022-A-0022

RE: Approving Final Regulations to Amend 7 DE Admin. Code 1126 - *Motor Vehicle Emissions Inspection Program*

Date of Issuance: December 14, 2022

Effective Date of the Amendment: January 11, 2023

1126 Motor Vehicle Emissions Inspection Program

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 promulgation.

Background, Procedural History and Findings of Fact

This Order relates to the proposed regulation amendments ("Amendments") to 1126 - *Motor Vehicle Emissions Inspection Program* ("Regulation"). Specifically, the Department is amending the Regulation for Sussex County's vehicle Inspection and Maintenance ("I/M") program to: (1) align with Delaware's House Bill 246 (2017) ("HB246") as codified in 21 *Del.C.* § 2143, expanding the vehicle I/M program model year exemption from five to seven years; (2) replace the current curb idle tailpipe test with On-Board Diagnostic Test ("OBD") on vehicles that weigh up to 8,500 pounds gross vehicle weight, beginning with model year 1996 and newer; (3) require vehicles that weigh 8,501 up to 14,000 pounds gross vehicle weight, beginning with vehicle model year 2008, to undergo an OBD test; (4) modify that in addition to the curb idle tailpipe test, vehicle model year 1995 and older will also be required to include gas cap tests; (5) add language to clarify and prevent tampering of emission controls; and (6) phase in an increased cost of repairs for receiving a program waiver in Sussex County. In turn, the proposed Amendments will establish identical emissions testing requirements statewide.

The Clean Air Act ("CAA") authorized the U.S. Environmental Protection Agency ("EPA") to establish the National Ambient Air Quality Standards ("NAAQS") for criteria pollutants shown to threaten human health, welfare, and the environment. Throughout the State, Delaware has 11 monitoring stations to measure air pollution concentrations of the pollutants through their ambient air monitoring network. Most of the monitoring stations are concentrated in the northern urban/industrial areas, such as New Castle County, that have the highest population and number of pollutant sources. When levels of pollutants measure above NAAQS, the EPA designates the area as nonattainment.

Today, the largest source of ozone pollution in Delaware is from the onroad cars and trucks. Motor vehicles are significant contributors of volatile organic compounds, carbon monoxide, and nitrogen oxide emissions. A control measure to reduce these emissions is the implementation of a motor vehicle I/M program.

In 1977, the CAA established a vehicle I/M program to reduce pollutants and set the standards to meet NAAQS. Delaware began the development of the I/M program in 1979 through a State Implementation Plan ("SIP"). In 1982, Delaware then established 7 DE Admin. Code 1126 to regulate the I/M program for New Castle County. Soon after, on January 1, 1983, the I/M program was formally adopted into Delaware's SIP. Subsequent to establishing the regulation and SIP for the New Castle County I/M program, Delaware expanded the I/M program to all three counties to include Kent County and Sussex County. During that time, the EPA designated Sussex County as "marginal" nonattainment and New Castle County and Kent County were designated as "severe" nonattainment, under the one-hour ozone standard.

In 1990, the CAA amended the vehicle I/M program to require that polluted areas adopt either the "basic" or "enhanced" I/M programs, depending on the severity of the problem and the population of the area. The "basic" vehicle I/M requirements were provided for moderate ozone nonattainment areas, and marginal ozone areas with

existing or previously required I/M programs with populations of 200,000 or more. The "enhanced" vehicle I/M requirements were provided for more polluted areas classified as serious, severe, and extreme nonattainment areas with populations of 200,000 or more. The EPA's rule for the "enhanced" I/M program established two standards codified in 40 CFR 51.351(f) - *High Enhanced Performance Standard* and 40 CFR 51.351(g) - *Low Enhanced Performance Standard*. The "high enhanced" performance standard achieves a greater reduction in emissions and uses a highly technical test method. The "low enhanced" performance standard provides flexibility for nonattainment areas that are required to implement enhanced I/M programs and can meet the Act's emission reduction requirements for reasonable further progress (referred to as 15% plans) and attainment from other sources. States may select the low enhanced performance standard if they have an approved SIP for 15%.

As a result of Sussex County being designated as "marginal" non-attainment, Delaware implemented the performance standards for the "basic" I/M program in Sussex County. Similarly New Castle and Kent County were nonattainment, with being designated as "severe" and Delaware implemented the "Low Enhanced" I/M program. Subsequent to the CAA revisions in 1990, Delaware revised the SIP to address the "low enhanced" performance standards for Kent and New Castle County. The SIP revisions consisted of revisions to Regulation 1126 and a new Regulation 1131. It should be noted that New Castle County and Kent County were then regulated under 7 DE Admin. Code 1131, the "low enhanced" I/M program, to address higher levels of pollutants.

In 2017, Delaware enacted HB246 to provide a higher level of service to DMV customers and provide a more efficient renewal processes for vehicle owners. The enactment of HB246 increased the exemption for vehicle emission inspections from 5-years to 7-years, for all new vehicle models. The enactment of this legislation reduces the number of inspections per year by approximately 45,000 vehicles and enables all owners of vehicles within the most recent 7-year vehicle model to easily renew their registration.

The passage of HB246 meant fewer inspections in Kent and New Castle County and this meant an increase of 19.2 tons of nitrogen oxides and 15.3 tons of volatile organic compounds. Fewer inspections in Sussex County meant an increase of 1.1 tons per year in volatile organic compounds with no emissions benefit. These emission increases triggered the Department to review the vehicle emission program and implement measures to reduce the levels of emissions impacted by the new legislation. It should be noted that Sussex County reported no impact on nitrogen oxides.

The Department worked with the Department of Motor Vehicles ("DMV") to analyze several scenarios to offset the aforementioned emission increases caused by HB246. The Department concluded the best scenario to provide a sufficient reduction of emission increases would be to add an on-board diagnostic test for vehicles weighing 8,500 pounds up to 14,000 pounds, a single-speed idle test for vehicle model years 1968 to 1995 weighing up to 8,500 pounds, and a gas cap test for vehicle model years 1975 to 1995 weighing up to 8,500 pounds. This scenario will reduce emissions from the current emission levels by 391.1 tons per year of CO, 101.6 tons per year of NOx and 45.6 tons per year of VOC's. This scenario would provide the most beneficial reduction in vehicle emissions for all three counties.

The Department then consulted with EPA's Region 3 staff and it was decided that the emission reductions attributed to adding onboard diagnostic testing programs in Sussex County could be used to offset, in part, the emissions increases attributed to the vehicle emissions exemption extension for Kent and New Castle Counties. As Delaware drivers travel through the three counties, the use of Sussex County reductions towards offsetting Kent and New Castle County's vehicle emissions supports the use for offsetting emission reductions.

As a part of the review process of Delaware's vehicle I/M program, the Department conducted one in-person public meeting, and two additional virtual public meetings to address the proposed changes and receive feedback from those in attendance. A survey was conducted after the meetings and the Department received two responses in regard to the Sussex County vehicle I/M program. After the public meetings, the Department considered the public comments and then proceeded with the formal promulgation of the Amendments.

Further, the Amendments maintain consistency with current federal regulations, 40 CFR 51.50 Subpart S - Inspection and Maintenance Program Requirements, the CAA (42 U. S. C. 7522(a)) Section 203 and State Regulation 21 *Del. C. Ch. 21, Registration of Vehicles* (§§ 2109, 2110, and 2143). As such, the Amendments encourage proper vehicle maintenance, discourage tampering of vehicle emission controls by vehicle owners, reduce vehicle emissions, improve air quality, help maintain a healthy environment, and help provide improved health related impacts.

The Department published its initial proposed Amendments in the September 1, 2022 *Delaware Register of Regulations*. After the public hearing notice was issued, the Department revised the proposed Amendments to include a non-substantive change. The virtual public hearing regarding this matter was held on September 29,

2022. There were two (2) members of the public in attendance at the virtual public hearing.

Pursuant to 29 *Del.C.* §10118(a), the hearing record remained open for receipt of written comment for 15 days following the public hearing. The hearing record formally closed for comment in this matter at close of business on October 14, 2022, with no comments received by the Department during this phase of the formal promulgation. It should be noted that the proposed *revised* Amendments were fully vetted at the time of the virtual public hearing.

Thereafter, Hearing Officer Theresa Newman prepared her report dated November 3, 2022 ("Report"), which expressly incorporated the Department's proposed Amendments into the hearing 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 revised Amendments as attached to the Report as Appendix "A."

The Department has the statutory basis and legal authority to act with regard to the formal promulgation of these proposed *revised* Amendments, pursuant to 7 *Del.C.* §6010(a) and (c). 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.

Reasons and Conclusions

Based on the record developed by the Department's staff in the Division of Air Quality, and established by the Hearing Officer's Report, I find that the proposed revised regulatory Amendments are well-supported and will enable the Department to: (1) expand the vehicle I/M program model year exemption from five to seven years; (2) replace the current curb idle tailpipe test with OBD on vehicles that weigh up to 8,500 pounds gross vehicle weight, beginning with model year 1996 and newer; (3) require vehicles that weigh 8,501 up to 14,000 pounds gross vehicle weight, beginning with model year 2008, to undergo an OBD test; (4) modify that in addition to curb idle tailpipe test, vehicle model years 1995 and older will also be required to include gas cap tests; (5) add language to clarify and prevent tampering of emission controls; and (6) phase in an increased cost of repairs for receiving a program waiver in Sussex County. I further find that the Department's Air Quality 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 revised Amendments be promulgated as final.

The following reasons and conclusions are hereby 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.* §6010(a) and (c);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.*Ch. 60, to issue an Order adopting these proposed *revised* 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 proposed *revised* Amendments, including at the time of the virtual public hearing held on September 29, 2022 and during the 15 days subsequent to the hearing (through October 14, 2022), before making any final decision;
4. Promulgation of the proposed *revised* Amendments to 1126 - *Motor Vehicle Emissions Inspection Program* will enable the Department to: (1) expand the vehicle I/M program model year exemption from five to seven years; (2) replace the current curb idle tailpipe test with OBD on vehicles that weigh up to 8,500 pounds gross vehicle weight, beginning with vehicle model year 1996 and newer; (3) require vehicles that weigh 8,501 up to 14,000 pounds gross vehicle weight, beginning with vehicle model year 2008, to undergo an OBD test; (4) modify that in addition to curb idle tailpipe test, vehicle model year 1995 and older will also be required to include gas cap tests; (5) add language to clarify and prevent tampering of emission controls; and (6) phase in an increased cost of repairs for receiving a program waiver in Sussex County;
5. The Department has reviewed the proposed *revised* Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* §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 Hearing Officer's Report, including its established record and the recommended proposed Amendments as set forth in Appendix "A," are hereby adopted to provide additional reasons and findings for this Order;

7. The Department's proposed regulatory Amendments, as initially published in the September 1, 2022 *Delaware Register of Regulations*, and then subsequently revised, as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and

8. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and

9. The Department shall submit this Order approving the proposed revised Amendments as final regulatory to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Shawn M. Garvin
Secretary

1126 Motor Vehicle Emissions Inspection Program- Sussex County

02/12/2004

1.0 Applicability and ~~General Provisions~~ general provisions

1.1 Applicability

1.1.1 Except as provided in ~~4.0 of this regulation~~ subsection 1.2, the standards, requirements and procedures set forth in this regulation are applicable to all motor vehicles, model years 1968 and newer with the exception of the ~~five~~ seven newest model years, titled and registered within Sussex County and as specified by the Department, including any motor vehicles owned or operated by the federal, state and local governments and their agencies.

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 ~~xx/xx/2023~~ January 11, 2023.

(Break in Continuity Within Section)

1.3 General provisions

1.3.1 Vehicles shall be pre-inspected by DMV prior to the emission inspection and shall be prohibited from testing should any unsafe conditions be found. These unsafe conditions include but are not limited to significant exhaust leaks and significant fluid leaks. The Division and the Department shall not be responsible for major vehicle component failures during the test, of including parts which were deficient or excessively worn prior to the start of the test.

1.3.2 Vehicles shall be rejected from testing, as covered in this regulation, if the exhaust system is missing or leaking, or if the vehicle is in an unsafe condition for testing.

1.3.3 Effective ~~xx/xx/2023~~ January 11, 2023 for vehicles registered in Sussex County, in order to qualify for a waiver under Section 7.0 on any 1996 or later model year vehicle, emission repairs shall be performed by a certified emission repair technician as defined in Section 8.0.

***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 162 (26 DE Reg. 162). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

<http://regulations.delaware.gov/register/january2023/final/26 DE Reg 598 01-01-23.htm>

FINAL REGULATIONS

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

Secretary's Order No.: 2022-A-0023

RE: Approving Final Regulations to Amend 7 DE Admin. Code 1131 - *Low Enhanced Inspection and Maintenance Program*

Date of Issuance: December 14, 2022

Effective Date of the Amendment: January 11, 2023

1131 Low Enhanced Inspection and Maintenance Program

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 promulgation.

Background, Procedural History and Findings of Fact

This Order relates to the proposed regulation amendments ("Amendments") to 7 DE Admin. Code 1131 - *Low Enhanced Inspection and Maintenance Program* ("Regulation"). Specifically, the Department is amending the Regulation for New Castle County and Kent County's vehicle Inspection and Maintenance ("I/M") program to: (1) align with Delaware's House Bill 246 (2017) ("HB246") as codified in 21 *Del.C.* § 2143, expanding the vehicle I/M program model year exemption from five to seven years; (2) expand On-Board Diagnostic Test ("OBD") for vehicles that weigh 8,501 up to 14,000 pounds gross vehicle weight, beginning with model year 2008; (3) discontinue the current 2-speed idle tailpipe test and replace that with a curb idle tailpipe test, for vehicle model years 1981 through 1995; (4) require vehicle model years 1975 through 1995 to complete a gas cap test; (5) remove the pressure integrity test of the vehicles evaporated canister and fuel system for vehicle model year 1975 through 1995; and (6) add language to clarify and prevent tampering of emission controls.

The Clean Air Act ("CAA") authorized the U.S. Environmental Protection Agency ("EPA") to establish the National Ambient Air Quality Standards ("NAAQS") for criteria pollutants shown to threaten human health, welfare, and the environment. Throughout the State, Delaware has 11 monitoring stations to measure air pollution concentrations of the pollutants through their ambient air monitoring network. The majority of the monitoring stations are concentrated in the northern urban/industrial areas, such as New Castle County, that have the highest population and number of pollutant sources. When levels of pollutants measure above NAAQS, the EPA designates the area as nonattainment.

Today, the largest source of ozone pollution in Delaware is from the onroad cars and trucks. Motor vehicles are significant contributors of volatile organic compounds, carbon monoxide, and nitrogen oxide emissions. A control measure to reduce these emissions is the implementation of a motor vehicle I/M program.

In 1977, the CAA established a vehicle I/M program as a control measure to reduce pollutants and set the standards to meet NAAQS. Delaware began the development of the I/M program in 1979 through a State Implementation Plan ("SIP"). In 1982, Delaware then established 7 DE Admin. Code 1126 to regulate the I/M program for New Castle County. Soon after, on January 1, 1983, the I/M program was formally adopted into Delaware's SIP. Subsequent to establishing the regulation and SIP for the New Castle County I/M program, Delaware expanded the I/M program to all three counties to include Kent County and Sussex County. During that time, the EPA designated Sussex County as "marginal" nonattainment and New Castle County and Kent County were designated as "severe" nonattainment, under the one-hour ozone standard.

In 1990, the CAA amended the vehicle I/M program to require that polluted areas adopt either "basic" or "enhanced" I/M programs, depending on the severity of the problem and the population of the area. The "basic" vehicle I/M requirements were provided for moderate ozone nonattainment areas, and marginal ozone areas with existing or previously required I/M programs with populations of 200,000 or more. The "enhanced" vehicle I/M requirements were provided for more polluted areas classified as serious, severe, and extreme nonattainment areas with populations of 200,000 or more. The EPA's rule for the "enhanced" I/M program established two

standards codified in 40 CFR 51.351(f) - High Enhanced Performance Standard and 40 CFR 51.351(g) - Low Enhanced Performance Standard. The "high enhanced" performance standard achieves a greater reduction in emissions and uses a highly technical test method. The "low enhanced" performance standard provides flexibility for nonattainment areas that are required to implement enhanced I/M programs and can meet the Act's emission reduction requirements for reasonable further progress (referred to as 15% plans) and attainment from other sources without the stringency of the high enhanced I/M performance standard. States may select the low enhanced performance standard if they have an approved SIP for 15%.

Subsequent to the CAA Amendments, Delaware revised the SIP and implemented performance standards to meet the requirements of the CAA and EPA rule. As a result of the one-hour ozone standard, designating New Castle County and Kent County as "severe" ozone nonattainment, Delaware revised the vehicle I/M program to meet the requirements of the "low enhanced" vehicle I/M program. It should be noted, as Sussex County was designated as marginal nonattainment, Delaware implemented the "basic" I/M program however, a SIP was not required of this program due to the lower pollutant levels.

On June 16, 1998, Delaware submitted a new Regulation 1131-*Low Enhanced Inspection and Maintenance Program*, that replaced Regulation 1126 for New Castle and Kent counties vehicle I/M program and required the counties to implement the "low enhanced" I/M program. Sussex County remained under Regulation 1126 and continued with a "basic" vehicle I/M program.

In 2017, Delaware enacted HB246 to provide a higher level of service to DMV customers and provide a more efficient renewal processes for vehicle owners. The enactment of HB246 increased the exemption for vehicle emission inspections from 5-years to 7-years, for all new vehicle models. The enactment of this legislation reduces the number of inspections per year by approximately 45,000 vehicles and enables all owners of vehicles within the most recent 7-year model to easily renew their registration.

The passage of HB246 meant fewer inspections and in Kent and New Castle County and this meant an increase of 19.2 tons of nitrogen oxides and 15.3 tons of volatile organic compounds. Fewer inspections in Sussex County meant an increase of 1.1 tons per year in volatile organic compounds with no emissions benefit. These emission increases triggered the Department to review the vehicle emission program and implement measures to reduce the levels of emissions impacted by the new legislation. It should be noted that Sussex County reported no impact on nitrogen oxides.

The Department worked with the Department of Motor Vehicles ("DMV") to analyze several scenarios to offset the aforementioned emission increases caused by HB246. The Department concluded the best scenario to provide a sufficient reduction of emission increases would be to add an on-board diagnostic test for vehicles weighing 8,500 pounds up to 14,000 pounds, a single-speed idle test for vehicle model years 1968 to 1995 weighing up to 8,500 pounds, and a gas cap test for vehicle model years 1975 to 1995 weighing up to 8,500 pounds. This scenario will reduce emissions from the current emission levels by 391.1 tons per year of CO, 101.6 tons per year of NO_x and 45.6 tons per year of VOC's. This scenario would provide the most beneficial reduction in vehicle emissions for all three counties.

The Department then consulted with EPA's Region 3 staff and it was decided that the emission reductions attributed to adding onboard diagnostic testing programs in Sussex County could be used to offset, in part, the emissions increases attributed to the vehicle emissions exemption extension for Kent and New Castle Counties. As Delaware drivers travel through the three counties, the use of Sussex County reductions towards offsetting Kent and New Castle County's vehicle emissions supports the use for offsetting emission reductions. In addition, the DMV requested the Two Speed Idle test be eliminated for older vehicles in Kent and New Castle Counties. The Department then began to revise the Delaware's vehicle I/M programs.

As a part of the review process of Delaware's vehicle I/M program, the Department conducted one in-person public meeting and two virtual public meetings to address the proposed changes and to receive feedback from those in attendance. A survey was conducted after the meetings and the Department received no comments pertaining to the New Castle and Kent County vehicle I/M program. After the public meetings, the Department proceeded with the formal promulgation of the Amendment.

It should be noted that the Amendments maintain consistency with current federal regulations, 40 CFR 51.50 Subpart S - Inspection and Maintenance Program Requirements, the CAA (42 U. S. C. 7522(a)) Section 203 and State Regulation 21 *Del. C. Ch. 21, Registration of Vehicles* (§§ 2109, 2110, and 2143). As such, the Amendments encourage proper vehicle maintenance, discourage tampering of vehicle emission controls by vehicle owners, reduce vehicle emissions, improve air quality, help maintain a healthy environment, and help provide improved health related impacts.

The Department published its initial proposed Amendments in the September 1, 2022 *Delaware Register of Regulations*. After the public hearing notice was issued, the Department revised the proposed Amendments to include a non-substantive change. The virtual public hearing regarding this matter was held on September 29, 2022. There were two (2) members of the public in attendance at the virtual public hearing. Pursuant to 29 *Del.C.* §10118(a), the hearing record remained open for receipt of written comment for 15 days following the public hearing. The hearing record formally closed for comment in this matter at close of business on October 14, 2022, with no comments received by the Department during this phase of the formal promulgation. It should be noted that the proposed revised Amendments were fully vetted at the time of the virtual public hearing.

Thereafter, Hearing Officer Theresa Newman prepared her report dated November 8, 2022 ("Report"), which expressly incorporated the Department's proposed Amendments into the hearing 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 revised Amendments as attached to the Report as Appendix "A."

The Department has the statutory basis and legal authority to act with regard to the formal promulgation of these proposed *revised* Amendments, pursuant to 7 *Del.C.* §6010(a) and (c). 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.

Reasons and Conclusions

Based on the record developed by the Department's staff in the Division of Air Quality, and established by the Hearing Officer's Report, I find that the proposed revised regulatory Amendments are well-supported and will enable the Department to: (1) expand the vehicle I/M program model year exemption from five to seven years; (2) expand OBD for vehicles that weigh 8,501 up to 14,000 pounds gross vehicle weight, beginning with model year 2008; (3) discontinue the 2-speed idle tailpipe test and replace that with a curb idle tailpipe test, for vehicle model years 1981 through 1995; (4) require vehicle model years 1975 through 1995 complete a gas cap test; (5) remove the pressure integrity test of the vehicles evaporated canister and fuel system for vehicles 1975 through 1995; and (6) add language to clarify and prevent tampering of emission controls. I further find that the Department's Air Quality experts fully developed the record to support adoption of these revised Amendments. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed revised Amendments be promulgated as final.

The following reasons and conclusions are hereby 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.* §6010(a) and (c);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Ch. 60, to issue an Order adopting these proposed *revised* 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 proposed *revised* Amendments, including at the time of the virtual public hearing held on September 29, 2022 and during the 15 days subsequent to the hearing (through October 14, 2022), before making any final decision;
4. Promulgation of the proposed revised Amendments to 7 DE Admin. Code 1131 - *Low Enhanced Inspection and Maintenance Program*, will enable the Department to (1) expand the vehicle I/M program model year exemption from five to seven years; (2) expand OBD for vehicles that weigh 8,501 up to 14,000 pounds gross vehicle weight, beginning with vehicle model year 2008; (3) discontinue the 2-speed idle tailpipe test and replace that with a curb idle tailpipe test, for vehicle model years 1981 through 1995; (4) require vehicle model years 1975 through 1995 complete a gas cap test; (5) remove the pressure integrity test of the vehicles evaporated canister and fuel system for vehicles 1975 through 1995; and (6) add language to clarify and prevent tampering of emission controls;
5. The Department has reviewed the proposed revised Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* §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 Hearing Officer's Report, including its established record and the recommended proposed Amendments as set forth in Appendix "A," are hereby adopted to provide additional reasons and findings

for this Order;

7. The Department's proposed regulatory Amendments, as initially published in the September 1, 2022 *Delaware Register of Regulations*, and then subsequently revised, as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*;

8. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and

9. The Department shall submit this Order approving the proposed revised Amendments as final regulatory to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Shawn M. Garvin
Secretary

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

<http://regulations.delaware.gov/register/january2023/final/26 DE Reg 602 01-01-23.htm>

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

Secretary's Order No.: 2022-A-0024

RE: Approving Final Revision to Delaware's State Implementation Plan ("SIP"): *Motor Vehicle Emissions Inspection Program; Plan for Implementation (PFI) for 7 DE Admin Code 1126 and 7 DE Admin. Code 1131; formally known as Delaware's Low Enhanced Inspection and Maintenance Program, Plan for Implementation*

Date of Issuance: December 14, 2022
Effective Date of the Amendment: January 11, 2023

1131 Low Enhanced Inspection and Maintenance Program; Plan for Implementation (PFI)

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 promulgation.

Background, Procedural History and Findings of Fact

This Order relates to the Department's proposed revision to Delaware's State Implementation Plan ("SIP") addressing the *Low Enhanced Inspection and Maintenance Program, Plan for Implementation (PFI)*. Delaware is required by Section 110 of the federal Clean Air Act ("CAA") to submit to the U.S. Environmental Protection Agency ("EPA") a SIP that provides for the implementation, maintenance, and enforcement of the National Ambient Air Quality Standard ("NAAQS") established by the EPA.

A SIP is a state plan that identifies how that state will attain and maintain air quality that conforms to each primary and secondary NAAQS. The SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and inventories. Delaware submitted its initial SIP to EPA in 1979. Delaware periodically submits revisions to the SIP as required by the CAA to address air quality nonattainment and maintenance issues. The CAA requires that any proposed SIP revision be made available for public comment and presented at a public hearing prior to submitting to EPA for adoption.

Delaware House Bill 246 ("HB246"), passed and signed into law in 2017, codified 21 *Del.C.* §2143, which expanded the model year exemption for vehicle safety and emissions testing from five to seven years. While the new law reduced vehicle inspections by 45,000 per year, it adversely increased vehicle emissions. The expanded vehicle exemption resulted in emissions increases of 19.2 tons per year in nitric oxide ("NO_x") and 15.3 tons per year in volatile organic compounds ("VOCs") for Kent and New Castle counties. Sussex County had an increase of 1.1 tons per year in VOCs, however there was no impact on NO_x emissions in this county.

As a result of HB246, the Department has determined it necessary to amend the I/M programs and the SIP to address the vehicle exemption, as well as offset the vehicle emission increases attributed to the exemption. The Department must submit revisions of Delaware's regulations pertaining to I/M to the EPA for review and approval, in accordance with Section 110(l) of the CAA. For SIP revisions that will or could potentially lead to a change in emissions or ambient concentrations of a pollutant or its precursors, the Section 110(l) demonstration should address all pollutants whose emissions and/or ambient concentrations may change as a result of the SIP revision.

The Department analyzed many scenarios, using EPA's Motor Vehicle Emission Simulator (MOVES) model, to offset emissions increases caused by HB246. It was concluded that by implementing a more stringent On-Board Diagnostic Test ("OBD") program in Sussex County, emissions could be reduced and be used to offset, in part, the emission increases attributed to the vehicle exemption. This conclusion is supported by the number of vehicles that travel each day between the three Delaware counties and the use of emission reductions from Sussex County can be applied to the increased emissions in Kent and New Castle counties.

The Department's amendments to 7 DE Admin. Code 1126 - *Motor Vehicle Emissions Inspection Program* ("Regulation 1126") and 7 DE Admin. Code 1131 - *Low Enhanced Emissions Inspection and Maintenance Program* ("Regulation 1131") will reduce vehicle emissions and assist in the equitable distribution of emission reductions responsibilities between New Castle, Kent and Sussex counties. The amendments to both Regulation 1126 and Regulation 1131 align with HB246, expand the inspection model year exemption from five to seven years and include additional language to clarify and prevent tampering of emission controls.

The Amendments to Regulation 1126 will require OBD for vehicles 1996 and newer with a weight of up to 8,500 pounds, replacing the current curb idle tailpipe test on vehicles in the same vehicle weight range. The amendment will require vehicles that weigh 8,501 up to 14,000 pounds gross vehicle weight, beginning with model year 2008, to undergo an OBD test. In addition to the curb idle tailpipe test, vehicle model years 1995 and older will be required to complete a gas cap pressure test. To obtain an emission waiver in Sussex County, the amendment will increase the cost repair requirement to achieve parity with New Castle County and Kent County by the year 2027. A phased-in schedule will include no change for pre-1981 model year repair costs, remaining at \$75.00, however for vehicle models 1981 and newer, the repair cost will increase to \$200 in years 2023-2023, and then to \$450 for years 2025-2026.

The Amendments to Regulation 1131 will add the OBD Test requirement for vehicles that weigh 8,501 up to 14,000 pounds gross vehicle weight, beginning with model year 2008. In addition, for vehicle model years 1981 through 1995, the current two speed curb idle tailpipe test will be discontinued and replaced by a curb idle tailpipe test. The tailpipe pipe test for vehicle model years 1968 through 1980 will remain unchanged. Vehicle model years 1975 through 1995 will also be required to complete a gas cap test, but the pressure integrity test of the vehicle's evaporative canister and fuel system will be removed.

The Department's revisions will also correct a mistake to the SIP that was approved by the EPA in 2006. The SIP was mistakenly included as a part of 7 DE Admin. Code 1100 and titled as *1131 Low Enhanced Inspection and Maintenance Program; Plan for Implementation (PFI)* however the SIP should be a standalone document and separate from regulatory language. It should be noted, the SIP incorporates the State's vehicle I/M programs, including both Regulation 1131 and Regulation 1126. The Department finds it necessary to revise the title of the SIP, herein after referred to as, *Motor Vehicle Emissions Inspection Program; Plan for Implementation (PFI) for 7 DE Admin Code 1126 and 7 DE Admin. Code 1131*. The revisions to the SIP will enable the Department to demonstrate for review and approval by the EPA, the revisions to Delaware's regulations pertaining to I/M program in accordance with Section 110(l) of the CAA and incorporate the same into Delaware's SIP document.

The Department has the statutory basis and legal authority to act with regard to the proposed SIP revision pursuant to 7 *Del.C.* Chapter 60. The Department published the General Notice of this proposed SIP revision, and of the September 29, 2022 public hearing to be held in this matter, in the September 1, 2022 *Delaware Register of Regulations*. The Record remained open for comment subsequent to the aforementioned public hearing through October 14, 2022. No public comment was received by the Department during any phase of this hearing matter. All proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of

the hearing was provided as required by law.

The Department's presiding hearing officer, Theresa Newman, prepared a Hearing Officer's Report dated November 11, 2022 ("Report"). The Report documents the proper completion of the required SIP revision process, establishes the Record, and recommends the approval of the aforementioned proposed SIP revision into Delaware's SIP document, thus enabling the Department to provide EPA with the *Motor Vehicle Emissions Inspection Program; Plan for Implementation for 7 DE Admin Code 1126 and 7 DE Admin. Code 1131*, as attached to the Report as Appendix "A." Additionally, the Report strikes 7 DE Admin. Code 1131 *Low Enhanced Inspection and Maintenance Program; Plan for Implementation (PFI)* as attached to the Report as "Appendix "B".

Reasons and Conclusions

Based on the Record developed by the Department's experts and established by the Hearing Officer's Report, I find that the Department's proposed revision to Delaware's SIP addresses the *Motor Vehicle Emissions Inspection Program; Plan for Implementation for 7 DE Admin Code 1126 and 7 DE Admin. Code 1131*. I further find that the Department's experts in the Division of Air Quality fully developed the Record to support adoption of the proposed SIP revision as final. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the same be promulgated as final.

The following reasons and conclusions are hereby entered:

1. The Department has the statutory basis and legal authority to act with regard to this proposed SIP revision, pursuant to 7 *Del.C.* Ch. 60;

2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Ch. 60, to issue an Order adopting this proposed SIP revision as final;

3. The Department provided adequate public notice of this proposed SIP revision, and all proceedings associated with the same, in a manner required by the law and regulations.

The Department provided the public with an adequate opportunity to comment on the aforementioned proposed SIP revision, and held the Record open for receipt of public comment subsequent to the date of the hearing (through October 14, 2022), consistent with Delaware law, in order to consider the same before making any final decision;

4. The Department's Hearing Officer's Report, including its established Record and the recommended SIP revision as set forth in Appendix "A," is hereby adopted to provide additional reasons and findings for this Order;

5. Promulgation of the proposed SIP revisions will enable the Department to establish Delaware's *Motor Vehicle Emissions Inspection Program; Plan for Implementation for 7 DE Admin Code 1126 and 7 DE Admin. Code 1131*, in accordance with Section 110(l) of the CAA and strike 7 DE Admin. Code 1131 *Low Enhanced Inspection and Maintenance Program; Plan for Implementation (PFI)* in its entirety;

6. The Department's proposed SIP revision, as published in the September 1, 2022 *Delaware Register of Regulations*, and as set forth in Appendix "A" and "Appendix "B" as noted above, is adequately supported, is not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it is approved as a final revision to Delaware's SIP document, which shall become effective immediately upon the signing of this Order;

7. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and

8. The Department shall submit this Order approving as final the proposed Delaware SIP document to the *Delaware Register of Regulations* for publication in its next available issue and provide such other notice as the law and regulation require, and the Department determines is appropriate.

Shawn M. Garvin
Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the September 2022 issue of the *Register* at page 164 (26 DE Reg. 164). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/january2023/final/26 DE Reg 605 01-01-23.htm>

FINAL REGULATIONS

DIVISION OF WATERSHED STEWARDSHIP

Statutory Authority: 7 Delaware Code, Section 6010(a) and (c) (7 **Del.C.** §6010(a) and (c))
7 DE Admin. Code 7401

Secretary's Order No.: 2022-WS-0025

RE: Approving Final Revised Amendments to 7 DE Admin. Code 7401:

Surface Water Quality Standards

Date of Issuance: December 14, 2022

Effective Date of the Amendment: January 11, 2023

7401 Surface Water Quality Standards

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), and pursuant to 7 *Del.C.* §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 promulgation.

Background, Procedural History and Findings of Fact

This Order relates to the Department's proposed *revised* Amendments to 7 DE Admin. Code 7401: *Surface Water Quality Standards* ("Amendments"). The Department's Division of Watershed Stewardship ("DWS") is proposing to amend 7 DE Admin. Code 7401 as part of the triennial review of Delaware's *Surface Water Quality Standards* ("SWQS"). The federal *Clean Water Act* ("CWA") requires that all states review their SWQS every three years and adopt revised standards to comply with all requirements of the CWA. Delaware's current SWQS were last updated in 2017.

In keeping with the goals of the CWA, Delaware's SWQS are established to restore and maintain the chemical, physical, and biological integrity of Delaware waters. The SWQS also designate water uses and provide anti-degradation requirements. The Department's proposed Amendments have significant updates for human health criteria, based upon updated recommendations of the United States Environmental Protection Agency ("EPA").

The Department has the statutory basis and legal authority to promulgate the proposed *revised* Amendments, pursuant to 7 *Del.C.* §6010(a) and (c). The Department published the initial proposed Amendments in the March 1, 2022, *Delaware Register of Regulations* ("*Register*"). Subsequent to publication of the initial proposed Amendments in the *Register* on March 1, 2022, but prior to the public hearing held in this matter on April 20, 2022, the DWS discovered minor clerical errors contained therein. The errors were corrected by DWS staff, and the Department's proposed *revised* Amendments were fully explained at the public hearing held as referenced above for the benefit of the hearing record ("Record") being generated in this matter. 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.

No members of the public attended the public hearing of April 20, 2022. The Record remained open for receipt of public comment through May 5, 2022, however, the only comments received by the Department in this matter were from (1) Gregory Voigt, Chief, Standards and TMDLs Section, Water Division, EPA; and (2) Danielle Ellis, Environmental Scientist III, from the Department's Division of Fish and Wildlife ("DFW"). Subsequent to the close of the public comment period, the Department's DWS provided to Hearing Officer Lisa A. Vest a Technical Response Memorandum ("TRM"), dated May 24, 2022, which is discussed in more detail below.

Following her review of the Record, Hearing Officer Vest prepared her Hearing Officer's Report, dated December 12, 2022 ("Report"). The Report expressly incorporated into the Record both the Department's proposed *revised* Amendments and the DWS's TRM, attached to her Report as Appendices "A" and "B," respectively. The Report documents the proper completion of the required regulatory development process, establishes the Record, and recommends the adoption of the Department's proposed *revised* Amendments, as referenced above.

Reasons and Conclusions

The Department is currently proposing the adoption of the aforementioned proposed *revised* amendments to 7 DE Admin. Code 7401, *Surface Water Quality Standards*. The proposed *revised* Amendments will satisfy the Department's requirement under the CWA that Delaware review its SWQS triennially and adopt revised standards to comply with those of the CWA.

As noted above, the Department received only two sets of comments on this proposed promulgation, namely, from the EPA, and internally from DNREC's DFW. No other comments were received at any time during the course of this proposed regulatory promulgation.

As part of the SWQS triennial review process, Delaware is required to conduct a triennial review of current surface water quality regulations every three years and determine if current criteria should be modified, or new criteria adopted. This determination is based on consideration of the EPA's recommended criteria and the best available science specific to Delaware's waters. Because the EPA's recommended criteria are developed for use nationally, local environmental conditions can result in the need to adopt different criteria that are based on the best available science and state specific data. The triennial review process allows states to review new data and scientific findings, incorporate public feedback, and determine if adoption of new standards is appropriate.

The EPA submitted comments for Delaware's consideration related to the adoption of criteria that were more stringent in some cases and less stringent in others when comparing to standards currently in Delaware's regulations. Changes to existing standards were made when the best available data specific to Delaware waters, and an understanding of the current science, supported the adoption of proposed regulations. For the suggested criteria changes Delaware chose not to modify, it was determined that either more data needed to be collected or the best available scientific understanding did not support adoption at this time. DNREC will consider new data and scientific findings during future triennial review periods that may result in the consideration of new criteria, or adoption of previously recommended EPA criteria.

DNREC staff worked closely with the EPA Region III staff during the most recent triennial review process in order to assure that Delaware's current triennial review updates were supported. The EPA understands DNREC's decision to consider some of the recommended criteria changes during the next review period due to the best available data and science at the time of review.

The comments from EPA recommended that Delaware should consider several other revisions of its current SWQS criteria (in addition to those currently being proposed) at this time. Accordingly, the Department provided thorough responses to EPA's suggestions in the TRM provided to Hearing Officer Vest for inclusion into the Record developed in this matter. For the sake of brevity, this Order provides the following summary of the Department's responses to EPA's comments, as contained fully within the aforementioned TRM:

- With regard to suggested revisions to update Delaware's "Organism Only" and "Water + Organism" human health criteria, the Department notes that EPA's recommended criteria would be much more stringent than Delaware's current regulatory criteria that was developed using field data collected by DNREC in Delaware's waters. The Department will work with EPA and stakeholders to develop appropriate statewide criteria for such pollutants in future triennial reviews. Further, Delaware will also consider revisions to its current water quality criteria for Benzo(a)pyrene, Benzo(b)fluoranthene, and Dibenz(a,h)anthracene in place, and will consider adoption of Benzo(k)fluoranthene criteria at that time.
- In response to EPA's suggestion for the Department to adopt the "Organism Only" component of the national recommended water quality criteria for Chlorophenoxy Herbicides, the Department notes that Delaware's current regulations contain the Maximum Contaminant Levels ("MCLs") criteria, which are more restrictive than EPA's "Organism Only" criteria. DNREC left the more stringent MCLs that were previously adopted criteria in place. The Department may consider adopting the less stringent EPA recommended criteria in future triennial reviews if the best available science specific to Delaware's waterbodies indicates that adopting the less stringent criteria are appropriate.
- Regarding the suggested adoption of EPA's recent revisions of its aquatic life national recommended criteria for aluminum and selenium, the Department notes that, to date, EPA has not developed implementation guidance for these naturally occurring elements. Delaware will consider revising aquatic life criteria for the same, along with stakeholder input, when such guidance is issued.
- As to providing rationale as to why DNREC is deleting human health criteria for fluoride, silver, lead and total trihalomethanes, the Department states that it could not ascertain the basis for the current criteria for these pollutants. Further, DNREC lacks the resources to independently develop and propose human health criteria and has relied upon EPA guidance to propose and adopt the same. As noted in the stakeholder's guide

to the proposed standards, the Department notes that there are applicable Aquatic Life Criteria for lead and silver that are more stringent than the current human health criteria, and they would remain in place.

- In response to EPA encouraging DNREC to consider adoption of recommended water quality criteria or swimming advisories for cyanotoxins, the Department states that it has limited information about the magnitude and frequency of outbreaks of Harmful Algal Blooms ("HABs") in Delaware waters. The Department further notes that it has placed signs near several waterbodies with a history of HAB outbreaks to give people information describing visual indications of possible HAB events and appropriate precautions if a HAB is likely to be occurring. As HABs are not discharged by point or nonpoint sources (but often occur as a result of excess nutrients in the water column), DNREC believes that implementation of nutrient TMDLs already in place, along with public notice, are the best strategy to prevent HAB events and the negative outcomes from the same. The Department is interested in working with EPA and stakeholders to work through HAB and nutrient issues, and has posted public water quality advisories, warning signs, and information about HAB on its website at <https://de.gov/bluegreen>.
- In response to EPA's recommendations for DNREC to adopt, during this triennial review, nutrient criteria for the protection of lakes and reservoirs derived using the models found in the *Ambient Water Quality Criteria to Address Nutrient Pollution in Lakes and Reservoirs*, as published by EPA in August 2021, the Department notes that this current triennial review was well underway at the time of the publication of EPA's newest recommendations for nutrients in lakes and reservoirs. As a result, Delaware may consider such recommendations, along with input from both EPA and stakeholders, in future reviews.

As noted previously, the only other comments received by the Department were those internally submitted by DNREC's DFW. Specifically, DFW suggests that the following regulatory boundaries be updated from the currently stated designations set forth in 7 DE Admin. Code 7401: *Migratory Fish Spawning and Nursery Designated Use; Open-water Fish and Shellfish Designated Use; Red Clay Creek (from the PA/DE line to the concrete bridge above Yorklin; White Clay Creek from the PA/DE line to the dam at Curtis Paper; Pike Creek from Route 72 to Henderson Road; and Designated use from PA/DE line to the dam at Curtis Paper, and designated use from PA/DE line to Wilmington city line*. In response to the DFW comments, the TRM states that Delaware will consider revising those regulatory boundaries during the next triennial review to ensure that all available locational data can be considered and allow for full stakeholder participation.

As noted above, the only changes made to the Department's initially proposed Amendments were non-substantive in nature and were fully vetted at the public hearing referenced above. No further revisions were made to the proposed revised Amendments as a result of the public comment received by the Department in this matter.

Based on the Record developed by the Department's experts and established by the Hearing Officer's Report, I find that the Department has provided appropriate reasoning regarding the need for the proposed *revised* Amendments, and that the same is well-supported. I further find that the Department's experts fully developed the Record to support adoption of the proposed revised Amendments to 7 DE Admin. Code 7401, *Surface Water Quality Standards*, which will enable the Department to conclude its current triennial review of Delaware's SWQS and adopt revised standards to comply with the requirements of the federal CWA.

Thus, for the reasons stated above, the recommendations of the Hearing Officer are hereby adopted, and I direct that Delaware's proposed revised Amendments be promulgated as final, in the customary manner provided by law.

In conclusion, the following reasons and conclusions are hereby entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed revised amendments to 7 DE Admin. Code 7401, *Surface Water Quality Standards*, pursuant to 7 Del.C. §6010(a) and (c);
2. The Department has jurisdiction under its statutory authority to issue an Order adopting the proposed revised 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 proposed *revised* Amendments, both at the time of the public hearing held on April 20, 2022, and subsequent to the time of the public hearing (through May 5, 2022), in order to consider all public comment on the same before making any final decision;
4. The adoption of the proposed *revised* Amendments will enable the Department to conclude its triennial review of Delaware's SWQS and adopt revised standards to comply with the requirements of the federal CWA;
5. The Department has reviewed the proposed *revised* Amendments in the light of the Regulatory Flexibility

Act, consistent with 29 *Del.C.* Ch. 104, and believes the same to be lawful, feasible, and desirable, that it will not establish reporting requirements or substantive additional costs for individuals or small businesses, and that the recommendations as proposed should be applicable to all Delaware individuals or small businesses equally;

6. The Department's proposed Amendments, as initially published in the March 1, 2022, *Delaware Register of Regulations*, and then non-substantively *revised* and fully vetted to the public at the aforementioned public hearing held on April 20, 2022, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, the proposed *revised* Amendments should be approved as final *revised* Amendments, which shall become effective ten days after publication in the next available issue of the *Delaware Register of Regulations*;

7. The Hearing Officer's Report, including its established Record, and the recommended proposed *revised* Amendments and the Department's TRM attached thereto as Appendices "A" and "B," respectively, is hereby adopted to provide additional reasons and findings for this Order;

8. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and

9. The Department shall submit this Order approving as final the proposed revised 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, as the Department determines is appropriate.

Shawn M. Garvin
Secretary

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

<http://regulations.delaware.gov/register/january2023/final/26 DE Reg 608 01-01-23.htm>

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH & THEIR FAMILIES DIVISION OF PREVENTION AND BEHAVIORAL HEALTH SERVICES

Statutory Authority: 16 Delaware Code, Section 5001(11) (16 **Del.C.** §5001(11))
9 **DE Admin. Code** 701

REGULATORY IMPLEMENTING ORDER

701 Qualifications for Juvenile Mental Health Screeners

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 16 **Del.C.** §5001(11), the Secretary of the Department of Services for Children, Youth & Their Families (DSCYF) intends to amend 16 **DE Admin. Code** 701 Qualifications for Juvenile Mental Health Screeners. Notice of the proposed regulation was published in the *Delaware Register of Regulations* on October 1, 2022. DSCYF received comments from the State Council for Persons with Disabilities and the Governor's Advisory Council for Exceptional Citizens, both indicating their support for the proposed amendment.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 16 **DE Admin. Code** 701 Qualifications for Juvenile Mental Health Screeners to expand access to timely mental health screening for juveniles.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 16 **DE Admin. Code** 701 Qualifications for Juvenile Mental Health Screeners. Therefore, pursuant to 16 **Del.C.** §5001(11), 16 **DE Admin. Code** 701 Qualifications for Juvenile Mental Health Screeners is hereby amended.

IV. TEXT AND CITATION

The text of 16 **DE Admin. Code** 701 Qualifications for Juvenile Mental Health Screeners amended hereby shall be in the form attached hereto, and said regulation shall be cited as 16 **DE Admin. Code** 701 Qualifications for Juvenile Mental Health Screeners in the *Administrative Code of Regulations* for the Department of Services for Children, Youth & Their Families.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 16 **Del.C.** §5001(11) on December 14, 2022. 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 14th day of December 2022.

Department of Education	
Josette D. Manning, Esq., Secretary	12/14/22
Department of Services for Children, Youth and Their Families	Date

***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 305 (26 DE Reg. 305). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/january2023/final/26 DE Reg 611 01-01-23.htm>

**DEPARTMENT OF STATE
PUBLIC SERVICE COMMISSION**

Statutory Authority: 26 Delaware Code, Section 209(a)(1) and 29 Delaware Code, Section 10111(2) (26 **Del.C.** §209(a)(1) & 29 **Del.C.** §10111(2))
26 **DE Admin. Code** 1001

ORDER

1001 Rules of Practice and Procedure of the Delaware Public Service Commission

IN THE MATTER OF REVISIONS TO THE
RULES OF PRACTICE AND PROCEDURE
OF THE DELAWARE PUBLIC SERVICE
COMMISSION
(FILED JANUARY 6, 1999; RE-OPENED
OCTOBER 9, 2012; RE-OPENED
JANUARY 29, 2020; RE-OPENED AUGUST 31,
2022)

PSC REGULATION DOCKET
NO. 99-9

ORDER NO. 10156

AND NOW, this 14th day of December 2022, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, in PSC Docket No. 20-0149³, Order No. 9953, the Commission noted Staff's recommendation that the Commission should consider adopting rules that incentivize utilities to answer data requests rather than

objecting to them or equivocating in their responses.⁴ The Commission directed Staff as follows:

"[T]o consider the issue revolving around discovery issues at the hearing examiner level and to come up with recommendations to the Commission to expedite those matters so that procedural schedules are not delayed and the information gets provided to the parties who require it. These proposals should be included in the revised MFRs that Staff is currently preparing. (Unanimous)."⁵

WHEREAS, on August 31, 2022, Commission Staff ("Staff") petitioned the Commission to re-open Regulation Docket 99-9, as Staff found that multiple amendments, including the aforementioned discovery issues, to the "*Rules of Practice and Procedure of the Delaware Public Service Commission*," 26 *Del. Admin. C.* § 1001 et seq. ("Rules") were necessary for clarification and adjustment, which amendments ("Proposed Amendments") are specifically detailed as follows:

- (1) under Subsection 1.2, to define "DPA" as the Delaware Division of the Public Advocate, or its successors;
- (2) under Subsection 1.2, to update the definition of "E-Filing" so as to remove the date, and remove "DelaFile" so as to remain current should the Commission rename it's electronic document management system, and as a result, to use "E-Filing" in place of "DelaFile" in the Rules thereafter;
- (3) under Subsection 1.2, to update the definition of "Filing" for ease of reference;
- (4) under Subsection 1.6.5, to update the procedure in which the Commission provides Filings to the DPA, so that the requirement that the Commission provide paper copies of all filings to the DPA is eliminated;
- (5) under Subsection 1.7.1.3, to change "Complaints" to "Formal Complaints" so as to differentiate formal complaints, which should be filed with the Commission, from informal complaints, which should be filed with the Delaware Division of the Public Advocate ("DPA");⁶
- (6) under Subsection 1.7.1.8, to remove the word "and;"
- (7) under Subsection 1.7.1.10, to include the word "and;"
- (8) under Subsection 1.7.1.10, to add "Reports" to the list of filings to clarify that reports should be filed with the Commission;
- (9) under Subsection 1.11.1, to update the statutory citation to the *Freedom of Information Act* ("*FOIA*") to reflect the current statute;
- (10) under Subsection 1.11.2, to amend certain procedures relating to challenging a claim of confidential designation for better alignment with *Freedom of Information Act* ("*FOIA*");⁷
- (11) under Subsections 1.11.5, to shorten the reference to the DPA to the defined term;
- (12) under Subsections 1.11.6, to shorten the reference to the DPA to the defined term;
- (13) under Subsection 2.1.2, to update *pro hac vice* admission information to maintain uniformity with the Delaware Supreme Court;
- (14) under Subsection 2.2.1, to clarify the timeframe for utility response to informal complaints and to shorten the reference to the DPA;
- (15) under Subsection 2.3.3, to replace "DelaFile" with "E-Filing" and to clarify the timeframe that the Commission Secretary is to direct a filed response to a complaint is twenty (20) calendar days;

3. Docket No. 20-0149 was Delmarva Power & Light's last electric rate base case.

4. See Docket No. 20-0149, Order No. 9953, para. 238: "Staff raised an issue in its testimony about ongoing problems with getting timely responses from the utility to its discovery requests. As Staff pointed out: (1) the utility has all the books and records that the omission, and by extension its Staff, are entitled to examine—now mostly through data requests, which in Staff's opinion are routinely objected to; and (2) a seven (7) month clock begins with the filing of a rate case and upon expiration allows the Company to put in the full amount of its rate request, subject to future refund. According to Staff, this forces Delmarva's ratepayers, at least for a period of time, to pay the full cost of the Company's application and delays the opportunity for them to utilize this capital for other expenses."

5. PSC Docket 20-0149, Order No. 9953, para. 244 (emphasis added). See *also id.* at para. 239-244.

6. See 26 *Del. Admin. C.* § 1001-2.2.1.

7. As amended, this places an affirmative obligation on a party claiming that information of confidential or propriety to file a petition with the Commission to request a ruling if any party challenges that designation of information. It clarifies that the party claiming confidentiality must demonstrate that the designated information is exempt from public disclosure pursuant to 29 *Del. C.* § 10002(o) of the FOIA.

(16) under Subsection 2.4.1, to clarify the timeframe that a respondent shall file an answer to a formal complaint is twenty (20) calendar days;

(17) under Subsection 2.6.2, to adjust certain procedures relating to serving discovery between parties so that rolling discovery is the default and that responses shall be due as set forth in Subsection 2.6.6. unless otherwise ordered by the designated Presiding Officer or Hearing Examiner;

(18) under Subsection 2.6.3, to provide instruction that interrogatories and written data requests shall be provided in Word format;

(19) under Subsection 2.6.6, to provide that discovery responses in rate or other expedited cases (including Section 215 applications, applications for issuance of a certificate of public convenience and necessity ("CPCN"), applications to abandon a previously-granted rate CPCN, or distribution planning matters) must be served no later than fifteen (15) calendar days after they are served on a party; and to remove the language "excluding holidays and weekends;"

(20) under Subsection 2.6.7, to reduce the time for objecting to discovery to ten (10) calendar days after service of discovery under subsection 2.6.7, and to include a seven (7) calendar day time frame to for the parties to resolve a discovery dispute; in the event the parties are unable to resolve the discovery dispute, to clarify that the party seeking the information shall file a motion to compel within five (5) business days thereafter; and to include language that all motions to compel must be resolved within fifteen (15) days of the filing of the motion to compel;

(21) under Subsection 2.7.1, to include that responses to a motion shall be submitted seven (7) calendar days after motion is filed, and to include that the movant may file a reply to the response no later than seven (7) calendar days after the response is filed;

(22) under Subsection 2.16.2, to increase the timeframe for filing a Petition for interlocutory review from three (3) days to seven (7) calendar days, and replacing "Delafile" with "E-Filing"; and

(23) under Subsection 2.16.3, to increase the timeframe for a party filing an answer to a Petition for interlocutory review from three (3) days to seven (7) calendar days;

(24) under Subsection 2.16.5, to clarify the timeframe for Commission action in response to a Petition for interlocutory review by including the numerical thirty ("30") and parenthesis; and

(25) under Subsection 2.19.3, to clarify that the timeframe for a party to file written exceptions is twenty (20) calendar days, and to grammatically correct the language from "was" to "were;" and

WHEREAS, on August 31, 2022, by Order No. 10094, the Commission reopened this docket, approved publication of the Proposed Amendments, directed the Secretary of the Commission ("Secretary") to transmit the amended Rules to the Registrar of Regulations ("Registrar") for publication in the October 2022 edition of *Delaware Register*, as required by 29 *Del. C.* § 10113; and in accordance with 26 *Del. C.* § 209(a) and 29 *Del. C.* § 10118(a), stated that the Commission would hold a public hearing on the proposed amendments on November 2, 2022, with the public comment period remaining open until November 18, 2022; and

WHEREAS, on October 12, 2022, Artesian Water Company, Inc. ("Artesian") submitted written comments regarding the Proposed Amendments to be considered at the November 2, 2022 Commission Meeting, which, in summary: (1) proposed to include a limit to the number of data requests in Subsection 2.6.3; (2) stated concern regarding the proposed reduction of time for a recipient to respond to a discovery request in Subsection 2.6.6; and (3) proposed additional language to Subsection 2.6.7 to read, "within seven (7) calendar days after notification of the objection;"⁸ and

WHEREAS, on October 13, 2022, Delmarva Power & Light Company ("Delmarva") submitted written comments regarding the Proposed Amendments to be considered at the November 2, 2022 hearing, which: (1) proposed additional language to Subsection 2.6.3 to include, "The party responding to interrogatories or data requests is not obligated to provide its response in Word format;" (2) proposed increasing the time to respond to discovery in Subsection 2.6.6 from fifteen (15) calendar days to twenty-one (21) calendar days; and (3) proposed to increase the time to respond to a motion in Subsection 2.7.1 from seven (7) calendar days to ten (10) calendar days;⁹

WHEREAS, pursuant to 26 *Del. C.* § 209(a), on November 2, 2022, the Commission conducted a public hearing to consider written comments submitted by October 14, 2022¹⁰; and

8. See Docket 99-9, Artesian Water Company, Inc., October 12, 2022, "Artesian Comments on Docket 99-9."

9. See Docket 99-9, Delmarva Power & Light, October 13, 2022, "DPL's Comments."

WHEREAS, on November 2, 2022, Delmarva provided oral comments, which mirrored its written comments. Delmarva first noted that its proposal regarding Subsection 2.6.3 is meant to clarify that "the party responding to Interrogatories or to data request is not also obligated to provide its response in Word format. In other words, it can provide them in Excel or as a PDF as it is."¹¹ Second, Delmarva commented on its proposal for Subsection 2.6.6, which stated concern for the Proposed Amendments' fifteen (15) calendar day timeline, and again suggested the twenty (21) calendar day timeline so that its employees can respond to data requests.¹² Delmarva noted as an example that in its last gas rate case, Delmarva received data requests from Staff and the Division of the Public Advocate ("DPA") (but did not receive data requests from intervenors).¹³ Third, Delmarva commented on its proposal for Subsection 2.6.7, which includes an additional three (3) calendar days to respond to a motion¹⁴ and noted that this is in line with the rules of all the courts in Delaware;¹⁵ and

WHEREAS, on November 2, 2022, Artesian provided oral comments which stated its concurrence with Delmarva's comments, and echoed its written comments submitted on October 12, 2022;¹⁶ and

WHEREAS, the Division of the Public Advocate (the "DPA") provided oral comments, which first stated the DPAs support for the Proposed Amendments as published in the October 2022 edition. Second, the DPA noted that Artesian and Delmarva's concerns regarding subsection 2.6.2 have not borne out in practice. The DPA noted that in Docket No. 20-0149, Delmarva's most recent electric rate case, Staff and the DPA issued discovery about once a week-not daily-and that Delmarva timely responded to all sets of discovery without a problem.¹⁷ Additionally, the DPA noted that Subsection 2.6.4 states that the Hearing Examiner (or designated presiding officer) may vary discovery provisions in the interest of justice, so that if there is a problem with complying with rolling discovery obligations, a party may request the Hearing Examiner to vary the discovery provisions and that in the past, the parties have worked with each other in the past with respect to needing additional time for discovery responses.¹⁸ Third, the DPA stated it did not oppose Delmarva's proposed change to Subsection 2.6.3. Fourth, in regard to Subsection 2.6.6, the DPA noted that why expedited discovery is necessary in the specific types of cases identified in the proposed amendment to Subsection 2.6.6, and also that decreasing the time for discovery responses could help speed up the rate case process.¹⁹ Fifth, the DPA did not oppose Artesian's proposed change in Subsection 2.6.7. Sixth, the DPA made comment on the proposed amendment to Subsection 2.6.7 regarding motions and response time, noting that if the longer response time was adopted, it could be weeks before a Commission hears a motion because of the Commission's meeting schedule.²⁰ Additionally, the DPA noted it is within the Hearing Examiner or the Commission's discretion to waive application of the seven (7) day response and reply period should the circumstances warrant.²¹ The DPA also suggested that the seven (7) day response and reply timing is a bigger burden on Staff and the DPA than it is on utilities, as Staff (when fully staffed) has two (2) Deputy Attorney Generals ("DAG(s)") and the DPA has one (1) DAG, but nonetheless, there has never been an issue in the past in turning around responses and replies to motions.²²

WHEREAS, on November 2, 2022, Staff noted it worked with the DPA on the amended Rules and therefore it

10. Pursuant to 29 *Del. C.* § 10118(a), 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*. The Proposed Amendments were published on October 1, 2022.

11. PSC Commission Meeting Tr., Nov. 2, 2022, pg. 21-22, lines 1-4.

12. *Id.* at pg. 35, lines 5-9.

13. *Id.* at pg. 23, lines 6-11.

14. *Id.* at pg. 24, lines 5-17.

15. *Id.* at pg. 35, lines 10-16.

16. *Id.* at pg. 25, lines 4-6, 10-17.

17. *Id.* at pg. 27, lines 10-12. *See also id.* at pg. 27-28 for additional examples of how much discovery Staff and the DPA have issued during rate cases.

18. *Id.* at pg. 28-29.

19. *Id.* at pg. 31.

20. *Id.* at pg. 33-34.

21. *Id.* at pg. 34, lines 1-3.

22. *Id.* at pg. 34, lines 7-13.

agreed with the DPA comments.²³ Staff took no issue with Delmarva's suggested amendment to Subsection 2.6.3, or Artesian's suggested amendment to Subsection 2.6.7; and

WHEREAS, in accordance with the Administrative Procedures Act ("APA"), public comment remained open until November 18, 2022;²⁴ and

WHEREAS, on November 14, 2022, Tidewater Utilities, Inc., ("Tidewater") submitted public comment. First, Tidewater stated that the proposed amendment to Subsection 2.6.2 would allow for discovery to be served on a rolling basis, which could create an additional burden for the recipient of the discovery requests to manage.²⁵ Tidewater suggested that Subsection 2.6.2 include a defined limit on the frequency and/or number of discovery batches to once every three (3) weeks with a maximum of four (4) discovery batches for each intervenor during the course of rate proceedings.²⁶ Second, Tidewater objected to Subsection 2.6.6, as the change from business days to calendar days reduces the length of time a recipient has to respond to discovery by nearly a full business week and will place a burden on the utilities.²⁷ Tidewater noted that this change could require utilities to hire outside counsel, and states its support to leave the rule unchanged at fifteen (15) days excluding holidays and weekends, or to increase the number of days to respond from fifteen (15) days to twenty (20) days;²⁸ and

WHEREAS, on November 14, 2022, Chesapeake Utilities Corporation submitted public written comment agreeing with the comments of Tidewater, Delmarva, and Artesian, and supporting the recommendation made in those comments for the reasons set forth therein;²⁹ and

WHEREAS, on November 17, 2022, the DPA submitted written public comment on the proposed amendments. First, the DPA noted that the Section 10113(b) of the APA does not require the Commission to follow the normal procedure for amending regulations when the regulations are rules of practice and procedure used by the agency;³⁰ rather, the Commission may simply adopt the regulation and file both the regulation and a copy of the order adopting the regulations with the Registrar.³¹ The DPA stated that the Proposed Amendments are reasonable and should be adopted by the Commission, with the minor modifications that Delmarva and Artesian proposed. The DPA proceeded to identify each of the amendments to the Subsections and reiterated its post-hearing comments.³²

WHEREAS, on November 18, 2022, Delmarva submitted supplemental comments to its first set of Comments dated October 13, 2022. Delmarva stated that public utilities face voluminous written discovery in rate cases for which a twenty-one (21) calendar day response period is reasonable.³³ Delmarva noted that PSC Docket No. 22-0150 included a fifteen (15) calendar day response period, which Delmarva had to supplement or amend 62 responses for, and that in Docket No. 22-0002, the DPA and Staff agreed to a twenty-one (21) day response period.³⁴ Delmarva stated that with the larger response period, the number of supplemental responses dropped by almost 50 percent.³⁵

WHEREAS, on November 18, 2022, the opportunity for public comment closed; and

WHEREAS, the Commission has considered all comments received by November 18, 2022; and

23. *Id.* at pg. 36, lines 11-13.

24. 29 *Del. C.* § 10118(a) requires that the opportunity for public written comment shall be extended for a minimum of 15 days after the final public hearing on a proposed regulation.

25. See Docket 99-9, Nov. 14, 2022, "Comments of Tidewater Utilities, Inc."

26. *Id.*

27. *Id.*

28. *Id.*

29. See Docket 99-9, Nov. 14, 2022, "Comments of Chesapeake Utilities Corporation."

30. See 29 *Del. C.* § 10113(b).

31. See Docket 99-9, Nov. 17, 2022, "Comments of the Delaware Division of the Public Advocate on the Proposed Amendments to the Delaware Public Service Commission's Rules of Practice and Procedure," pg. 1-2.

32. *Id.* at pg. 3-10.

33. See Docket 99-9, Nov. 18, 2022, "DPL's Supplement Comments," pg. 2.

34. *Id.*

35. *Id.*

WHEREAS, pursuant to 29 *Del. C.* § 10118(c), if changes to the amended rules are not substantive,³⁶ the agency shall *not* be required to republish the regulation change (emphasis added); and

WHEREAS, pursuant to 29 *Del. C.* § 10113(b)(4), any changes in existing regulations to alter style or form or to correct technical errors are exempted from the procedural requirements of Title 29 Chapter 101 and may be adopted informally; and

WHEREAS, pursuant to 29 *Del. C.* § 10113(b), an agency's rules of practice and procedure are exempted from the procedural requirements of Title 29 Chapter 101 and may be adopted informally; and

WHEREAS, the Commission has considered all comments received by the utilities, Staff and the DPA, and is not persuaded by the majority of the utility's comments regarding the Proposed Amendments. The Commission notes that Subsections 2.6.2, 2.6.3, 2.6.6, and 2.6.7 were the only Subsections to receive comment by the utilities. The Commission finds that the remaining Proposed Amendments were uncontested. The Commission therefore finds that the uncontested subsections of the Proposed Amendments should be adopted; and

WHEREAS, the Commission finds that the Proposed Amendment to Subsection 2.6.2 would be beneficial for the parties involved in discovery and therefore accepts the Proposed Amendment to Subsection 2.6.2. The Commission is persuaded by the DPA's argument that discovery served has not, historically speaking, been overwhelming to the utilities, but that it is served about every week, which the Commission believes is manageable for utilities. Further, in the event that discovery does become an overwhelming issue for a utility, the Commission notes that the designated Presiding Officer or Hearing Examiner on the matter can consider the utility's position and order such different discovery procedures as may be necessary; and

WHEREAS, the Commission finds that the Proposed Amendment to Subsection 2.6.3, as augmented by the additional language Delmarva proposed in its comments, serves to clarify Subsection 2.6.3 and that it would be a helpful inclusion to the Subsection for all parties involved. Accordingly, the Commission accepts the Proposed Amendment to Subsection 2.6.3, and accepts Delmarva's proposed additional language; and

WHEREAS, the Commission finds that the Proposed Amendment to Subsection 2.6.6, would be beneficial for the parties involved in discovery, and therefore to the Commission as well. The Commission is persuaded by the DPA's comments as to why expedited discovery is necessary in the specific types of cases identified in the proposed amendment to Subsection 2.6.6, and the comments by the DPA that decreasing the time for discovery responses could help speed up the rate case process. Moreover, as we noted with respect to rolling discovery, if a utility has a problem complying with the 15-day response period, it can request the Hearing Examiner to order a different period. The Commission therefore accepts the Proposed Amendments to Subsection 2.6.6; and

WHEREAS, the Commission finds that the Proposed Amendment to Subsection 2.6.7, as augmented by the additional language Artesian proposed in its comments, serves to alter and clarify the form of Subsection 2.6.7 as it states when the seven (7) calendar day period begins, instead of implying when the seven (7) calendar day period begins. Accordingly, the Commission accepts the Proposed Amendment to Subsection 2.6.7, and accepts Artesian's proposed additional language; and

**NOW, THEREFORE, IT IS ORDERED BY THE AFFIRMATIVE
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. That, for the reasons set forth above, the Commission hereby approves as final the proposed *Rules of Practice and Procedure of the Delaware Public Service Commission 26 Del. Admin. C. § 1001 et seq.*, as proposed herein. A marked-up version of the Rules reflecting only the amended sections is attached as Exhibit "A." A clean version of the Amended Rules reflecting the changes is attached as Exhibit "B."

2. Pursuant to 26 *Del. C.* §§ 10113 and 10118, the Secretary of the Commission shall transmit a copy of this Order (with the attached Amended Rules) to the Registrar of Regulations for publication in the January 1, 2023 edition of the *Delaware Register of Regulations*. An exact copy of the Amended Rules shall be published as the current official regulations in the *Delaware Register*.

3. That, pursuant to 29 *Del. C.* § 10118(g), the effective date of the amendments shall be later of January 11, 2023, or ten (10) days after publication in the *Delaware Register of Regulations*.

36. See 29 *Del. C.* § 10102(9) (which defines substantive as "when used in connection with regulations, those regulations allowing, requiring or forbidding conduct in which private persons are otherwise free or prohibited to engage, or regulations which state requirements, other than procedural, for obtaining, retaining or renewing a license or any kind of benefit or recompense,").

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

BY ORDER OF THE COMMISSION:

/s/ Dallas Winslow, Chairman

/s/ Joann T. Conaway, Commissioner

/s/ Harold B. Gray, Commissioner

/s/ Manubhai "Mike" Karia, Commissioner

/s/ Kim F. Drexler, Commissioner

ATTEST: Donna Nickerson, Secretary

***Please note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

***Please see the Final Order and regulatory text at the following link:**

<http://regulations.delaware.gov/register/january2023/final/26 DE Reg 612 01-01-23.htm>

DEPARTMENT OF TRANSPORTATION

DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 17 Delaware Code, Sections 131, 132 and 143; 26 Delaware Code, Chapters 9, 11 and 13 (17 **Del.C.** §§131, 132 & 143; 26 **Del.C.** Ch. 9, 11 & 13)
2 **DE Admin. Code** 2401

ORDER

2401 Utilities Manual Regulations

Pursuant to the authority provided by 17 Del.C. §§131, 132 & 143; 26 Del.C. Ch. 9, 11 & 13, the Delaware Department of Transportation proposed to adopt changes to its regulation entitled the Utilities Manual Regulations.

The Department, through its Division of Transportation Solutions, published proposed revisions to the existing regulation, the Utilities Manual Regulations, seeking public comment through the public notice appearing in **26 DE Reg. 387 (11/01/22)**.

The Department indicated in its November 1, 2022 notice that it would accept written public comments on the proposed changes to the Utilities Manual Regulations from November 1, 2022 through December 1, 2022.

Summary of the Evidence and Information Submitted.

There were no comments received by the Department. Links to two additional appendices have been inserted to provide further clarity for the public where external content is cited, but the substance of the regulations remains the same. The proposed changes to the Utilities Manual Regulations intended to revise Regulation 2401 are procedural changes which are administrative and organizational in nature and serve in part to address recent updates to federal law and clarify the intent of the Department as enacted through these regulations.

Findings of Fact and Conclusions

Based on the record in this docket, I make the following findings of fact:

1. The proposed amendments to the Utilities Manual Regulations are useful and proper. The public comment period was appropriately held open for thirty days and no public comment was received.

2. The adoption of these proposed changes to the Utilities Manual Regulations is in the best interests of the State of Delaware. Having received no public comment, there is no basis upon which to further amend the regulation and

it is adopted as amended.

Decision and Effective Date

The Department hereby adopts the Regulations as proposed, to be effective January 11, 2023.

IT IS SO ORDERED this 14th day of December 2022.

Nicole Majeski, Secretary
Delaware Department of Transportation

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

<http://regulations.delaware.gov/register/january2023/final/26 DE Reg 618 01-01-23.htm>

GENERAL NOTICES

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))

GENERAL NOTICE

Secretary's Order No.: 2022-A-0024

**RE: Approving Final Revision to Delaware's State Implementation Plan ("SIP"):
Motor Vehicle Emissions Inspection Program; Plan for Implementation (PFI) for 7 DE Admin Code 1126 and
7 DE Admin. Code 1131; formally known as Delaware's Low Enhanced Inspection and Maintenance
Program, Plan for Implementation**

Date of Issuance: December 14, 2022

Effective Date of the Amendment: January 11, 2023

Low Enhanced Inspection and Maintenance Program; Plan for Implementation (PFI)

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 promulgation.

Background, Procedural History and Findings of Fact

This Order relates to the Department's proposed revision to Delaware's State Implementation Plan ("SIP") addressing the *Low Enhanced Inspection and Maintenance Program, Plan for Implementation (PFI)*. Delaware is required by Section 110 of the federal Clean Air Act ("CAA") to submit to the U.S. Environmental Protection Agency ("EPA") a SIP that provides for the implementation, maintenance, and enforcement of the National Ambient Air Quality Standard ("NAAQS") established by the EPA.

A SIP is a state plan that identifies how that state will attain and maintain air quality that conforms to each primary and secondary NAAQS. The SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and inventories. Delaware submitted its initial SIP to EPA in 1979. Delaware periodically submits revisions to the SIP as required by the CAA to address air quality nonattainment and maintenance issues. The CAA requires that any proposed SIP revision be made available for public comment and presented at a public hearing prior to submitting to EPA for adoption.

Delaware House Bill 246 ("HB246"), passed and signed into law in 2017, codified 21 *Del.C.* §2143, which expanded the model year exemption for vehicle safety and emissions testing from five to seven years. While the new law reduced vehicle inspections by 45,000 per year, it adversely increased vehicle emissions. The expanded vehicle exemption resulted in emissions increases of 19.2 tons per year in nitric oxide ("NO_x") and 15.3 tons per year in volatile organic compounds ("VOCs") for Kent and New Castle counties. Sussex County had an increase of 1.1 tons per year in VOCs, however there was no impact on NO_x emissions in this county.

As a result of HB246, the Department has determined it necessary to amend the I/M programs and the SIP to address the vehicle exemption, as well as offset the vehicle emission increases attributed to the exemption. The Department must submit revisions of Delaware's regulations pertaining to I/M to the EPA for review and approval, in accordance with Section 110(l) of the CAA. For SIP revisions that will or could potentially lead to a change in emissions or ambient concentrations of a pollutant or its precursors, the Section 110(l) demonstration should address all pollutants whose emissions and/or ambient concentrations may change as a result of the SIP revision.

The Department analyzed many scenarios, using EPA's Motor Vehicle Emission Simulator (MOVES) model, to offset emissions increases caused by HB246. It was concluded that by implementing a more stringent On-Board Diagnostic Test ("OBD") program in Sussex County, emissions could be reduced and be used to offset, in part, the emission increases attributed to the vehicle exemption. This conclusion is supported by the number of vehicles that travel each day between the three Delaware counties and the use of emission reductions from Sussex County can be applied to the increased emissions in Kent and New Castle counties.

The Department's amendments to 7 DE Admin. Code 1126 - *Motor Vehicle Emissions Inspection Program* ("Regulation 1126") and 7 DE Admin. Code 1131 - *Low Enhanced Emissions Inspection and Maintenance Program* ("Regulation 1131") will reduce vehicle emissions and assist in the equitable distribution of emission reductions responsibilities between New Castle, Kent and Sussex counties. The amendments to both Regulation 1126 and Regulation 1131 align with HB246, expand the inspection model year exemption from five to seven years and include additional language to clarify and prevent tampering of emission controls.

The Amendments to Regulation 1126 will require OBD for vehicles 1996 and newer with a weight of up to 8,500 pounds, replacing the current curb idle tailpipe test on vehicles in the same vehicle weight range. The amendment will require vehicles that weigh 8,501 up to 14,000 pounds gross vehicle weight, beginning with model year 2008, to undergo an OBD test. In addition to the curb idle tailpipe test, vehicle model years 1995 and older will be required to complete a gas cap pressure test. To obtain an emission waiver in Sussex County, the amendment will increase the cost repair requirement to achieve parity with New Castle County and Kent County by the year 2027. A phased-in schedule will include no change for pre-1981 model year repair costs, remaining at \$75.00, however for vehicle models 1981 and newer, the repair cost will increase to \$200 in years 2023-2023, and then to \$450 for years 2025-2026.

The Amendments to Regulation 1131 will add the OBD Test requirement for vehicles that weigh 8,501 up to 14,000 pounds gross vehicle weight, beginning with model year 2008. In addition, for vehicle model years 1981 through 1995, the current two speed curb idle tailpipe test will be discontinued and replaced by a curb idle tailpipe test. The tailpipe pipe test for vehicle model years 1968 through 1980 will remain unchanged. Vehicle model years 1975 through 1995 will also be required to complete a gas cap test, but the pressure integrity test of the vehicle's evaporative canister and fuel system will be removed.

The Department's revisions will also correct a mistake to the SIP that was approved by the EPA in 2006. The SIP was mistakenly included as a part of 7 DE Admin. Code 1100 and titled as 1131 *Low Enhanced Inspection and Maintenance Program; Plan for Implementation (PFI)* however the SIP should be a standalone document and separate from regulatory language. It should be noted, the SIP incorporates the State's vehicle I/M programs, including both Regulation 1131 and Regulation 1126. The Department finds it necessary to revise the title of the SIP, herein after referred to as, *Motor Vehicle Emissions Inspection Program; Plan for Implementation (PFI)* for 7 DE Admin Code 1126 and 7 DE Admin. Code 1131. The revisions to the SIP will enable the Department to demonstrate for review and approval by the EPA, the revisions to Delaware's regulations pertaining to I/M program in accordance with Section 110(l) of the CAA and incorporate the same into Delaware's SIP document.

The Department has the statutory basis and legal authority to act with regard to the proposed SIP revision pursuant to 7 *Del.C.* Chapter 60. The Department published the General Notice of this proposed SIP revision, and of the September 29, 2022 public hearing to be held in this matter, in the September 1, 2022 *Delaware Register of Regulations*. The Record remained open for comment subsequent to the aforementioned public hearing through October 14, 2022. No public comment was received by the Department during any phase of this hearing matter. All proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Theresa Newman, prepared a Hearing Officer's Report dated November 11, 2022 ("Report"). The Report documents the proper completion of the required SIP revision process, establishes the Record, and recommends the approval of the aforementioned proposed SIP revision into Delaware's SIP document, thus enabling the Department to provide EPA with the *Motor Vehicle Emissions Inspection Program; Plan for Implementation for 7 DE Admin Code 1126 and 7 DE Admin. Code 1131*, as attached to the Report as Appendix "A." Additionally, the Report strikes 7 DE Admin. Code 1131 *Low Enhanced Inspection and Maintenance Program; Plan for Implementation (PFI)* as attached to the Report as "Appendix "B".

Reasons and Conclusions

Based on the Record developed by the Department's experts and established by the Hearing Officer's Report, I find that the Department's proposed revision to Delaware's SIP addresses the *Motor Vehicle Emissions Inspection Program; Plan for Implementation for 7 DE Admin Code 1126 and 7 DE Admin. Code 1131*. I further find that the Department's experts in the Division of Air Quality fully developed the Record to support adoption of the proposed SIP revision as final. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the same be promulgated as final.

The following reasons and conclusions are hereby entered:

GENERAL NOTICES

1. The Department has the statutory basis and legal authority to act with regard to this proposed SIP revision, pursuant to 7 *Del.C.* Ch. 60;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Ch. 60, to issue an Order adopting this proposed SIP revision as final;
3. The Department provided adequate public notice of this proposed SIP revision, and all proceedings associated with the same, in a manner required by the law and regulations. The Department provided the public with an adequate opportunity to comment on the aforementioned proposed SIP revision, and held the Record open for receipt of public comment subsequent to the date of the hearing (through October 14, 2022), consistent with Delaware law, in order to consider the same before making any final decision;
4. The Department's Hearing Officer's Report, including its established Record and the recommended SIP revision as set forth in Appendix "A," is hereby adopted to provide additional reasons and findings for this Order;
5. Promulgation of the proposed SIP revisions will enable the Department to establish Delaware's *Motor Vehicle Emissions Inspection Program; Plan for Implementation for 7 DE Admin Code 1126 and 7 DE Admin. Code 1131*, in accordance with Section 110(l) of the CAA and strike 7 DE Admin. Code 1131 *Low Enhanced Inspection and Maintenance Program; Plan for Implementation (PFI)* in its entirety;
6. The Department's proposed SIP revision, as published in the September 1, 2022 *Delaware Register of Regulations*, and as set forth in Appendix "A" and "Appendix "B" as noted above, is adequately supported, is not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it is approved as a final revision to Delaware's SIP document, which shall become effective immediately upon the signing of this Order;
7. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and
8. The Department shall submit this Order approving as final the proposed Delaware SIP document to the *Delaware Register of Regulations* for publication in its next available issue and provide such other notice as the law and regulation require, and the Department determines is appropriate.

Shawn M. Garvin
Secretary

***Please note: Due to the size and formatting of the proposed amendments they are being attached as a PDF document:**

[http://regulations.delaware.gov/register/january2023/general/Appendix A - Proposed PFI_SIP \(003\).pdf](http://regulations.delaware.gov/register/january2023/general/Appendix A - Proposed PFI_SIP (003).pdf)

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 - DE7 Bear Christiana Road (N5)

November 29, 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 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" on DE7 Bear Christiana Road (N5) between DE273 Christiana Road (N3) and US40 Pulaski Highway (N32)

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 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 - Edgemoor Road (N220)

December 5, 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:

GENERAL NOTICES

§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" on Edgemoor Road (N220) between US13 Governor Printz Boulevard (N50) and Marsh Road (N23)

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 - Glen Berne Estates Subdivision

December 12, 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 Local Services" on all local streets in the Glen Berne Estates subdivision.

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 - Hillcrest Avenue (N499)

November 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:

GENERAL NOTICES

"No Trucks Over 2 Axles Except Local Services" on Hillcrest Avenue (N499) from US13 Philadelphia Pike (N24) to Brandywine Boulevard (N496)

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 - Lore Avenue (N100380)

November 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 Local Services" on Lore Avenue (N100380) between Marsh Road (N23) and Governor Printz Boulevard (N50)

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 - Marsh Road (N23)

November 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 Local Services" on Marsh Road (N23) between Edgemoor Road (N220) and Washington Street Extension (N43)

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 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 - Northbound Rogers Road (N369)**

December 2, 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 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" on northbound Rogers Road (N369) between SR9 New Castle Avenue (N19) and Hastie Drive (N24)

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 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 - Old Baltimore Pike (N26)

November 29, 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 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" on Old Baltimore Pike (N26) between DE72 South Chapel Street (N356) and DE273 Christiana Road (N3)

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

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 - SR34 Faulkland Road (N270)

December 12, 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 Local Services" on SR34 Faulkland Road (N270) between SR41 Newport Gap Pike (N21) and SR141 Centre Road (N271)

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 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 - US13 Governor Printz Boulevard (N50)

December 7, 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 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" on US13 Governor Printz Boulevard (N50) between Edgemoor Road (N220) and US13 Business Philadelphia Pike (N24)

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

**DEPARTMENT OF STATE
PUBLIC SERVICE COMMISSION**

Statutory Authority: 26 Delaware Code, Section 209(a)(1) and 29 Delaware Code, Section 10111(2) (26 **Del.C.** §209(a)(1) & 29 **Del.C.** §10111(2))
26 **DE Admin. Code** 1001

ERRATA**1001 Rules of Practice and Procedure of the Delaware Public Service Commission**

* **Please Note:** The Public Service Commission regulation, 26 **DE Admin. Code** 1001, Rules of Practice and Procedure of the Delaware Public Service Commission was published as proposed in the *Register of Regulations*, 26 **DE Reg.** 307 (10/01/22). The submitted amendment to subsection 1.7.1.3 was inadvertently omitted.

The subsection should have read:

1.7.1.3 Formal Complaints;

The regulation is published as final in the January 2023 *Register* with the inclusion of this amendment. See 26 **DE Reg.** 612 (01/01/23).

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 January 19, 2023.

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 MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Medicaid and CHIP coverage of COVID-19 Treatment, Vaccines, & Testing**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of 31 **Del. C.** §512, Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DHSS/DMMA) is proposing to amend Title XIX Medicaid State Plan and Title XXI CHIP State Plan regarding the coverage of COVID-19 treatment, vaccines, & testing. Specifically, to assure coverage of COVID-19 treatment, vaccines, vaccine administration, vaccine counseling, and testing consistent with the Centers for Disease Control and Prevention (CDC) definitions of screening, testing, and diagnosis for COVID-19 and its recommendations for who should receive diagnostic and screening tests for COVID-19 with no cost sharing for Medicaid and CHIP plans.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Planning and Policy Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to DHSS_DMMA_Publiccomment@Delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on January 31, 2023. Please identify in the subject line: CHIP ARP & COVID-19 Treatment, Vaccines & Testing.

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

DEPARTMENT OF INSURANCE**OFFICE OF THE COMMISSIONER****PUBLIC NOTICE****1404 Long-Term Care Insurance**

The proposed regulation appears below and may also be viewed on the Department of Insurance Website at <http://insurance.delaware.gov/information/proposedregs/>. The Department will not be holding a public hearing on the proposed regulation.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed regulation. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EDT, the 31st day of January, 2023 and should be directed to:

Alisa Pritchard, Regulatory Specialist
 Delaware Department of Insurance
 1351 West North Street, Suite 101
 Dover, DE 19904
 (302) 674-7379
 Email: DOI_Legal@delaware.gov

DEPARTMENT OF LABOR

DIVISION OF INDUSTRIAL AFFAIRS

Industrial Accident Board

PUBLIC NOTICE

1331 Industrial Accident Board Regulations

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 19 **Del.C.** §§105 and 2301A, the Delaware Department of Labor, Industrial Accident Board ("Board") proposes to modify 19 **DE Admin. Code** 1331, Section 9.0 regarding Pre-Trial Memorandums. The Industrial Accident Board administers and enforces the Workers Compensation Act ("Act") and related rules.

In accordance with 29 **Del.C.** §10116, persons wishing to submit written comments, suggestions, briefs, and compilations of data or other written materials concerning the proposed modifications to Rule No. 9 should direct them to the following address:

Allison Stein
 Delaware Department of Labor
 Division of Industrial Affairs / Office of Workers' Compensation
 4425 North Market Street, 3rd Floor
 Wilmington, DE 19802

Comments may also be directed via electronic mail to Allison.stein@Delaware.gov. Any written submission in response to this notice and relevant to the proposed rules must be received by the above contact at the Delaware Department of Labor no later than 4 p.m. EST, January 31, 2023.

The action concerning determination of whether to adopt the proposed changes to this rule will be based upon the Board's consideration of the written comments and any other written materials filed by the public.

DEPARTMENT OF STATE

PUBLIC SERVICE COMMISSION

PUBLIC NOTICE

1002 Minimum Filing Requirements for All Regulated Companies Subject to the Jurisdiction of the Public Service Commission

IN THE MATTER OF THE REGULATION
 ESTABLISHING THE MINIMUM FILING
 REQUIREMENTS FOR ALL REGULATED
 COMPANIES SUBJECT TO THE JURISDICTION
 OF THE PUBLIC SERVICE COMMISSION
 (REOPENED DECEMBER 14, 2022)

PSC REGULATION DOCKET NO. 4

In 1981, the Delaware Public Service Commission (the "Commission" or "PSC") adopted "Minimum Filing Requirements for All Regulated Companies" to govern applications to the Commission by regulated public utilities.

Parts A of the Minimum Filing Requirements describe the filing and content of rate increase applications made by large utilities subject to the Commission's jurisdiction. These portions of the Minimum Filing Requirements are reproduced in their present form as Exhibit "B".

Rate increase applications submitted to the Commission are reviewed and evaluated by the Commission's Staff for the justness and reasonableness of the rates proposed. The Commission is informed by Staff that, in recent years, the frequency and number of such applications has increased significantly, resulting in a corresponding increase in the administrative burdens associated with Staff's review. Staff has also identified certain practices that tend to add significantly and unreasonably to these administrative burdens. According to Staff, these practices typically involve changes made by the utility to data on which the application relies, including changes to the test year (as that term is used in the Minimum Filing Requirements) and changes in rate base items, expenses, or revenues. Staff contends that the burden occasioned by such practices is most severe where multiple and material changes are made at different points in time during the pendency of a single application. Staff further contends that, where such changes are sought, they are often of a type that is avoidable through the applicant's exercise of ordinary diligence in preparing its rate increase application.

Staff now seeks certain changes and additions to Parts A to the Minimum Filing Requirements that are designed to curtail the undesirable practices. In this way, the efficiency of the rate review process will be increased, and its administrative burdens reduced. The text of the proposed Minimum Filing Requirements, as modified by Staff's changes and additions, is attached as Exhibit "C". The Commission has authority to issue such rules, and to effect the proposed changes and additions, under 26 *Del. C.* § 209(a).

Copies of the filing may be inspected at the Commission during normal business hours, or may be viewed by going to Delafile (<http://depsec.delaware.gov/>), the Commission's file management system, and by searching Reg. 4.

The Commission hereby solicits written comments, suggestions, compilations of data, briefs, or other written materials concerning Staff's proposed changes and additions to the Minimum Filing Requirements. These such materials shall be filed with the Commission in Delafile or can be mailed to its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware 19904. Public comment will be accepted through March 3, 2023. In addition, the Commission's duly appointed Hearing Examiner will conduct a public hearing concerning Staff's proposed changes and additions on February 16, 2023 at 10:00 AM in the Commission's hearing room at the above address. **To be considered at the public hearing, all such materials shall be filed on or before February 1, 2023.**

The Minimum Filing Requirements, Staff's proposed changes and additions to the same, and the materials submitted in connection therewith will be available for public inspection and copying at the Commission's Dover office during normal business hours. The fee for copying is \$0.25 per page.

Any individual with disabilities who wishes to participate in these proceedings should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, telephonically (including use of the Telecommunications Relay Service), or otherwise. The Commission's toll-free telephone number in Delaware is (800) 282-8574. Persons with questions concerning this application may contact the Commission by either Text Telephone ("TT") or by regular telephone at (302) 736-7500.

OFFICE OF THE CHILD ADVOCATE

PUBLIC NOTICE

Driver Education, Driver's License, and Motor Vehicle Insurance Program for Individuals who have Experienced Foster Care

A. TYPE OF REGULATORY ACTION REQUIRED

Enactment of New Regulations

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 29 *Del.C.* §9011A, the Office of the Child Advocate ("Office") proposes to enact regulations regarding the administration of the Driver Education, Driver's License, and Motor Vehicle Insurance Program. This

program was established by the General Assembly in June 2022 to assist youth and young adults who have experienced foster care to overcome barriers to obtaining a driver's license and motor vehicle insurance. The costs of driver education, costs incidental to obtaining a driver's license, and motor vehicle insurance for an individual who has experienced foster care serve as an additional barrier to gaining independence and engaging in normal, age-appropriate activities and limit opportunities for obtaining employment and completing educational goals. It is the intent and purpose of the General Assembly to establish a program to help pay these costs for eligible individuals who have experienced foster care in Delaware. This program is administered by the Office of the Child Advocate. This is the first time regulations for this program have been submitted.

There will be no Public Hearing regarding these regulations, but Public Comments can be sent by email to: oca.scholarships@delaware.gov.

Public comments will be accepted until February 1st, 2023.
