
Delaware Register of Regulations

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Volume 26 - Issue 12, Pages 979-1089



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Proposed
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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 May 15, 2023.

Cover Photo

Lewes Beach

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INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
July 1	June 15	4:30 p.m.
August 1	July 15	4:30 p.m.
September 1	August 15	4:30 p.m.
October 1	September 15	4:30 p.m.
November 1	October 15	4:30 p.m.
December 1	November 15	4:30 p.m.

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The regulations are listed alphabetically by the promulgating agency, followed by a citation to that issue of the *Register* in which the regulation was published. Proposed regulations are designated with (Prop.); Final regulations are designated with (Final); Emergency regulations are designated with (Emer.); and regulations that have been repealed are designated with (Rep.).

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3541 Atlantic Sharks.....	26 DE Reg. 220 (Final)
3591 American Shad and Hickory Shad Creel Limits.....	26 DE Reg. 325 (Final)
3592 Atlantic Ocean American Shad Season and Closure.....	26 DE Reg. 325(Final)
3593 Minimum Thread, Twine, or Monofilament Diameter for Anchored Gill Nets	26 DE Reg. 325 (Final)

DEPARTMENT OF SAFETY AND HOMELAND SECURITY**Delaware Council on Police Training**

801 Regulations of the Delaware Council on Police Training.....	26 DE Reg.222(Final)
	26 DE Reg.223(Final)

Office of Highway Safety

1203 Ignition Interlock Device Installation, Removal and Monthly Monitoring and Calibration Fees.....	26 DE Reg. 40 (Prop.)
1205 Electronic Red Light Safety Program (ERLSP).....	26 DE Reg. 63 (Final)

Office of the Alcoholic Beverage Control Commissioner

Rule 705 - Expansion of Outdoor Seating: Procedures, Standards and Fees...	26 DE Reg. 57 (Final)
Rule 910 (Formerly Rule Number 33) A Rule Defining And Regulating The Quantities Of Sales And Methods Of Deliveries Of Certain Off-premises Sales By Licensees.....	26 DE Reg. 59 (Final)
Rule 1202 (Formerly Rule 7.1) Employment of Persons Who Have Reached the Age of 18 Years in Package Stores.....	26 DE Reg. 62 (Final)

Office of the Secretary

103 Regulations Governing the Delaware Large Capacity Magazine Compensation Program.....	26 DE Reg.165(Prop.)
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State Police

1301 Nonconsensual Towing.....	26 DE Reg. 42 (Prop.)
	26 DE Reg.304(Prop.)
	26 DE Reg. 708(Final)

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH & THEIR FAMILIES**Division of Prevention and Behavioral Health Services**

701 Qualifications for Juvenile Mental Health Screeners.....	26 DE Reg.305(Prop.)
	26 DE Reg. 611(Final)

DEPARTMENT OF STATE**Division of Professional Regulation**

1400 Board of Electrical Examiners.....	26 DE Reg. 43 (Prop.)
	26 DE Reg.491(Final)
1800 Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners.....	26 DE Reg.759(Prop.)
1900 Board of Nursing.....	26 DE Reg. 96 (Prop.)
	26 DE Reg.325 (Final)
	26 DE Reg.824(Prop.)
	26 DE Reg.683(Prop.)
2000 Board of Occupational Therapy Practice.....	26 DE Reg.825(Prop.)
2100 Board of Examiners in Optometry.....	26 DE Reg. 64 (Final)
2500 Board of Pharmacy.....	26 DE Reg.306(Prop.)
	26 DE Reg.768(Final)
	26 DE Reg.934(Prop.)
3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals.....	26 DE Reg.771(Final)
3300 Board of Veterinary Medicine.....	26 DE Reg.935(Prop.)
4100 Board of Home Inspectors.....	26 DE Reg.329 (Final)
	26 DE Reg.825(Prop.)
5100 Board of Cosmetology and Barbering.....	26 DE Reg.760(Prop.)
5300 Board of Massage and Bodywork.....	26 DE Reg.330 (Final)
	26 DE Reg.827(Prop.)
Public Service Commission	
1001 Rules of Practice and Procedures of the Delaware Public Service Commission.....	26 DE Reg.307(Prop.)
	26 DE Reg. 612(Final)
	26 DEReg.632(Errata)

1002 Minimum Filing Requirements for All Regulated Companies Subject to the Jurisdiction of the Public Service Commission.....	26 DE Reg.542(Prop.)
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DEPARTMENT OF TRANSPORTATION**Division of Motor Vehicles**

2203 Implied Consent and Administrative Per Se Other Administrative Hearings of Record (Formerly Reg. No. 17).....	26 DE Reg.167 (Prop.) 26 DE Reg.492 (Final)
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Division of Transportation Solutions

2401 Utilities Manual Regulations.....	26 DE Reg. 618(Final)
2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual.....	26 DE Reg.170 (Prop.) 26 DE Reg. 829(Prop.)

OFFICE OF THE CHILD ADVOCATE

904 Driver Education, Driver's License, and Motor Vehicle Insurance Program for Individuals who have Experienced Foster Care.....	26 DE Reg. 544(Prop.) 26 DE Reg. 772(Final)
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DEPARTMENT OF TRANSPORTATION
DIVISION OF TRANSPORTATION SOLUTIONS

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

ERRATA

2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual

* **Please Note:** The Department of Transportation, Division of Transportation Solutions, regulation, 2 **DE Admin. Code** 2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual, was published as proposed in the *Delaware Register of Regulations*, 26 **DE Reg.** 829 (04/01/23). A submitted amendment to subsection 1.2.4 was inadvertently not included. In addition, an amendment to subsection 4.6.1.6 was inadvertently not underlined in the April Register.

Subsection 1.2.4 should have read:

- 1.2.4 A permit shall be required for movement on the highways of the State of Delaware when any vehicle, vehicle combination, vehicle and load combination, ~~and/or~~ or equipment or machinery being moved under its own power exceeds the dimensional ~~and/or~~ or weight limits set forth in Chapter 45, Title 21 of the Delaware Code. The limitations are described in Section 2.0 of this ~~Manual~~ regulation.

Subsection 4.6.1.6 should have read:

- 4.6.1.6 Two (~~2~~) escort vehicles are required for vehicles and loads ~~fifteen~~ 15 feet (~~15'~~) or more in height. One (~~1~~) escort vehicle shall be in front of the over height vehicle or load and ~~one~~ (~~1~~) 1 behind. A separate state police escort (third escort) is required for vehicles and loads ~~seventeen~~ 17 feet - ~~six~~ 6 inches (~~17'-6"~~) or more in height.

2 **DE Admin. Code** 2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual was previously published as proposed in September 2022 and final in November 2022. The numbering in subsection 4.5.4.2 was inadvertently published incorrectly.

Subsection 4.5.4.2 was published as:

- 4.5.4.2 The lists of permanently and temporarily restricted routes can be found on DeIDOT's website at the following locations:
- 4.5.4.2.1 Permanently Restricted Routes: <https://www.deldot.gov/osow/application/permrestrictions>
- 4.5.4.2.2 Temporarily Restricted Routes: <https://www.deldot.gov/osow/application/temprestrictions>
- 4.5.4.2.3 The Department reserves the right to route vehicles to a permanently or temporarily restricted route on a case-by-case basis.
- 4.5.4.2.4 The Department also reserves the right to change the list of permanently ~~and/or~~ or temporarily restricted routes at any time without notice to the permittee.

Subsection 4.5.4.2 should have read:

- 4.5.4.2 The lists of permanently and temporarily restricted routes can be found on DeIDOT's website at the following locations:
- 4.5.4.2.1 Permanently Restricted Routes: <https://www.deldot.gov/osow/application/permrestrictions>
- 4.5.4.2.2 Temporarily Restricted Routes: <https://www.deldot.gov/osow/application/temprestrictions>

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- 4.5.4.3 The Department reserves the right to route vehicles to a permanently or temporarily restricted route on a case-by-case basis.
 - 4.5.4.4 The Department also reserves the right to change the list of permanently ~~and/or~~ or temporarily restricted routes at any time without notice to the permittee.

This regulation is being published as a final regulation in the June 2023 *Register*.

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, Sections 122(b)(15) and 303 (14 **Del.C.** §§122(b)(15) & 303)

14 **DE Admin. Code** 1043

PUBLIC NOTICE

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

1043 Officials

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 **Del.C.** §§122(b)(15) and 303, the Delaware Interscholastic Athletic Association Board of Directors ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1043 Officials. The regulation concerns the requirements for DIAA-recognized officials' associations, requirements for officials who officiate at DIAA Member Schools, and the fees for officiating contests and competitions. The Board proposes to strike the reference to the current school year and amend the rates for officiating regular season contests in subsection 5.1; amend the fee for traveling in subsection 5.2; and amend the fees for officiating scrimmages in subsection 5.3.

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 July 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 pertains to officials 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 pertains to officials and is not designed to help to ensure students in Delaware public schools receive an equitable education.
3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation does not change the requirement that officials complete a course regarding concussion in sports, which is designed to help ensure that 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 pertains to officials and is not designed to help ensure 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 does not change authority or flexibility of decision makers at the local board and school level. By statute (14 **Del.C.** § 303(b)), DIAA develops rules and regulations relating to middle and secondary school interscholastic athletics for schools in Delaware, including the regulation of athletic programs of all public schools and such nonpublic schools that elect to become full or associate DIAA Member Schools. The Board enforces the regulations (14 **Del.C.** §304).
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.
7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Board enforces the regulations relating to interscholastic athletics in Delaware (14 **Del.C.** §304).
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 amended regulation? In accordance with 14 **Del.C.** §304(6), the Board establishes the fees for officiating contests and competitions at DIAA Member Schools. The proposed amendments to the fees are based on a presentation that was delivered to the Board on April 20, 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/june2023/proposed/26 DE Reg 994RFA 06-01-23.pdf>

1043 Officials
(Break in Continuity of Sections)

5.0 Fees for Officiating Contests and Competitions

- 5.1 Pursuant to 14 **Del.C.** §304(6), the Board has established the following fees for officiating regular season contests and Competitions for the 2022-23 school year. The Board has the authority to review and amend the fees.

Sport	Level	Number of Officials per Contest	Time Adjustment	Rate per Official (Regular Season Contests)

PROPOSED REGULATIONS

Baseball	Varsity	2		\$84 <u>\$95</u>
	Subvarsity	2		\$58 <u>\$70</u>
	Middle School	2		\$57 <u>\$60</u>
Basketball	Boys' Varsity	3, or 2 if mutually agreed upon request		\$84 <u>\$95</u>
	Girls' Varsity	2, or 3 upon request		\$84 <u>\$95</u>
	Subvarsity	2	8 minute quarters	\$67 <u>\$70</u>
	Subvarsity	2	7 minute quarters	\$62 <u>\$70</u>
	Subvarsity	2	6 minute quarters	\$58 <u>\$70</u>
	Middle School	2	6 minute quarters	\$57 <u>\$60</u>
Cross Country	Starter/Referee	Upon request		\$75 <u>\$80</u>
	Timer/Judge	Upon request		\$72 <u>\$80</u>
Field Hockey	Varsity	2		\$84 <u>\$95</u>
	Subvarsity	2		\$58 <u>\$70</u>
	Middle A	2	25 minute halves	\$57 <u>\$60</u>
	Middle B	2	25 minute or less halves at the Member School's discretion	\$57 <u>\$60</u>
Football	Varsity	5		\$84 <u>\$95</u>
	Timer	1		\$58 <u>\$60</u>
	Subvarsity	3	8 or 10 minute quarters	\$58 <u>\$70</u>
	Middle School	3	8 minute quarters	\$57 <u>\$60</u>
Lacrosse (Boys' and Girls')	Varsity	2, or 3 if requested		\$84 <u>\$95</u>
	Subvarsity	2		\$58 <u>\$70</u>
	Middle School	2		\$57 <u>\$60</u>
Soccer (Boys' and Girls')	Varsity	2, or 3 if requested		\$84 <u>\$95</u>
	Subvarsity	2		\$58 <u>\$70</u>
	Subvarsity	3		\$50 <u>\$60</u>
	Middle A	2	30 minute halves	\$57 <u>\$60</u>
	Middle B	2	30 minute or less halves	\$57 <u>\$60</u>
Softball	Varsity	2		\$84 <u>\$95</u>
	Subvarsity	2		\$58 <u>\$70</u>
	Middle School	2		\$57 <u>\$60</u>

Swimming and Diving	Referee	1		\$75 \$80
	Judge	1		\$72 \$80
Track and Field	Starter/Referee	Upon request		\$75 \$80
	Timer/Judge	Upon request		\$72 \$80
Volleyball (Boys' and Girls')	Varsity	2		\$84 \$95
	Linesman	2 by request		\$43 \$45
	Subvarsity	2		\$58 \$70
	Middle School	2		\$57 \$60
Wrestling	Varsity	1		\$84 \$95
	Subvarsity	1		\$58 \$70
	Varsity+	1		\$84 \$95 , then \$6 \$5 per match, up to 7 9 matches; not to exceed \$42 \$45
	Middle School	1		\$57 \$60
	Middle+	1		\$57 \$60 , then \$5 per match, up to 7 9 matches; not to exceed \$35 \$45

5.2 Pursuant to 14 **Del.C.** §304(6), the fee for traveling to and from contests and Competitions shall be ~~\$10 for each county or state line an official crosses~~ \$0 for 0 to 15 miles, \$5 for 16 to 40 miles, \$10 for 41 to 60 miles, and \$20 for 61 or more miles from the official's residence.

5.3 Pursuant to 14 **Del.C.** §304(6), the fees for officiating a Scrimmage shall be as follows:

Sport	Standard Crew Size	Scrimmage Fee (60% for each 2.0 hours per hour up to 2 hours)
Baseball	2	\$400 \$57 (\$114 total)
Basketball - Boys'	3	\$450 \$57 (\$114 total)
Basketball - Girls'	2	\$400 \$57 (\$114 total)
Field Hockey	2	\$400 \$57 (\$114 total)
Football	5	\$250 \$57 (\$114 total)
Lacrosse - Boys' and Girls'	2	\$400 \$57 (\$114 total)
Soccer - Boys' and Girls'	2	\$400 \$57 (\$114 total)
Softball	2	\$400 \$57 (\$114 total)

PROPOSED REGULATIONS

Swimming	2	\$100 \$48 (\$96 total)
Volleyball - Boys' and Girls'	2	\$100 \$57 (\$114 total)
Wrestling	1	\$50 \$57 (\$114 total)

- 5.4 For the purpose of determining the fee for officiating a Play Day, each court or field is considered a single scrimmage.
- 5.5 The fee for state tournament contests and Competitions shall be the rate at the varsity level as provided in subsection 5.1 and an additional:
- 5.5.1 \$5 for first, second, and quarterfinal rounds of Competition.
- 5.5.2 \$10 for the semi-final round of Competition.
- 5.5.3 \$15 for the final or championship contest.
- 5.6 The Officials' Committee shall work with the Executive Director to help determine the fee amount for officiating a state tournament contest.

***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/june2023/proposed/26 DE Reg 994 06-01-23.htm>

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), and 1210 (14 Del.C. §§1203, 1205(b), & 1210)
14 DE Admin. Code 1510

PUBLIC NOTICE

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

1510 Initial License

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§1203, 1205(b), and 1210, the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1510 Initial License. The regulation sets forth the requirements for issuance and retention of an educator's Initial License. The proposed amendments include amending and striking terms in Section 2.0; revising subsections 3.1.2 and 3.1.4; amending Section 4.0, which concerns the requirements for an Initial License; amending Section 5.0, which provides reciprocity requirements; amending Section 6.0, which concerns expired Delaware educators' licenses; amending Section 7.0, which concerns application requirements; amending Section 9.0, which concerns the validity of an Initial License, and adding the requirements for placement on active and inactive status; removing the performance assessment requirement in Section 15.0; and adding Section 17.0, which concerns applicants' and Educators' contact information with the Department and specifies how they can change their name or address. The proposed amendments are consistent with HB 315 w/ HA 2 of the 151st General Assembly, which was signed into law on August 4, 2022.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department, 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 July 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 requirements in Sections 4.0, 5.0, 6.0, and 12.0 are designed to improve the quality of the educator workforce, which will help to improve student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The requirements in Sections 4.0, 5.0, 6.0, and 12.0 are designed to improve the quality of the educator workforce, which will help to ensure students in Delaware public schools receive an equitable education.

3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation addresses the issuance and retention of an Initial License and is not designed to help ensure students' health and safety is protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses the issuance and retention of an Initial License and is not designed to help ensure 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 does not change the authority and flexibility of decision makers at the local board and school level. By statute (14 **Del.C.** § 1224), a school district or charter school may request that the Secretary of Education review the credentials of an applicant who does not meet the requirements for the Initial License but whose effectiveness is documented by the district or school. The amended regulation does not change a school district or charter school's ability to submit such a request. Proposed Section 8.0 (which is based on existing Section 11.0) is consistent with 14 **Del.C.** § 1224.

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 application requirements in Section 7.0 apply to individual applicants. In addition, the requirements in proposed Section 17.0 apply to individual applicants and Educators.

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

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

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

10. What is the cost to the state and to the local school boards of compliance with the amended regulation? There is no expected cost to the state or to the local school boards of complying with 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/june2023/proposed/26 DE Reg 998RFA 06-01-23.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/june2023/proposed/26 DE Reg 998 06-01-23.htm>

PROFESSIONAL STANDARDS BOARD

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

PUBLIC NOTICE**Educational Impact Analysis Pursuant to 14 Del. C. §122(d)****1585 School Behavior Analyst****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), and 1220, the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed 14 **DE Admin. Code** 1585 School Behavior Analyst. The proposed regulation concerns the requirements for a School Behavior Analyst Standard Certificate in accordance with 14 **Del.C.** §1220. Proposed Section 1.0 provides who would be required to hold the School Behavior Analyst Standard Certificate; Section 2.0 provides definitions for the proposed regulation; Section 3.0 concerns the issuance of a School Behavior Analyst Standard Certificate; Section 4.0 provides the prescribed education, knowledge, and skill requirements for the issuance of a School Behavior Analyst Standard Certificate; Section 5.0 provides the application requirements; Section 6.0 concerns Secretary of Education review; Section 7.0 concerns the validity of a School Behavior Analyst Standard Certificate; Section 8.0 concerns the requirements to retain the School Behavior Analyst Standard Certificate; Section 9.0 concerns disciplinary actions; and Section 10.0 concerns applicants' and Educators' contact information with the Department and specifies how they can change their name or address.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department, 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 July 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 new regulation help improve student achievement as measured against state achievement standards? The education, knowledge, and skill requirements in proposed Section 4.0 are designed to improve the quality of the educator workforce, which will help to improve student achievement.

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

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

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

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

6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The proposed new regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels. The application requirements in Section 5.0 apply to individual applicants. In addition, the requirements in Section 10.0 apply to individual applicants and Educators.

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

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

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

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

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

<https://regulations.delaware.gov/register/june2023/proposed/26 DE Reg 1000RFA 06-01-23.pdf>

1585 School Behavior Analyst

1.0 Content

This regulation shall apply to the issuance of a School Behavior Analyst Standard Certificate pursuant to 14 Del.C. §1220(a). The School Behavior Analyst Standard Certificate is required for all behavior analysts who provide behavior analytic services in Delaware public schools. The School Behavior Analyst Standard Certificate is not required for educators who provide behavior analytic services in the course of their work and are licensed and certified to practice in other areas such as, but not limited to, teachers or school psychologists. Applied Behavior Analysis Technicians (ABATs), Board Certified Assistant Behavior Analyst (BCaBA), Qualified Autism Service Practitioner - Supervisors (QASP-Ss), and Registered Behavior Technicians (RBTs) are not eligible to hold the School Behavior Analyst Standard Certificate.

2.0 Definitions

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

"Department" means the Delaware Department of Education.

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

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

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

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

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

"Standard Certificate" means a credential issued to certify that an educator has the prescribed

knowledge, skill or education to practice in a particular area, teach a particular subject, or teach a category of students.

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

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

3.0 Issuance of a Standard Certificate

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

4.0 Prescribed Education, Knowledge, and Skill Requirements

- 4.1 An applicant for a School Behavior Analyst Standard Certificate shall have satisfied the requirement in subsection 4.1.1.
- 4.1.1 The applicant shall hold 1 of the certifications in subsections 4.1.1.1 through 4.1.1.2.
- 4.1.1.1 The applicant holds a Board Certified Behavior Analyst (BCBA) certification issued by the Behavior Analyst Certification Board.
- 4.1.1.2 The applicant holds a Qualified Behavior Analyst (QBA) issued by the Qualified Applied Behavior Analysis Credentialing Board.

5.0 Application Requirements

- 5.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with the application for the Initial License, and the applicant shall also provide all required documentation for the License.
- 5.2 If the applicant is also applying for the issuance or renewal of an educator's license or paraeducator's permit, the applicant must disclose the applicant's criminal conviction history upon application. Failure to disclose a criminal conviction history is grounds for denial of the license or permit application as specified in 14 Del.C. §1219 and it could delay the processing or result in the denial of the application for a School Behavior Analyst Standard Certificate.
- 5.3 For applicants who are applying for the School Behavior Analyst Standard Certificate under subsection 3.1.1, the following documentation is required:
- 5.3.1 Proof the applicant holds 1 of the certificates listed in subsection 4.1.1; and
- 5.3.2 Additional documentation as required by the Department.
- 5.4 For applicants who are applying for the School Behavior Analyst Standard Certificate under subsection 3.1.2, the following documentation is required:
- 5.4.1 An official copy of the Valid and Current License or Certificate; and
- 5.4.2 Additional documentation as required by the Department.

6.0 Secretary of Education Review

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

7.0 Validity of a Standard Certificate

- 7.1 A School Behavior Analyst Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.
- 7.2 A School Behavior Analyst Standard Certificate is not subject to renewal.

8.0 Requirements Related to Retention of the School Behavior Analyst Standard Certificate

- 8.1 In order to retain a School Behavior Analyst Standard Certificate, the Educator shall:
 - 8.1.1 Hold an Initial, Continuing, or Advanced License and meet any requirements related to retention of the license.
 - 8.1.2 Maintain the Educator's certification issued by the Behavior Analyst Certification Board or the Qualified Applied Behavior Analysis Credentialing Board.
- 8.2 If an Educator fails to meet any of the requirements related to retaining a School Behavior Analyst Standard Certificate, the Educator shall immediately notify the Department in writing.
- 8.3 The requirements set forth in subsection 8.1 apply to all Educators regardless of the date the School Behavior Analyst Standard Certificate was issued.

9.0 Disciplinary Action

- 9.1 An Educator's School Behavior Analyst Standard Certificate may be revoked, suspended, or limited for cause as provided in 14 **DE Admin. Code** 1514 Limitation, Suspension, and Revocation of Licenses, Certificates, and Permits or for the Educator's failure to comply with the requirements related to the retention of the School Behavior Analyst Standard Certificate as provided in Section 8.0.
- 9.2 An Educator's School Behavior Analyst Standard Certificate shall be revoked if the Educator's Initial, Continuing, or Advanced License or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's application in accordance with 14 **Del.C.** §1222.
- 9.3 An Educator whose certificate is noticed for disciplinary action is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with 14 **DE Admin. Code** 1515 Hearing Procedures and Rules.

10.0 Contact Information and Change of Name or Address

- 10.1 All applicants and Educators are required to update their contact information in DEEDS if their contact information changes.
- 10.2 An Educator who legally changes the Educator's name and wishes to change the name on the School Behavior Analyst Standard Certificate shall provide a notarized copy of evidence of the name change such as a marriage license or court action.
- 10.3 An applicant or Educator whose mailing address, email address, or phone number changes shall provide the Department with the new mailing address, email address, or phone number within 14 calendar days of the change.

PROFESSIONAL STANDARDS BOARD

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

PUBLIC NOTICE**Educational Impact Analysis Pursuant to 14 Del. C. §122(d)****1586 School Behavior Analyst Assistant****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), and 1220, the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed 14 **DE Admin. Code** 1586 School Behavior Analyst Assistant. The proposed regulation concerns the requirements for a School Behavior Analyst Assistant Standard Certificate in accordance with 14 **Del.C.** §1220. Proposed Section 1.0 provides who would be required to hold the School Behavior Analyst Assistant Standard Certificate; Section 2.0 provides definitions for the proposed regulation; Section 3.0 concerns the issuance of a School Behavior Analyst Assistant Standard Certificate; Section 4.0 provides the prescribed education, knowledge, and skill requirements for the issuance of a School Behavior Analyst Assistant Standard Certificate; Section 5.0 provides the application requirements; Section 6.0 concerns Secretary of Education review; Section 7.0 concerns the validity of a School Behavior Analyst Assistant Standard Certificate; Section 8.0 concerns the requirements to retain the School Behavior Analyst Assistant Standard Certificate; Section 9.0 concerns disciplinary actions; and Section 10.0 concerns applicants' and Educators' contact information with the Department and specifies how they can change their name or address.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department, 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 July 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 new regulation help improve student achievement as measured against state achievement standards? The education, knowledge, and skill requirements in proposed Section 4.0 are designed to improve the quality of the educator workforce, which will help to improve student achievement.

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

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

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

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

Section 6.0 is consistent with the statute.

6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The proposed new regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels. The application requirements in Section 5.0 apply to individual applicants. In addition, the requirements in Section 10.0 apply to individual applicants and Educators.

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

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

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

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

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

<https://regulations.delaware.gov/register/june2023/proposed/26 DE Reg 1004RFA 06-01-23.pdf>

1586 School Behavior Analyst Assistant

1.0 Content

This regulation shall apply to the issuance of a School Behavior Analyst Assistant Standard Certificate pursuant to 14 **Del.C.** §1220(a). The School Behavior Analyst Assistant Standard Certificate is required for all behavior analyst assistants who provide behavior analytic services in Delaware public schools. Educators who hold a School Behavior Analyst Assistant Standard Certificate shall be supervised by educators who hold a School Behavior Analyst Standard Certificate (14 **DE Admin. Code** 1585). The School Behavior Analyst Assistant Standard Certificate is not required for educators who provide behavior analytic services in the course of their work and are licensed and certified to practice in other areas such as, but not limited to, teachers or school psychologists. Applied Behavior Analysis Technicians (ABATs), Board Certified Behavior Analyst (BCBAs), Qualified Behavior Analysts (QBAs), and Registered Behavior Technicians (RBTs) are not eligible to hold the School Behavior Analyst Standard Certificate.

2.0 Definitions

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

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

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

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

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

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

"**Regionally Accredited**" means educational accreditation by a regional accrediting agency that is

recognized by the U.S. Secretary of Education as a reliable authority concerning the quality of education offered by the institutions of higher education it accredits, including Middle States Commission on Higher Education.

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

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

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

3.0 Issuance of a Standard Certificate

3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a School Behavior Analyst Assistant Standard Certificate to an applicant who:

3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003 and meets the requirements set forth in Section 4.0 of this regulation;

3.1.2 Has met the requirements for an educator's license in Delaware and presents proof of a Valid and Current License or Certificate as a school behavior analyst assistant issued by another state or jurisdiction.

3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for a School Behavior Analyst Assistant Standard Certificate if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the allegations include but are not limited to conduct such as Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials until the applicant provides evidence of the investigation's resolution.

4.0 Prescribed Education, Knowledge, and Skill Requirements

4.1 An applicant for a School Behavior Analyst Assistant Standard Certificate shall have satisfied the requirement in subsection 4.1.1.

4.1.1 The applicant shall hold 1 of the certifications in subsections 4.1.1.1 through 4.1.1.2.

4.1.1.1 The applicant holds a Board Certified Assistant Behavior Analyst (BCaBA) certification issued by the Behavior Analyst Certification Board.

4.1.1.2 The applicant holds a Qualified Autism Service Practitioner – Supervisor (QASP-S) issued by the Qualified Applied Behavior Analysis Credentialing Board.

5.0 Application Requirements

5.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with the application for the Initial License, and the applicant shall also provide all required documentation for the License.

5.2 If the applicant is also applying for the issuance or renewal of an educator's license or paraeducator's permit, the applicant must disclose the applicant's criminal conviction history upon application. Failure to disclose a criminal conviction history is grounds for denial of the license or permit application as specified in 14 Del.C. §1219 and it could delay the processing or result in the denial of the application for a School Behavior Analyst Assistant Standard Certificate.

5.3 For applicants who are applying for the School Behavior Analyst Assistant Standard Certificate under subsection 3.1.1, the following documentation is required:

5.3.1 Proof the applicant holds 1 of the certificates listed in subsection 4.1.1; and

5.3.2 Additional documentation as required by the Department.

5.4 For applicants who are applying for the School Behavior Analyst Assistant Standard Certificate under subsection 3.1.2, the following documentation is required:

5.4.1 An official copy of the Valid and Current License or Certificate; and

5.4.2 Additional documentation as required by the Department.

6.0 Secretary of Education Review

6.1 The Secretary of Education may, upon the written request of a local school district or charter school, review credentials submitted in an application for a School Behavior Analyst Assistant Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a School Behavior Analyst Assistant Standard Certificate but whose effectiveness is documented by the local school district or charter school.

6.1.1 For school districts, requests shall be approved by the superintendent of the school district.

6.1.2 For charter schools, requests concerning the head of school of the charter school shall be approved by the charter school's board of directors and requests concerning all other applicants shall be approved by the charter school's head of school.

7.0 Validity of a Standard Certificate

7.1 A School Behavior Analyst Assistant Standard Certificate is valid regardless of the assignment or employment status of the holder provided that the Educator's License remains current and valid.

7.2 A School Behavior Analyst Assistant Standard Certificate is not subject to renewal.

8.0 Requirements Related to Retention of the School Behavior Analyst Assistant Standard Certificate

8.1 In order to retain a School Behavior Analyst Assistant Standard Certificate, the Educator shall:

8.1.1 Hold an Initial, Continuing, or Advanced License and meet any requirements related to retention of the license.

8.1.2 Maintain the Educator's certification issued by the Behavior Analyst Assistant Certification Board or the Qualified Applied Behavior Analysis Credentialing Board.

8.2 If an Educator fails to meet any of the requirements related to retaining a School Behavior Analyst Assistant Standard Certificate, the Educator shall immediately notify the Department in writing.

8.3 The requirements set forth in subsection 8.1 apply to all Educators regardless of the date the School Behavior Analyst Assistant Standard Certificate was issued.

9.0 Disciplinary Action

9.1 An Educator's School Behavior Analyst Assistant Standard Certificate may be revoked, suspended, or limited for cause as provided in 14 DE Admin. Code 1514 Limitation, Suspension, and Revocation of Licenses, Certificates, and Permits or for the Educator's failure to comply with the requirements related to the retention of the School Behavior Analyst Assistant Standard Certificate as provided in Section 8.0.

9.2 An Educator's School Behavior Analyst Assistant Standard Certificate shall be revoked if the Educator's Initial, Continuing, or Advanced License or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's application in accordance with 14 Del.C. §1222.

9.3 An Educator whose certificate is noticed for disciplinary action is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with 14 DE Admin. Code 1515 Hearing Procedures and Rules.

10.0 Contact Information and Change of Name or Address

10.1 All applicants and Educators are required to update their contact information in DEEDS if their contact information changes.

PROPOSED REGULATIONS

- 10.2 An Educator who legally changes the Educator's name and wishes to change the name on the School Behavior Analyst Assistant Standard Certificate shall provide a notarized copy of evidence of the name change such as a marriage license or court action.
- 10.3 An applicant or Educator whose mailing address, email address, or phone number changes shall provide the Department with the new mailing address, email address, or phone number within 14 calendar days of the change.
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DEPARTMENT OF FINANCE

DIVISION OF REVENUE

Statutory Authority: 30 Delaware Code, Section 545(c) (30 Del.C. §545(c))

PUBLIC NOTICE

Regulation Governing Tax Refund Offset and Lottery Winnings Intercept Programs

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

In accordance with 30 Del.C. §545(c), the Delaware Department of Finance, through its Division of Revenue ("Revenue"), is proposing regulations governing the tax refund offset and lottery winnings intercept programs authorized under 30 Del.C. §545.

STATUTORY BASIS AND LEGAL AUTHORITY TO ACT

30 Del.C. §545(c).

OTHER REGULATIONS AFFECTED

None.

HOW TO COMMENT ON THE PROPOSED REGULATION

Members of the public may receive a copy of the proposed regulations at no charge by sending a letter via U.S. mail, or by emailing or calling, the following Revenue contact person:

Donna Owens
820 N. French St., Eighth Floor
Wilmington, Delaware 19801
Donna.owens@delaware.gov
(302) 577-8682

Members of the public may present written comments on the proposed regulations by submitting such comments to Donna Owens as provided above. Written comments must be received on or before July 1, 2023.

SUMMARY OF PROPOSED REGULATIONS

The Director of Revenue and the Director of the State Lottery Office are required under 30 Del.C. §545 to take certain steps to collect debts owed to State agencies by a taxpayer (owed a refund) or a lottery winner. The proposed regulations impose certification and other requirements on State agencies that refer debts for collection under the tax refund offset and lottery winnings intercept programs and establish procedures for Revenue, Lottery and state agencies to follow in connection with the programs. The regulations require, among other things, notice and opportunity for an administrative hearing prior to offsetting against a state tax refund and notice of intercepted lottery winnings.

***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/june2023/proposed/26 DE Reg 1008RFA 06-01-23.pdf>

Regulation Governing Tax Refund Offset and Lottery Winnings Intercept Programs

1.0 Authority and purpose

- 1.1 The Director is authorized and required by 30 Del.C. §545(c) to promulgate regulations governing the tax refund offset and lottery winnings intercept programs authorized under 30 Del.C. §545.
- 1.2 This regulation establishes policies and procedures for the programs.

2.0 Definitions

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

"Claimant agency" has the meaning ascribed to it in 30 Del.C. §545(b).

"Debt" has the meaning ascribed to it in 30 Del.C. §545(b). For purposes of this regulation, the term debt includes the reimbursement amount.

"Debtor" means a person, organization or entity who owes a debt to a claimant agency.

"Director" means the individual appointed to serve as Director of Revenue pursuant to 29 Del.C. §8303(2)b.

"Lottery Director" means the individual appointed to serve as the Director of the State Lottery Office pursuant to 29 Del.C. §§4804, 8303(2)c.

"Lottery winner" has the meaning ascribed to it in 30 Del.C. §545(b).

"Qualified lottery prize" means entitlement to a payment on account of winning a prize in a lottery conducted pursuant to the provisions of 29 Del.C. Ch. 48 if the prize exceeds the threshold established by the Lottery Director.

"Reimbursement amount" is the amount that Revenue is authorized to assess and collect as part of the debt, and which Revenue may withhold from any amounts collected under this regulation, to offset the costs, direct and indirect, incurred by Revenue in effectuating the offset procedures set forth in 30 Del.C. §545. For purposes of this regulation, the reimbursement amount shall mean \$25.00 per offset unless Revenue and the claimant agency agree to a different amount in a written agreement.

"Revenue" means the Delaware Division of Revenue, a division of the Delaware Department of Finance.

"Taxpayer" has the meaning ascribed to it in 30 Del.C. §545(b).

"Tax refund" means the amount determined by Revenue under applicable law to be an overpayment of State taxes that may be refundable to the debtor.

3.0 General Provisions

- 3.1 This regulation does not apply to any debt owing to Revenue under Title 30 of the Delaware Code.
- 3.2 A claimant agency is not precluded from using other debt collection procedures, such as wage garnishment, to collect debts that have been submitted to Revenue for purposes of offset or intercept under this regulation. Other debt collection procedures may be used separately or in conjunction with offset or intercept programs.
- 3.3 The Director shall ensure that claimant agencies are not provided with or given access to tax returns or information from tax returns, including the amount of income or any particulars set forth or disclosed in any report or return required under Title 30 and any information on a federal return or report which is required to be attached to or included in a State tax return, except to the limited extent necessary to administer the programs. Any access to tax information granted by the Director shall be on a need-to-know basis to perform program-related duties and shall be memorialized in writing. Claimant agencies shall take all necessary steps to protect any such tax information from inadvertent disclosure and unauthorized access.

4.0 Referral of Debts

- 4.1 Referral threshold. No single debt may be referred for offset or intercept if the amount is less than \$100.00. Revenue and the claimant agency may agree in writing to a different threshold amount.
- 4.2 Pre-offset notice and hearing requirements

PROPOSED REGULATIONS

- 4.2.1 Prior to referring a debt for collection by offset or intercept, the claimant agency must:
- 4.2.1.1 Make a reasonable attempt to notify the debtor that a debt is past-due and may be referred to Revenue for tax refund offset or lottery winnings intercept and of the opportunity to request an administrative hearing and present evidence that all or part of the debt is not past-due or legally enforceable. For purposes of this provision, the claimant agency has made a reasonable attempt to notify the debtor if the agency uses the current address information contained in the agency's records related to the debt.
 - 4.2.1.2 Consider any evidence presented by the debtor.
 - 4.2.1.3 Determine that the debt is past-due and legally enforceable in the amount referred.
- 4.2.2 The claimant agency may refer a debt without first complying with the requirements of subsections 4.2.1.1 through 4.2.1.3 if Revenue has established a screening procedure pursuant to which Revenue, after an initial referral, issues the required pre-offset notice, notifies the agency of a match between the debtor and the identity of an individual owed a tax refund, and refers the debt back to the claimant agency for purposes of compliance with the pre-offset hearing requirements of this regulation. The claimant agency, after complying with the requirements of subsections 4.2.1.1 through 4.2.1.3, may then refer the debt or a portion thereof back to Revenue in accordance with this regulation.
- 4.3 Certification. When a claimant agency refers a debt to Revenue for tax refund offset or lottery prize intercept, the claimant agency will be deemed to have certified to Revenue that:
- 4.3.1 The debt is past-due and legally enforceable in the amount submitted to Revenue as of the date of the referral.
 - 4.3.2 The claimant agency will ensure that subsequent collections, if any, are properly and timely credited to the debt.
 - 4.3.3 The debt is more than the referral threshold specified in this regulation or such different amount as may be agreed to in writing by Revenue and the claimant agency.
- 4.4 Noncompliance. Revenue may reject a referral that does not comply with the requirements of this regulation.
- 4.5 Post-referral obligations. If, after referring a debt to Revenue, a claimant agency determines that an error has been made with respect to the information transmitted to Revenue, or if an agency receives a payment on account of a debt referred for offset or intercept, or if the debt amount is otherwise incorrect, the agency shall promptly notify Revenue and make the appropriate correction of the agency's records. Claimant agencies must satisfy the pre-offset notice and hearing requirements for any correction that increases the amount of the debt.

5.0 Offset Procedures

- 5.1 Upon referral of a debt under this regulation, Revenue will compare tax refund records with records of debts submitted to Revenue.
- 5.2 For purposes of this regulation, a match for a tax refund owed to a debtor will occur when the taxpayer identifying number and name are the same as the taxpayer identifying number and name of a debtor submitted by the claimant agency.
- 5.3 Except with respect to a match that relates to a joint or combined income tax return, after a match, Revenue will promptly:
- 5.3.1 Reduce the amount of any tax refund otherwise payable to a debtor by the amount of the debt or unpaid portion thereof.
 - 5.3.2 Take reasonable steps to notify the taxpayer that the refund has been reduced and the amount of the reduction.
 - 5.3.3 Remit or credit the amount of the offset to the claimant agency. If more than one claimant agency has a debt against the taxpayer, Revenue will remit or credit payments in order of priority as determined by the Director.
 - 5.3.4 Pay to the taxpayer the remainder of any tax refund, if any.

- 5.4 If a match relates to a joint income tax return, the offset shall be placed on hold pending compliance with the procedures set forth in subsections 5.4.1 through 5.4.3. In such event, Revenue shall:
- 5.4.1 Take reasonable steps to notify each taxpayer filing such return that a reduction may be made from a tax refund based upon the return. The notice shall include a description of the right of the non-debtor taxpayer to file a written protest with the Director within 30 days of the date of mailing of such notification for the purpose of showing the non-debtor taxpayer's proper share of the refund.
- 5.4.2 The non-debtor taxpayer may attempt to make the required showing by providing documentation establishing to the Director's satisfaction a right to a portion of the refund based on income reported by the non-debtor taxpayer on the joint return.
- 5.4.3 If the non-debtor taxpayer timely files a petition and makes the required showing, Revenue shall remit to the non-debtor taxpayer his or her proper share of the tax refund and apply the balance of such refund, if any, in the manner prescribed in subsection 5.3.
- 5.5 In the event the debtor shall be due a refund in combination with a non-debtor by virtue of having filed separately but combined on one return, the Director shall regard each taxpayer as entitled to separate refunds based upon the taxes due and prior payments of each taxpayer individually. The offset contemplated in this regulation shall not be applicable to a separate refund due to the non-debtor taxpayer. The offset provisions shall apply to a separate refund due to the debtor taxpayer.
- 5.6 Revenue has made reasonable attempts to notify a taxpayer if Revenue uses the current address information contained in Revenue's records related to a tax return.
- 5.7 Revenue will advise each claimant agency of the names and addresses of the debtors from whom debts were collected and of the amounts collected from each debtor for that agency. Revenue will not advise as to the source of payment from which such amounts were collected.
- 5.8 For each debt collected in whole or in part through offset, Revenue may withhold from the amount collected and credit to its own account an amount equal to the reimbursement amount.

6.0 **Intercept Procedures**

- 6.1 After referral of a debt under this regulation, Revenue will notify the Lottery Director to intercept any qualified lottery prize payable to a taxpayer who is also a lottery winner until such time as the Director notifies the Lottery Director that the debt of said taxpayer has been discharged.
- 6.2 Upon receipt of such notice, the Lottery Director shall:
- 6.2.1 Reduce any qualified lottery prize payable to the lottery winner by the amount of the debt or unpaid portion thereof.
- 6.2.2 Take reasonable steps to notify the lottery winner of the intercept and the amount of the reduction. Reasonable attempts to notify the lottery winner shall include verbal notification provided to winners presenting in person at Revenue or the State Lottery Office.
- 6.2.3 Remit all intercepted amounts to the appropriate claimant agencies or to Revenue for subsequent transfer to the appropriate claimant agencies.
- 6.2.4 Pay to the winner the remainder of such qualified lottery prize, if any.
- 6.3 No reimbursement amount shall accrue or be collected with respect to intercept of qualified lottery prizes.
-

PROPOSED REGULATIONS

OFFICE OF THE STATE LOTTERY

Statutory Authority: 29 Delaware Code, Section 4805 (29 Del.C. §4805)
10 DE Admin. Code 203

PUBLIC NOTICE

203 Video Lottery and Table Game Regulations

A. Type of Regulatory Action Required

Amendment to Existing Regulations

B. Synopsis of Subject Matter of the Regulation

Pursuant to 29 Del.C. §4805, the Delaware Lottery Office proposes amendments to subsections 20.6 and 21.7 in 10 DE Admin. Code 203. The first proposed amendment is to subsection 20.6 and would remove subsection 20.6.3.2 entirely. The second proposed amendment is to subsection 21.7 and would remove the verbiage requiring a Delaware State Lottery representative to be present in the count room to observe the casinos' daily table game counts.

Persons wishing to present their views regarding this matter may do so by submitting written comments by the close of business on or before July 5, 2023 at the offices of the Delaware State Lottery at 1575 McKee Road, Suite 102, Dover, DE 19904. A copy of these regulations is available from the above address or may be viewed at the Delaware State Lottery office at the same address.

C. Summary of Proposal

The regulations currently require that a Delaware State Lottery Representative be present during each casino's daily table games count. The proposed amendments to subsections 20.6 and 21.7 seek to remove certain requirements relating to those counts as unnecessary and inconsistent with industry standard. By deleting subsection 20.6.3.2, Delaware State Lottery will no longer be required to control one of the two keys needed for the performance of the daily table games drop box count. The revision to subsection 21.7 maintains the requirement that empty drop boxes be shown to surveillance and count team members but eliminates the requirement that they also be shown to a Delaware State Lottery representative.

***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/june2023/proposed/26 DE Reg 1012RFA 06-01-23.pdf>

203 Video Lottery and Table Game Regulations (Break in Continuity of Sections)

20.0 Drop Box Characteristics and Transportation to and from Table Games

- 20.1 Each agent shall place on file with the agency a schedule setting forth the specific times at which the drop boxes will be brought to or removed from the table games. Any changes to the schedule must first be approved by the agency. No drop box shall be brought to or removed from any table game at other than the time specified in such schedule except with the approval of a representative of the agency. Such approval shall be documented in a manner approved by the agency.
- 20.2 The table game drop shall be performed by a minimum of two (2) persons, one of which shall be a representative of the security department and the other a table games supervisor.
- 20.3 Table game drop shall be performed at a minimum, at least once each gaming day. However, the agency may require that table game boxes be dropped more frequently.

-
- 20.4 All locked table game drop boxes shall be removed, and a separate empty drop box shall be placed on each table in a continuous process. Upon removal from the tables, table game drop boxes shall be transported in a locked trolley directly to the count room and locked in a secure manner until the count takes place.
- 20.5 When not in use, empty table game drop boxes shall be stored in a locked trolley in the count room or in a secure area as approved by the agency. The involvement of at least two persons from independent departments shall be required to access stored empty table game drop boxes.
- 20.6 Each table game drop box shall have as a minimum:
- 20.6.1 A number corresponding to a permanent number on the gaming table and marked to indicate game and table number, except that emergency drop boxes may be maintained without such number or marking provided the word "emergency" is permanently imprinted or impressed thereon and, when put into use, is temporarily marked with the number of the gaming table and identification of the game and day;
 - 20.6.2 A slot opening through which currency, coins, forms, records, and documents can be inserted into the drop box which shall automatically lock when the drop box is removed from the table;
 - 20.6.3 Two different keys securing the contents of the drop box (content keys) and a separate key to release the drop box from the table (release key). Procedures for the issuance, control and security over the keys shall be as authorized by the agency, in compliance with the following minimum requirements:
 - 20.6.3.1 Only the ~~person(s)~~ persons authorized to remove table game drop boxes from the tables shall be allowed access to the table game drop box release key; however, the count team members may have access to the release keys during the soft count in order to reset the table game drop boxes.
 - 20.6.3.2 ~~One drop box content key shall be utilized by the count team and the other drop box content key shall be controlled and maintained by the agency;~~
 - 20.6.3.3 Persons authorized to remove the table game drop boxes shall be precluded from having simultaneous access to the table game drop box contents keys and release keys.

21.0 The Count Room and Counting of the Table Game Drop

- 21.1 The table game drop box count shall be performed in a soft count room, and access to the count room during the count shall be restricted to members of the drop and count teams, with the exception of authorized observers, supervisors for resolution of problems, and authorized maintenance personnel.
- 21.2 The soft count room shall be designed and constructed to provide maximum security for the materials housed therein and for the activities conducted therein. Each agent shall design and construct a count room as approved by the Director with, at a minimum, the following security measures:
- 21.2.1 A metal door installed on each entrance and exit equipped with:
 - 21.2.1.1 Two separate locks as required by the MICS and approved by the Director;
 - 21.2.1.2 An alarm device with audible signals that are activated, as approved by the ~~director~~ Director, whenever a door to the count room is opened at times other than those times for which the agent has provided prior notice; and
 - 21.2.1.3 A light system which illuminates one or more lights in the monitoring rooms and at such other locations as the agency may require, for purposes of maintaining constant surveillance on whether each count room door is open or closed or whether the count is in progress;
 - 21.2.2 Closed circuit television cameras and microphone wired to monitoring rooms capable of, but not limited to, the following:
 - 21.2.2.1 Effective and detailed audio-video monitoring of the entire count process;
 - 21.2.2.2 Effective, detailed video-monitoring of the interior of the count room, including storage cabinets or trolleys used to store drop boxes; and
 - 21.2.2.3 Audio-video taping of the entire count process and any other activities in the count room.

- 21.3 Count room personnel shall not be allowed to exit or enter the count room during the count except for emergencies or scheduled breaks. At no time during the count shall there be fewer than two (2) employees in the count room until the drop proceeds have been accepted into cage/vault accountability.
- 21.4 The table game drop box count shall be performed by a minimum of two (2) employees. If the count team consists of only two (2) employees, they shall be rotated on a routine basis such that the count team is not consistently the same two (2) persons more than four (4) days per week.
- 21.5 The count team shall be independent of transactions being reviewed and counted, and the cage/vault cashiers shall be responsible for accepting the count, as approved by the agency.
- 21.6 The table game drop boxes shall be individually emptied and counted in such a manner to prevent the commingling of funds between boxes until the count of the box has been recorded. The count of each box shall be recorded in ink or other permanent form of recordation.
- 21.7 Table game drop boxes, when empty, shall be shown to another member of the count team, team and surveillance, and the agency representative observing the count.
- 21.8 The count process shall be done in accordance with the MICS as approved by the agency, and all members of the count team shall sign the count document to attest to their participation in the count.
- 21.9 All drop proceeds that were counted shall be turned over to a cage cashier who shall be independent of the count team. Prior to having access to the documentation of the funds counted by the soft count team, the cage cashier shall conduct a bulk count of the soft count drop and then compare the bulk count to the soft count documentation or a transfer sheet. All differences shall be reconciled prior to the cage cashier and count team leaving the count room.
- 21.10 The cage cashier shall document the acceptance of the funds and transport the funds to the cashiers' cage/vault in a manner approved by the agency.
- 21.11 The count sheet, with all supporting documents, shall be delivered to the accounting department by a count team member or a person independent of the cashiers' cage/vault department. Alternatively, it may be adequately secured via a locked canister to which only accounting personnel can gain access or any other effective manner until retrieved by the accounting department.

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

<https://regulations.delaware.gov/register/june2023/proposed/26 DE Reg 1012 06-01-23.htm>

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

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

PUBLIC NOTICE

2023 Quality Strategy

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 the Diamond State Health Plan Medicaid Managed Care Strategy, regarding 2023 Quality Strategy, specifically, to serve as a roadmap for Delaware on our contracted health plans and assessing the quality of care that beneficiaries receive while setting forth measurable goals and targets for improvement.

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 July 3, 2023. Please identify in the subject line: 2023 Quality Strategy.

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Diamond State Health Plan Medicaid Managed Care Strategy regarding 2023 Quality Strategy, specifically, to serve as a roadmap for Delaware on our contracted health plans and assessing the quality of care that beneficiaries receive while setting forth measurable goals and targets for improvement.

Statutory Authority

- 42 CFR 438.340(b)

Background

Federal regulations at 42 CFR 438.340(b) lay the groundwork for the development and maintenance of a quality strategy to assess and improve the quality of managed care services offered within a state. This quality strategy is intended to serve as a blueprint or road map for states and their contracted health plans in assessing the quality of care that beneficiaries receive, as well as for setting forth measurable goals and targets for improvement.

Each state contracting with a managed care organization (MCO) and/or prepaid inpatient health plan (PIHP) must obtain input from beneficiaries and other key stakeholders in the development of the quality strategy and make the quality strategy available for public comment before adopting it as final.

In accordance with 42 CFR 438.340, at a minimum, all quality strategies must include:

- The MCO and PIHP contract provisions that incorporate the standards of Part 438, subpart E;
- Procedures that assess the quality and appropriateness of care and services furnished to all Medicaid enrollees under the MCO and PIHP contracts, and to individuals with special health care needs;
- Procedures that identify the race, ethnicity, and primary language spoken of each Medicaid enrollee;
- Procedures that regularly monitor and evaluate the MCO and PIHP compliance with the standards of Part 438, subpart D
- Arrangements for annual, external independent reviews of the quality outcomes and timeliness of, and access to, the services covered under each MCO and PIHP contract;
- For MCOs, appropriate use of intermediate sanctions that, at a minimum, meet the requirements of subpart I of this Part 438;
- An information system that supports initial and ongoing operation and review of the State's quality strategy; and
- Standards, at least as stringent as those in Part 438, subpart D, for access to care, structure and operations, and quality measurement and improvement.

Based on our recent priorities and the healthcare environment after the COVID-19 pandemic, DMMA has modified its quality goals;

- Improve Maternal and Infant Health,
- Improve Chronic Condition Management,
- Reduce Communicable Diseases,
- Improve Behavioral Health Condition Identification and Management, and
- Improve Member Experience of Care.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to serve as a roadmap for Delaware on our contracted health plans and assessing the quality of care that beneficiaries receive while setting forth measurable goals and targets for improvement.

Summary of Proposed Changes

Effective for services provided on and after August 1, 2023, Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend the Diamond State Health Plan Medicaid Managed Care Strategy to serve as a roadmap for Delaware on our contracted health plans and assessing the quality of care that beneficiaries receive while setting forth measurable goals and targets for improvement, regarding 2023 Quality Strategy.

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 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 July 3, 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 to provide any other pertinent information regarding DMAP updates. DMAP updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>

Fiscal Impact

There is no anticipated fiscal impact.

STATE OF DELAWARE
PUBLIC NOTICE
DELAWARE HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
2023 Quality Strategy

In accordance with the public notice requirements of 42 U.S.C. §1315(d), 42 CFR Part 431, Subpart G, 42 CFR 447.205 and Title 29, Chapter 101 of the Delaware Code, Delaware Health, and Social Services (DHSS), Division of Medicaid and Medical Assistance (DMMA), is seeking public comment on Delaware's Draft 2023 Quality Strategy Plan that will be submitted to the Centers for Medicare and Medicaid Services (CMS).

Purpose and Rationale

The Department proposes to update the current Medicaid managed care quality strategy, as required by 42 CFR Part 438, Subparts D and E (relating to quality assessment and performance improvement; and external quality review) the Quality Strategy serves as a blueprint or roadmap for Delaware on our contracted health plans and to assessing the quality of care that beneficiaries receive and setting forth measurable goals and targets for improvement.

Background

Federal regulations at 42 CFR §438.200 et seq. require all States contracting with a managed care organization (MCO) to have a written strategy for assessing and improving the quality of managed care services offered within

the State. This is what the Centers for Medicare and Medicaid Services (CMS) refers to as the "State Quality Strategy".

State Responsibilities

Each State must obtain the input of beneficiaries and other stakeholders in the development of the State Quality Strategy, and make the State Quality Strategy available for public comment before adopting it as final.

Elements of State Quality Strategies

In accordance with 42 CFR §438.204, at a minimum, State Quality Strategies must include:

- The MCO contract provisions that incorporate the standards of Part 438, subpart D;
- Procedures that assess the quality and appropriateness of care and services furnished to all Medicaid enrollees under the MCO contracts, and to individuals with special health care needs;
- Procedures that identify the race, ethnicity, and primary language spoken of each Medicaid enrollee;
- Procedures that regularly monitor and evaluate the MCO compliance with the standards of Part 438, Subpart D;
- Arrangements for annual, external independent reviews of the quality outcomes and timeliness of, and access to, the services covered under each MCO contract;
- For MCOs, appropriate use of intermediate sanctions that, at a minimum, meet the requirements of Subpart I of this Part 438;
- An information system that supports initial and ongoing operation and review of the State's quality strategy; and,
- Standards, at least as stringent as those in Part 438, Subpart D, for access to care, structure and operations, and quality measurement and improvement.

Summary of Draft 2023 Quality Strategy

This public input process has been undertaken to fulfill the requirements of the Code of Federal Regulations, specifically 42 CFR §438.202(b) which requires states to obtain the input of recipients and other stakeholders in the development of the strategy and to make the strategy available for public comment. The purpose of this notice is to fulfill that requirement.

Comments on public notices will be used to formulate Delaware's Final Quality Strategy that will be submitted to CMS by July 15, 2023.

The Quality Strategy (QS) is a comprehensive plan which incorporates quality assurance monitoring and ongoing quality improving processes to coordinate, assess and continually improve the delivery of quality care to the Medicaid beneficiaries.

Based on our recent priorities and the healthcare environment after the COVID-19 pandemic, DMMA has modified its quality goals;

- Improve Maternal and Infant Health,
- Improve Chronic Condition Management,
- Reduce Communicable Diseases,
- Improve Behavioral Health Condition Identification and Management, and
- Improve Member Experience of Care.

Draft of Proposed Medicaid Managed Care 2023 Quality Strategy

The Draft 2023 Quality Strategy is accessible on the Division of Medicaid and Medical Assistance (DMMA) website: <http://dhss.delaware.gov/dmma/>

Hard copies are available by contacting Dawn Hayman at (302) 255-9531

Hard copies are available for review at the Division of Medicaid and Medical Assistance, 1901 North DuPont

Highway, Holloway Campus, Lewis Building, Conference Room 198, New Castle, Delaware 19720 from 8:00 am - 4:30 pm.

Public Comment Submission Process

As required by 42 CFR Part 441.301, DHSS/DMMA/DSAMH provides a thirty-day public notice and comment period. The public is invited to review and comment on the State's proposed quality strategy. Comments must be received by 4:30 pm on July 3, 2023.

Comments and input regarding the draft quality strategy may be submitted in the following ways:

By email: Dawn.Hayman@Delaware.gov or DHSS_DMMA_Publiccomment@Delaware.gov

By fax: 302-255-4425 (phone#) Dawn Hayman

By written comments sent to:

Dawn Hayman
 Division of Medicaid and Medical Assistance
 Planning and Policy Unit
 1901 North DuPont Highway
 P.O. Box 906
 New Castle, Delaware 19720-0906

This notice shall appear for one (1) day only. Please identify in the subject line: Proposed Draft 2023 Quality Strategy. Delaware will publish the 2023 quality strategy in the June 2023 issue of the Delaware Register of Regulations for a thirty-day comment period.

Fiscal Impact Statement

No anticipated fiscal impact

Theodore G. Mermigos, Jr.
 Acting Division Director
 Division of Medicaid and Medical Assistance

***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/june2023/proposed/26 DE Reg 1014RFA 06-01-23.pdf>

Page(s)	2018 Quality Management Strategy	Page(s)	2023 Quality Strategy
4 - 17	Quality Management Structure	1 - 11	Introduction-Different appearance
22 - 28	<i>Goals and Objectives</i> Goal 1: To improve timely access to appropriate care and services for adults and children with an emphasis on primary and preventive care, behavioral health and to remain in a	28-31	<i>Goals and Objectives</i> Goal 1: Improve Maternal and Infant Health
21	safe and least-restrictive Goal 2: To improve quality of care and services provided to DSHP, DSHP	28	Goal 2: Improve Chronic Condition Management
23	Plus and CHIP members Goal 3: To control the growth of	29	Goal 3: Reduce Communicable Diseases

26	health care expenditures. Goal 4: To assure member satisfaction with services	29	Goal 4: Improve Behavioral Health Condition Identification and Management
27		30	Goal 5: Improve Member Experience of
		31	Care
39	Monitoring Mechanisms-State Monitoring and Evaluation	26	Improvement Strategies and Monitoring Activities PROMISE Program waiver assurances and
70	Appendix I - PROMISE Sub-Assurances	36	sub-assurances
41	Performance Improvement Projects	43	DMMA Specific PIP Requirements *DSHP Plus Program waiver assurances
		32	and sub-assurances *Appendix C: Quality Strategy Crosswalk
		58	*Appendix B: Quality Strategy Goals and
		58	Objectives
			*New

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

[https://regulations.delaware.gov/register/june2023/proposed/2023 Quality Strategy draft.pdf](https://regulations.delaware.gov/register/june2023/proposed/2023%20Quality%20Strategy%20draft.pdf)

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

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

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 regarding the Temporary Extension to COVID-19 Disaster Relief Co-pay & Premium Provisions, specifically, to request that an extension for co-pays and premiums to be waived.

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 July 3, 2023. Please identify in the subject line: Temporary Extension to COVID-19 Disaster Relief Co-pay & Premium Provisions.

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

Statutory Authority

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

During the Public Health Emergency (PHE) Delaware waived copays and premiums for members. On January 27, 2023, CMS approved an amendment to Delaware's Medicaid State Plan to extend the waiving of copays and premiums for 6 months following the end of the month in which the PHE ended. CMS has since instructed states that members may not be charged a premium until they have received a full redetermination and provided states guidance regarding the resumption of premiums. Additionally, the end of the PHE has been announced and CMS has required states to assign dates to the end of temporary extension SPAs to reflect this.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to align the resumption of premiums with the end of the unwinding period and to assign dates to the temporarily extended suspension of member copays and premiums.

Summary of Proposed Changes

Effective for services provided on the day after the end of the PHE until December 1, 2023, DHSS/DMMA proposes to amend Section 7.4-B of the Medicaid State Plan to temporarily extend the provision approved by CMS to waive member copays.

Effective for services provided on the day after the end of the PHE until July 1, 2024, DHSS/DMMA proposes to amend Section 7.4-B of the Medicaid State Plan to temporarily extend the provision approved by CMS to waive premiums.

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 July 3, 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

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

***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/june2023/proposed/26 DE Reg 1019RFA 06-01-23.pdf>

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

State/Territory: Delaware

Section 7 - General Provisions

7.4.-B Temporary Extension to the Medicaid Disaster Relief Policies for the COVID-19 National Emergency

Effective the day after the end of the PHE until ~~6 months following the end of the month in which the PHE ends~~ December 1, 2023, the agency temporarily extends the following election(s) in section 7.4 (approved on 05/27/2020 in SPA Number DE-20-0002) of the state plan.

- Section C.1 - DHSS suspends all copayments for all beneficiaries effective March 26, 2020.

Effective the day after the end of the PHE until July 1, 2024, the agency temporarily extends the following election(s) in section 7.4 (approved on 05/27/2020 in SPA Number DE-20-0002) of the state plan.

- Section C.2 - DHSS suspends all premiums for all beneficiaries effective April 1, 2020.

- **Section C - Premiums and Cost Sharing**

1. X The agency suspends deductibles, copayments, coinsurance, and other cost sharing charges as follows:

DHSS suspends all copayments for all beneficiaries effective March 26, 2020.

2. X The agency suspends enrollment fees, premiums and similar charges for:
 - a. X All beneficiaries
 - b. _____ The following eligibility groups or categorical populations:

DHSS suspends all premiums for all beneficiaries effective April 1, 2020.

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 9000

PUBLIC NOTICE**Delaware's SNAP EBT System**

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 Social Services (DHSS/DSS) is proposing to amend the Division of Social Services Manual (DSSM) to define Delaware's EBT system and EBT card responsibilities for the Supplemental Nutrition Assistance Program (SNAP).

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, Division of Social Services (DSS), 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 July 1, 2023. Please identify in the subject line: Delaware's SNAP EBT System

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 Social Services (DSS) is proposing to amend the Division of Social Services Manual (DSSM) regarding to define Delaware's EBT system and EBT card responsibilities for the Supplemental Nutrition Assistance Program (SNAP).

Statutory Authority

7 CFR 274.1
7 CFR 274.2 (b) & (f)
7 CFR 274.5
7 CFR 274.6 (b)
7 CFR 274.8
7 CFR 273.2 (f)(1)(vii)

Background

The Division of Social Services (DSS) is proposing this regulation to define Delaware's EBT system and EBT card responsibilities for the Supplemental Nutrition Assistance Program (SNAP). The regulation includes guidelines for Delaware Health and Social Services (DHSS) to administer the State's EBT system and maintain and issue EBT cards. Several Divisions within DHSS have EBT roles that must be clearly defined and EBT system security requirements that must be followed to maintain compliance with federal regulations.

DSSM 9093 is being amended to add EBT system functions and requirements to the policy.

DSSM 9093.1 establishes SNAP EBT card maintenance responsibilities for the DHSS Office of the Secretary-

Administration and Division of State Service Centers.

DSSM 9093.11 establishes the SNAP EBT card procedures for issuing cards to households who receive SNAP food benefits. Delaware's EBT contractor mails EBT cards to households, and the Division of State Service Centers issues over-the-counter EBT cards to households who have an immediate need to access food benefits.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to define Delaware's EBT system and EBT card responsibilities for the Supplemental Nutrition Assistance Program (SNAP).

Summary of Proposed Changes

Effective for services provided on and after August 11, 2023 Delaware Health and Social Services (DHSS) / Division of Social Services (DSS) proposes to amend the Division of Social Services Manual (DSSM) to define Delaware's EBT system and EBT card responsibilities for the Supplemental Nutrition Assistance Program (SNAP).

Public Notice

In accordance with the *state* public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DSS 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 July 1, 2023.

Fiscal Impact

The policy and procedures in the regulation are currently in operation and are being codified to define EBT card responsibilities within DHSS. There is no cost associated with the 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/june2023/proposed/26 DE Reg 1022RFA 06-01-23.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/june2023/proposed/26 DE Reg 1022 06-01-23.htm>

DIVISION OF SUBSTANCE ABUSE AND MENTAL HEALTH

Statutory Authority: 16 Delaware Code, Section 5004 (16 **Del.C.** §5004)
16 **DE Admin. Code** 6002

PUBLIC NOTICE

6002 Credentialing Mental Health Screeners and Payment for Voluntary Admissions

In compliance with the *Administrative Procedures Act* (29 **Del.C.** Ch. 101) and under the authority of 16 **Del.C.** § 5004, the State of Delaware Department of Health and Social Service's Division of Substance Abuse and Mental Health ("the Division") is proposing amending regulations governing credentialed mental health screeners ("screeners").

A person may make suggestions or provide compilations of data, testimony, briefs, or other materials concerning the Division's proposal by written submission to the Division of Substance Abuse and Mental Health. The Division will receive submissions made before 4:30 p.m. on July 3, 2023, by mail to 1901 North DuPont Highway, New Castle, DE 19720-0906, by fax to (302) 255-4427, and by email to joe.aronson@delaware.gov. Please identify in the subject line: 6002 Credentialed Mental Health Screeners.

The Division's determination to adopt this proposal will include analysis and consideration of submissions

received.

SUMMARY

This notice advises the public that the Division proposes amendments to regulations governing credentialed mental health screeners.

Statutory Authority

16 **Del.C.** §5004(k) authorizes the Division "to establish regulations consistent with this chapter," adopt "rules regarding the disclosure by credentialed mental health screeners... of potential conflicts of interest," and issue this proposal.

Background

Enacted in 2014, 79 **Del. Laws** Ch. 442 amended Delaware's existing involuntary commitment laws and established a new involuntary commitment process. The new law codified at 16 **Del.C.** ch. 50, required that an individual be emergently detained before being provisionally admitted as a precursor to a probable cause hearing and potential involuntary commitment.

Under 16 **Del.C.** § 5004(b), "an emergency detention may only be initiated by a credentialed mental health screener." Under 16 **Del.C.** § 5001(2), a credentialed mental health screener is a licensed psychiatrist or one of the following whom the Division credentials:

- A licensed mental health professional.
- An unlicensed mental health professional working under the supervision of a psychiatrist.
- A Delaware licensed physician.
- A licensed physician working in a United States Department of Veterans Affairs medical center in Delaware.

Summary of the Proposal

The proposed regulation ("the regulation") seeks to update the current regulation to establish precise requirements and procedures for conducting screenings, registering psychiatrists, and credentialing screeners.

The regulation amends 16 **DE Admin. Code** § 6002 and does all of the following:

- Establishes clear definitions of license types comprising "licensed mental health professional" and "unlicensed mental health professional."
- Sets prerequisites for screeners to conduct a screening.
- Requires psychiatrists to register with the Division before conducting a screening.
- Standardizes the credentialing process for physicians without regard to specialty.
- Removes additional credentialing requirements imposed on state employees.
- Removes burdensome and unnecessary regulatory requirements mandating the number of hours of training required for credentialing and renewal.
- Simplifies and broadens the Division's authority to revoke credentials in cases of malfeasance.
- Reduces the length of the regulation by over 50%.

Fiscal Impact

The Division anticipates the regulation will have a de minimus fiscal impact.

*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/june2023/proposed/26 DE Reg 1023RFA 06-01-23.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/june2023/proposed/26 DE Reg 1023 06-01-23.htm>

DEPARTMENT OF INSURANCE

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311, 3349, and 3565 (18 Del.C. §§311, 3349 & 3565)

18 DE Admin. Code 1316

PUBLIC NOTICE

1316 Arbitration of Health Insurance Disputes Between Carriers And Non-Network Providers of Emergency Care Services

A. Type of Regulatory Action Required

Proposal of amendments to Regulation 1316 Arbitration of Health Insurance Disputes Between Carriers and Non-Network Providers of Emergency Care Services.

B. Synopsis of Subject Matter of the Regulation

Regulation 1316 implements 18 Del.C. §§3349 and 3565 by setting forth regulations pertaining to the arbitration of health insurance disputes between carriers and non-network providers of emergency care services. The purpose of the proposed amendment is to eliminate the need for carriers to provide the Department with a quarterly list of exempt plan numbers by deleting subsection 3.15 of this regulation.

The Department is also taking the opportunity of this proposal to make grammatical and formatting edits throughout the regulation.

C. Notice and Public Comment

The proposed amendments appear 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 amendments.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendments to the regulation. Any written submission in response to this notice and relevant to the proposed amendments must be received by the Department of Insurance no later than 4:30 p.m. EST, the 1st day of July 2023. Any such requests and any questions concerning connecting to the public hearing should be directed to:

Alisa L. Pritchard, Regulatory Specialist
Delaware Department of Insurance
1351 West North Street, Suite 101
Dover, DE 19904
(302) 674-7379
Email: Alisa.Pritchard@delaware.gov

***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/june2023/proposed/26 DE Reg 1025RFA 06-01-23.pdf>

1316 Arbitration of Health Insurance Disputes Between Carriers And Non-Network Providers of Emergency Care Services

1.0 Purpose and Statutory Authority

The purpose of this Regulation is to implement 18 Del.C. §§3349 and 3565, which require the Delaware Insurance Department to establish and administer procedures for arbitration of disputes between health insurance carriers and non-network providers of emergency care services. This Regulation is promulgated pursuant to 18 Del.C. §§311, 3349, and 3565; and 29 Del.C. Ch. 101. This Regulation should not be construed to create any

cause of action not otherwise existing at law.

2.0 Definitions

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

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

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

"Department" means the Delaware Insurance Department.

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

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

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

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

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

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

"Network carrier" is a carrier that has a written participation agreement with a provider to pay for emergency care services.

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

"Non-Network Emergency Care Provider" is a provider who is not a Network Emergency Care Provider.

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

3.0 Provisions Applicable to Arbitration Pursuant to 18 Del.C. §§3349 and 3565

- 3.1 If a carrier and a non-network emergency care provider cannot agree on payment to the provider for emergency care services, within 30 days after the carrier has received from the provider clean claims, as defined in Section 4.0 of ~~Regulation 1310~~ **18 DE Admin. Code 1310**, for such services, either the carrier or the non-network emergency care provider (the "Petitioner") may petition for arbitration pursuant to this Section 3.0 and 18 **Del.C.** §§3349 or 3565 and the other party (the "Respondent") shall submit to such arbitration.

- 3.2 Prior to the Arbitration Hearing, the Arbitrator shall at a minimum receive the following written evidence from the parties:
- 3.2.1 The highest allowable charge for each emergency care service subject to arbitration allowed by the carrier for any other network or non-network emergency care provider during the full twelve month period immediately prior to the date the Petition for Arbitration was filed with the Department;
 - 3.2.2 If subsection 3.4.1 of this regulation applies, the carrier's highest allowable charge for each emergency care service subject to arbitration pursuant to the non-network provider's most recent participation agreement with the carrier;
 - 3.2.3 The highest allowable charge for each emergency care service subject to arbitration received by the non-network emergency care provider from any other carrier during a full twelve month period immediately prior to the date the Petition for Arbitration was filed with the Department; and
 - 3.2.4 The highest allowable charge for each emergency care service subject to arbitration received by the non-network emergency care provider from any network carrier during a full twelve month period immediately prior to the date the Petition for Arbitration was filed with the Department.
 - 3.2.5 Each party shall also submit in writing the allowable charge each party would accept for each emergency care service subject to arbitration and each party's history of the negotiations between the parties relating to each such emergency care service.
 - 3.2.6 Each party shall also submit a written list of all emergency care services subject to arbitration and the date each service was delivered to the patient. The Arbitrator's decision shall apply to each such service from the date of each service and the date of all other emergency care service subject to arbitration through the date provided for in subsection 3.12.2 of this regulation.
 - 3.2.7 A copy of all information submitted to the Arbitrator by a party pursuant to this Section 3.0 will also be given to the other party except for information submitted by the provider pursuant to subsections 3.2.3 and 3.2.4 of this regulation. ~~subsection 3.2.3 and subsection 3.2.4~~ information will be redacted by the Arbitrator and given to the carrier to ~~insure~~ ensure that the carrier cannot determine pricing information relating specifically to other carriers.
- 3.3 All information specified in subsection 3.2 of this ~~Regulation~~ regulation provided to the Arbitrator shall presumptively be considered trade secret or confidential financial information under the Delaware Freedom of Information Act and shall not be disclosed to or available at any time to any person, firm or entity not involved in the arbitration.
- 3.4 The Arbitrator shall follow the guidelines listed in this subsection 3.4 as a basis for determining the carrier's payment to the non-network emergency care provider for each emergency care service subject to arbitration unless the evidence adduced at arbitration supports a different payment. All payments pursuant to this section are subject to reduction based on the insured's obligation for co-payments or deductibles.
- 3.4.1 Payments for emergency care services to a non-network emergency care provider who was a network emergency care provider at any time prior to the date the provider delivered the emergency care services which are the subject of the arbitration. The Arbitrator shall direct the carrier to pay the non-network emergency care provider based on an allowable charge for each emergency care service subject to arbitration within the following range:
 - 3.4.1.1 ~~(1) the~~ The allowable charges submitted to the Arbitrator pursuant to subsection 3.2.2 of this regulation, subject to COLA adjustments as may be published in bulletins by the Commissioner from time to time; and
 - 3.4.1.2 ~~(2) the~~ The allowable charges submitted to the Arbitrator pursuant to subsection 3.2.3 of this regulation. ~~All payments pursuant to this section are subject to reduction based on the insured's obligations for co-payments or deductibles.~~
 - 3.4.2 Payments for emergency care services to a provider who was never a network emergency care provider with the carrier. The Arbitrator shall direct the carrier to pay the non-network emergency care provider who was never a network emergency care provider based on an allowable charge for each emergency care service subject to arbitration within the following range:

PROPOSED REGULATIONS

- 3.4.2.1 ~~(1) the~~ The allowable charges submitted to the carrier pursuant to subsection 3.2.1 of this regulation; and
- 3.4.2.2 ~~(2) the~~ The allowable charges submitted to the Arbitrator pursuant to subsection 3.2.3 of this regulation. ~~All payments pursuant to this section are subject to reduction based on the insured's obligations for co-payments or deductibles.~~
- 3.5 Changes in the membership of a provider group will not affect the remaining group ~~member(s)~~ member or members insofar as the application of this Section 3.0. In the absence of a contract provision to the contrary, a physician's existing network status and payment rights shall not be transferable to that physician's new group or practice.
- 3.6 Carrier Payments Prior to Arbitration.
- 3.6.1 Prior to Arbitrator's decision pursuant to subsection 3.12 of this regulation, the carrier will pay directly to the non-network emergency care provider the highest amount provided for in subsection 3.2.1 of this regulation, for each emergency care service subject to arbitration.
- 3.6.2 All payments due the non-network provider pursuant to subsection 3.6.1 of this regulation, will be paid within 30 days after the carrier has received from the provider a clean claim, as defined in Section 4.0 of ~~Regulation 1310~~ 18 DE Admin. Code 1310, for each emergency care service subject to arbitration.
- 3.6.3 The Arbitrator will direct the carrier and the provider to pay, in the case of the carrier, or refund in the case of the provider, the difference between payments made pursuant to this subsection 3.6 and the payments determined by the Arbitrator pursuant to subsection 3.4 of this regulation.
- 3.7 Procedures for Arbitration Pursuant to this Section 3.0.
- 3.7.1 Either the non-network emergency care provider or his authorized representative or the carrier, after the carrier pays the provider pursuant to subsection 3.6.1 of this regulation, may request arbitration by delivering to the Department an original and one copy of the Petition for Arbitration, (with all applicable information required by subsection 3.2 of this regulation attached) so that the Petition is received by the Department no later than 60 days from the date the carrier was required to pay the provider pursuant to subsection 3.6.1 of this regulation.
- 3.7.2 At the time of delivering the Petition for Arbitration to the Department. the Petitioner or his authorized representative must also:
- 3.7.2.1 ~~send~~ Send a copy of the Petition and supporting documentation to the Respondent by certified mail, return receipt requested, except as provided by subsection 3.2.7 of this regulation;
- 3.7.2.2 ~~deliver~~ Deliver to the Department a Proof of Service confirming that a copy of the Petition has been sent to the Respondent by certified mail, return receipt requested; and
- 3.7.2.3 ~~deliver~~ Deliver to the Department a \$75.00 filing fee.
- 3.7.3 The Department may refuse to accept any Petition that is not timely filed or does not otherwise meet the criteria for arbitration.
- 3.8 Response to Petition for Arbitration
- 3.8.1 Within 20 days of receipt of the Petition, the Respondent or ~~his~~ the Respondent's authorized representative must deliver to the Department an original and one copy of a Response with all information required by subsection 3.2 of this regulation attached.
- 3.8.2 At the time of delivering the Response to the Department, the Respondent must also:
- 3.8.2.1 ~~send~~ Send a copy of the Response and supporting documentation to the Petitioner or ~~his~~ the Petitioner's authorized representative by certified mail, postage prepaid, except as provided by subsection 3.2.7 of this regulation; and
- 3.8.2.2 ~~deliver~~ Deliver to the Department a Proof of Service confirming that a copy of the Response was mailed to the Petitioner or ~~his~~ the Petitioner's authorized representative.
- 3.8.3 The Department may return any non-conforming Response to Respondent.

- 3.8.4 If the Respondent fails to deliver a Response to the Department in a timely fashion, the Department, after verifying proper service, and with written notice to the parties, may assign the matter to the next scheduled Arbitrator for summary disposition.
- 3.8.4.1 The Arbitrator may determine the matter in the nature of a default judgment after establishing that the Petition is properly supported and was properly served on the Respondent.
- 3.8.4.2 The Arbitrator may allow the re-opening of the matter to prevent a manifest injustice. A request for re-opening must be made no later than seven days after notice of the default judgment.
- 3.9 Summary Dismissal of Petition by the Arbitrator
- 3.9.1 If the Arbitrator determines that the subject of the Petition is not appropriate for arbitration, the Arbitrator may summarily dismiss the Petition and provide notice of such dismissal to the parties.
- 3.10 Appointment of Arbitrator
- 3.10.1 Upon receipt of a proper Response, the Department shall assign an Arbitrator who shall schedule the matter for a hearing so that the Arbitrator can render a written decision within 45 days of the delivery to the Department of the Petition for Arbitration.
- 3.10.2 The Arbitrator shall be of suitable background and experience to decide the matter in dispute and shall not be affiliated with any of the parties.
- 3.11 Arbitration Hearing
- 3.11.1 The Arbitrator shall give notice of the arbitration hearing date to the parties at least 10 days prior to the hearing. The parties are not required to appear and may rely on the papers delivered to the Department.
- 3.11.2 The arbitration hearing is to be limited, to the maximum extent possible, to each party being given the opportunity to explain their view of the previously submitted evidence and to answer questions by the Arbitrator.
- 3.11.3 If the Arbitrator allows any brief testimony, the Arbitrator shall allow brief cross-examination or other response by the opposing party.
- 3.11.4 The Delaware Uniform Rules of Evidence will be used for general guidance but will not be strictly applied.
- 3.11.5 Because the testimony may involve evidence relating to personal health information that is confidential and protected by state or federal laws from public disclosure, the arbitration hearing shall be closed.
- 3.11.6 The Arbitrator may contact, with the parties' consent, individuals or entities identified in the papers by telephone in or outside of the parties' presence for information to resolve the matter.
- 3.11.7 The Arbitrator is to consider the matter based on the submissions of the parties and information otherwise obtained by the Arbitrator in accordance with this Section 3.0. The Arbitrator shall not consider any matter not contained in the original or supplemental submissions of the parties that has not been provided to the opposing party with at least five days notice, except claims of a continuing nature that are set out in the filed papers.
- 3.12 Arbitrator's Written Decision.
- 3.12.1 The Arbitrator shall render his decision and mail a copy of the decision to the parties within 45 days of the filing of the Petition.
- 3.12.2 The Arbitrator's decision is binding upon the parties with respect to allowable charges and payments for each emergency care service subject to arbitration for a period that will end on the 360th day after the date of the Arbitrator's decision.
- 3.13 Arbitration Costs.
- 3.13.1 The non-prevailing party at arbitration shall reimburse the Commissioner for the expenses related to the arbitration process.
- 3.14 Arbitrations subject to this ~~Regulation 1316~~ regulation shall not be subject to the provisions of ~~Regulation 1313~~ 18 DE Admin. Code 1313.

PROPOSED REGULATIONS

~~3.15 Exemption from Arbitration. 18 Del.C. §§3340(b) and 3565(b) shall not apply to health insurance policies exempt from state regulation under federal law or regulation. On a quarterly basis, each carrier shall provide a list of exempt plan numbers to the Department. The Department shall maintain a public register of exempt plan numbers. The placement of an exempt plan number on the register shall constitute a rebuttable presumption that the policy plan is not subject to the provisions of this regulation. A carrier that clearly identifies whether a plan is either exempt or non-exempt on the face of an identification or membership card shall not be required to comply with the provisions of this section but only with respect to the plans for which such identification or membership cards display the group status. The failure of a carrier to either (1) provide the Department with a list of exempt plan numbers, or (2) clearly identify if a plan is exempt or non-exempt on the face of an identification or membership card shall constitute a rebuttable presumption that the plan is subject to the provisions of this regulation.~~

3.16 3.15A A carrier and a non-network emergency care provider can mutually agree in writing to submit to arbitration pursuant to Section 3.0 payment disputes relating to the delivery of emergency care services to patients covered by a plan otherwise exempt from arbitration, except that such agreement will only apply to the plan and the services stated therein.

3.17 3.16 The provisions of this regulation shall not apply to Medicaid or any other health insurance program where the review of coverage determinations is otherwise regulated by the provisions of other state or federal laws or regulations.

4.0 Confidentiality of Health Information

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

5.0 Computation of Time

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

6.0 Effective Date

This Regulation became effective on April 11, 2016. The amendment deleting subsection 3.15 of this regulation shall become effective ten 10 days after being published as a final regulation.

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 531, 2304, and 2312 (18 Del.C. §§531, 2304 & 2312)

18 DE Admin. Code 2102

PUBLIC NOTICE

2102 Termination of Coverage for Policies of Commercial Governmental and Professional Liability Insurance [Formerly Regulation 54]

A. Type of Regulatory Action Required

Proposal to repeal Regulation 2102.

B. Synopsis of Subject Matter of Regulation

The Department of Insurance hereby gives notice of a proposal to repeal Regulation 2102, Termination of Coverage for Policies of Commercial Governmental and Professional Liability Insurance. Regulation 2102 was enacted on May 9, 1986 and expired by operation of law effective November 5, 1986. As such, the Insurance Commissioner finds it necessary to repeal Regulation 2102.

C. Notice of Public Comment

The proposed regulation appears below and may also be viewed at 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 1st day of July, 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: 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/june2023/proposed/26 DE Reg 1030RFA 06-01-23.pdf>

2102 Termination of Coverage for Policies of Commercial Governmental and Professional Liability Insurance [Formerly Regulation 54]

4.0 Authority

4.1 This regulation is adopted pursuant to 29 ~~Del.C.~~ Ch. 101 and 18 ~~Del.C.~~ Sections 531, 2304 and 2312.

2.0 Scope

2.1 This regulation shall apply to all attempted mid-term cancellations of commercial, governmental, and professional liability insurance policies and to some attempted nonrenewals and requires minimum notice of proposed cancellations and terminations of coverage. This regulation applies to all companies licensed to do business in this State except policies of reinsurance, excess and surplus lines, residual market risks, workers' compensation, multi-state location risk policies subject to retrospective rating plans and excess or umbrella policies. This regulation shall not apply to policies covering private passenger automobiles as defined in 18 ~~Del.C.~~ Ch. 39, and its requirements are in addition to any imposed by other statutes or regulations.

3.0 Prohibition of Mid-Term Cancellations

3.1 No insurer licensed to do business in Delaware shall cancel mid-term any policy of governmental, commercial or professional liability except for the following reasons:

- 3.1.1 Nonpayment of premium;
- 3.1.2 Material misrepresentation or nondisclosure to the company of a material fact at the time of acceptance of the risk;
- 3.1.3 Increased hazard or material change in the risk assumed which could not have been reasonably contemplated by the parties at the time of assumption of the risk;
- 3.1.4 Substantial breaches of contractual duties, conditions or warranties that materially affect the nature and/or insurability of the risk;

- ~~3.1.5 Fraudulent acts against the company by the insured or its representatives that materially affect the nature of the risk insured;~~
- ~~3.1.6 Lack of cooperation from the insured on loss control matters affecting insurability of the risk;~~
- ~~3.1.7 Bona fide loss of or substantial changes in applicable reinsurance provided, however, the insurer shall give sixty days written notice to both the insured and the Insurance Commissioner and submit a statement outlining the measures taken by the insurer to retain reinsurance and to obtain alternative sources of reinsurance in the form provided (Exhibit 1);~~
- ~~3.1.8 Material increase in exposure arising out of changes in statutory or case law subsequent to the issuance of the insurance contract (provided that the insurer give sixty days written notice to the insured and the Insurance Commissioner); and~~
- ~~3.1.9 Bona fide loss of or reduction in available insurance capacity (provided that the insurer give sixty days written notice to the insured and the Insurance Commissioner).~~
- ~~3.2 Nothing in this regulation shall prohibit an insurer from issuing a notice of cancellation with respect to any policy which has been in effect for less than 60 days at the time the notice is mailed or delivered.~~
- ~~3.3 No insurer shall effect or attempt to effect a mid-term premium increase and/or a reduction in the amount and/or type of coverage provided under the policy unless mutually agreed to by the insurer and the insured after good faith negotiations or unless prior written approval therefore has been obtained from the Commissioner.~~

4.0 ~~Notice of Cancellation or Nonrenewal~~

- ~~4.1 No cancellation or nonrenewal notice other than a cancellation based upon nonpayment of premium shall be valid unless notice is mailed or delivered by the insurer to the insured, and to any person entitled to notice under the policy, not more than 120 days nor less than sixty days prior to the proposed effective date. The notice shall state the effective date of the cancellation.~~
 - ~~4.1.1 A policy shall not be cancelled for nonpayment of premium unless the insurer, at least ten days prior to the effective cancellation date, has mailed or delivered to the insured notice as required in this regulation of the amount of premium due and the due date. The notice shall clearly state the effect of nonpayment by the due date.~~
 - ~~4.1.2 No cancellation for nonpayment of premium shall be effective if payment of the amount due is made prior to the effective date set forth in the notice.~~
 - ~~4.1.3 A policy shall not be cancelled other than for nonpayment of premium under Section 3 of this regulation unless the insurer, at least sixty days prior to the effective termination date, has mailed or delivered to the insured notice as required in this regulation.~~
 - ~~4.1.4 The insurer shall provide the first named insured with a written statement setting forth the reasons for cancellation or nonrenewal where the named insured agrees in writing to hold the insurer harmless from liability for any communication giving notice of or specifying a reason for a cancellation or nonrenewal, or for any statement made in connection with an attempt to discover or verify the existence of conditions which would be a reason for a cancellation or nonrenewal under this regulation.~~
- ~~4.2 All notices of cancellation, except those for nonpayment of premium, must contain a statement which shall be clearly and prominently set out in boldface type or other manner which draws the reader's attention advising the insured that the insured may file a written complaint about the cancellation with the Delaware Insurance Department. The statement also shall advise the insured to contact the Insurance Department immediately, in the event he or she wishes to file a complaint.~~
- ~~4.3 No cancellation or nonrenewal shall be valid unless notice thereof is sent:~~
 - ~~4.3.1 By certified mail; or~~
 - ~~4.3.2 By first class mail, if at the time of mailing the insurer has obtained from the Post Office Department a date stamped proof of mailing showing the name and address of the insured, and the insurer has retained a duplicate copy of the mailed notice which is certified to be a true copy.~~
- ~~4.4 For the purposes of this regulation, if an insurer fails to send a notice of cancellation or nonrenewal as required by this regulation, the insured shall be entitled to continue the expiring policy at the same~~

~~terms and premium until such time as the insurer shall send appropriate notice of termination under this regulation. Nothing in this regulation shall prohibit an insurer from replacing its policy with a policy issued by another insurer with which it is under common management and control.~~

- 4.5 ~~An insurer shall not be required to provide notice of cancellation or nonrenewal as specified in this regulation if the insured has replaced coverage elsewhere or has otherwise specifically requested termination. The insurer must, however, maintain in its file properly documented proof that termination was made at the request of the insured.~~

5.0 Policy Provisions

- 5.1 ~~No policy shall contain provisions which are inconsistent with the applicable requirements of this regulation.~~

6.0 Separability

- 6.1 ~~If any provision of this regulation or the application thereof to any person, or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances shall not be affected thereby.~~

7.0 Penalties

- 7.1 ~~In addition to any other penalty authorized by law, the Commissioner may order the immediate reinstatement without lapse of any policy which has been terminated in violation of the provisions of this regulation and may, after notice and a hearing, impose penalties as prescribed by 18 ~~Del.C.~~ §334 and 18 ~~Del.C.~~ §2312.~~

8.0 Effective Date

- 8.1 ~~This regulation shall become effective upon signature. (May 27, 1986)~~

~~8.2 Exhibit 1~~

~~8.2.1 Name of company~~

~~8.2.2 Address~~

~~8.2.3 Contact person~~

~~8.2.4 Total amount of company's net retention for the risks intended to be cancelled~~

~~8.2.5 Name of reinsurer~~

~~8.2.5.1 Contact person~~

~~8.2.5.2 Telephone no.~~

~~8.2.5.3 Type of treaty~~

~~8.2.5.4 Proposed date of cancellation of reinsurance treaty~~

~~8.2.5.5 Reason given for cancellation~~

~~8.2.5.6 Total risk ceded to reinsurer~~

~~8.2.5.6.1 Portion no longer available~~

~~8.2.5.6.2 Percentage this represents in relation to total reinsurance ceded~~

~~8.2.6 Identify by company name, address, contact person, and telephone number at least three companies contacted in an effort to obtain replacement reinsurance:~~

~~8.2.6.1 Name of reinsurer~~

~~8.2.6.2 Address~~

~~8.2.6.3 Contact person~~

~~8.2.6.4 Telephone number~~

~~8.2.6.5 Name of reinsurer~~

~~8.2.6.6 Address~~

~~8.2.6.7 Contact person~~

PROPOSED REGULATIONS

- 8.2.6.8 Telephone number
 8.2.6.9 Name of reinsurer
 8.2.6.10 Address
 8.2.6.11 Contact person
 8.2.6.12 Telephone number
- 8.2.7 Explain how the loss or reduction in reinsurance affects the company's risks throughout the entire line or category of insurance proposed for cancellation or termination of coverage
- 8.2.7.1 Percentage of that line or category written in Delaware
- 8.2.8 Explain how the cancellation or termination of coverage will be implemented with respect to individual risks
- 8.2.9 Please provide the names and addresses of Delaware policyholders who will be cancelled on a separate sheet.
- 8.3 I swear under the penalty of perjury that the above statements are true and correct to the best of my knowledge and belief.

 Contact Person

 Title

Dated: _____

DEPARTMENT OF SAFETY AND HOMELAND SECURITY DELAWARE COUNCIL ON POLICE TRAINING

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

PUBLIC NOTICE

801 Regulations of the Delaware Council on Police Training

The Council on Police Training (COPT), pursuant to 11 Del. C. §8404 (a)(14), proposes to amend 801 Regulations of the Delaware Council on Police Training. The proposed amendments, which were voted on during a public meeting of the COPT on April 11, 2023, seek to modify COPT's minimum qualifications for police instructors.

The COPT will allow for the submission of written comments, suggestions, or other materials regarding the proposed rules to the COPT Attn: Lacey Neeld, P.O. Box 430, Dover DE 19903 or e-mail lacey.neeld@delaware.gov. Any written submission in response to this notice and the relevant proposed regulations must be received by the COPT no later than 4:30 p.m. (EST) on July 3, 2023. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons sent forth above, the Council on Police Training does hereby ORDER that the regulations be, and that they hereby are, proposed to be enacted as set forth below.

Nathaniel McQueen, Jr., Chairman COPT

***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/june2023/proposed/26 DE Reg 1034RFA 06-01-23.pdf>

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

10.0 Minimum Qualifications for Police Instructors

10.1 Proposed instructors shall forward a resume including information relative to their education, experience in law enforcement, experience and suitability in instruction, ability at oral and written communication, and physical and personal appearance to the Administrator.

10.1.1 The instructors shall be of ~~two~~ 5 types:

10.1.1.1 Certified Instructors: Those used in general police instruction and who have been in law enforcement for a minimum of ~~five~~ 5 years. These instructors shall complete a police instructor school as approved by the Council and instructed by a Master Instructor.

10.1.1.2 Limited Instructor: Those who, by their special knowledge and preparation, are suited to instruct certain courses requiring such special knowledge and education shall have the ~~five-year~~ 5-year minimum experience waived. These instructors may be given a certification limited in subject matter.

10.1.1.3. Master Instructor: A police officer certified by the Council to teach a police instructor school.

10.1.1.4. Firearms Instructor: Defined in 1 **DE Admin. Code 803**.

10.1.1.5. Master Firearms Instructor: Defined in 1 **DE Admin. Code 803**.

10.1.2 ~~All instructors must meet one of the following criteria.~~ Instructors shall maintain their certification as an instructor by meeting the following criteria:

~~40.1.2.1 Certification from a police instructor school as approved by the Delaware Council on Police Training and instructed by a Council certified master instructor.~~

~~40.1.2.2 Those, who by their special knowledge and preparation, are suited to instruct certain courses requiring such special knowledge and education may be given a certification limited in subject matter.~~

~~40.1.2.3~~ 10.1.2.1 Certified, Limited and Firearms Instructors must conduct a minimum of ~~four (4)~~ 8 hours of instruction or presentation in a ~~five-year~~ 2-year period to remain active instructors. Instructors who are not active instructors are required to instruct under the supervision of another active certified instructor for a total of ~~four (4)~~ 8 hours to become active. An instructor who fails to instruct or present a minimum of 8 hours during a 2-year period shall become inactive and is not permitted to act as an instructor. An inactive instructor may re-activate their instructor status by teaching for 8 hours under the supervision of another instructor. Should an instructor fail to teach or present within a 5-year period, they shall be subject to the provisions in subsection 10.1.5.

10.1.2.2 A Master Instructor must participate in a police instructor school as an instructor or facilitator once every 2 years. If a Master Instructor fails to meet these requirements during a 2-year period, they shall be subject to the provisions in subsection 10.1.5.

10.1.3 Evaluations

10.1.3.1 Certified instructors shall be monitored by the Director (or his/her designee) of the respective academy in which they are instructing.

10.1.3.2 Evaluation reports shall be forwarded to the Director (or his/her designee) of the training academy from which the instructor originates.

10.1.4 Complaint Process

10.1.4.1 Students in a police academy having complaints relative to training shall direct such complaints to the Director of the academy they are attending.

10.1.4.1.1 If remedial action is not forthcoming, the student;

10.1.4.1.1.1 In the case of students attending their own academy, shall follow the authorized chain of command of that agency.

PROPOSED REGULATIONS

10.1.4.1.1.2 In the case of students attending an academy other than their own, shall notify their training officer or chief of police.

10.1.4.1.1.3 The training officer or chief of police making complaints relative to an instructor or the training shall make a written request to the Administrator for an evaluation of the training or the instructor. The Administrator, or ~~his/her~~ the Administrator's designee, shall provide ~~such an~~ an evaluation for every request. The Administrator's designee shall be a director of an approved academy or ~~his/her~~ delegate the director's designee. The Administrator or the Administrator's designee shall consult with a Master Instructor in that evaluation process.

10.1.4.2 Students not in a police academy, or anyone else who has a complaint relative to training from an instructor defined in subsection 10.1.1, shall follow the complaint process in subsection 10.1.4.1.1.3.

10.1.5 Decertification

10.1.5.1 Instructors who become certified, but through the evaluation process are found to be unacceptable for training purposes may be decertified by the Council upon recommendation by the Training Director of the agency's Academy, and the Administrator. The complaint shall have been investigated prior to any action by the Council.

10.1.5.2 Falsification of information which led to certification shall be just cause for instructor decertification.

10.1.5.3 Certified Instructors who fail to complete the minimum required teaching may be decertified after notice and an opportunity to be heard in front of a panel of 3 Master Instructors chosen by the Administrator. The Certified Instructor may present argument in writing or request a hearing by sending the argument or request for a hearing to the Administrator. If the panel determines that the instructor demonstrated by substantial evidence that the instructor was unable to complete the required teaching due to circumstances beyond their control, the instructor shall be given 1 additional year to meet the minimum teaching standard. If the instructor fails to complete the minimum teaching standard within 1 year, they shall be decertified as an instructor by the Council. Failure to respond to a notice sent by Certified Mail to an instructor shall be grounds for decertification as a Certified Instructor.

10.1.5.4 Master Instructors who fail to complete the minimum required teaching may be decertified after notice and an opportunity to be heard in front of a panel of 3 members of the Council. The Master Instructor may present argument in writing or request a hearing by sending the argument or request for a hearing to the Administrator. If the panel determines that the Master Instructor demonstrated by substantial evidence that the Master Instructor was unable to complete the required teaching due to circumstances beyond their control, the Master Instructor shall be given 1 additional year to meet the minimum teaching standard. If the Master Instructor fails to complete the minimum teaching standard within 1 year, they shall be decertified as a Master Instructor, but shall retain their status as a Certified Instructor. Failure to respond to a notice sent by Certified Mail to a Master Instructor shall be grounds for decertification as a Master Instructor.

10.1.6 Appellate Process:

~~10.1.6.1~~ There are no appeals of the decisions of the Council on Police Training concerning instructor decertification unless a claim of lack of due process can be substantiated.

***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/june2023/proposed/26 DE Reg 1034 06-01-23.htm>

DELAWARE COUNCIL ON POLICE TRAINING

Statutory Authority: 11 Delaware Code, Section 8404(a)(14) (11 Del.C. §8404(a)(14))
1 DE Admin. Code 803

PUBLIC NOTICE

803 COPT Firearms Instructors Standards and Requirements

The Council on Police Training (COPT), pursuant to 11 Del. C. §8404 (a)(14), proposes to amend 803 COPT Firearms Instructors Standards and Requirements. The proposed amendments, which were voted on during a public meeting of the COPT on April 11, 2023, seek to modify regulations concerning COPT firearms and master firearms instructors qualifications.

The COPT will allow for the submission of written comments, suggestions, or other materials regarding the proposed rules to the COPT Attn: Lacey Neeld, P.O. Box 430, Dover DE 19903 or e-mail lacey.neeld@delaware.gov. Any written submission in response to this notice and the relevant proposed regulations must be received by the COPT no later than 4:30 p.m. (EST) on July 3, 2023. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons sent forth above, the Council on Police Training does hereby ORDER that the regulations be, and that they hereby are, proposed to be enacted as set forth below.

Nathaniel McQueen, Jr., Chairman COPT

***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/june2023/proposed/26 DE Reg 1037RFA 06-01-23.pdf>

803 COPT Firearms Instructors Standards and Requirements

1.0 Intent and Purpose

To establish basic requirements for COPT firearms instructors that include standards for both sworn and civilian sponsored instructors.

2.0 Definitions

As used in this chapter:

- “**Ammunition**” means a projectile designed to be fired from a weapon such as a handgun or rifle.
- “**Armorer**” means a person who has received specialized training related to conducting detailed inspections and repairs to specific weapons.
- “**Certification**” means the official approval by the Council on Police Training for an officer to act in a specified capacity, due to the officer’s credentials or level of achievement.
- “**Chief of Police**” means any colonel, chief of police or any officer who is the highest-ranking officer of a legislatively authorized police department within this State.
- “**Council on Police Training**” or “**COPT**” means the regulatory body established by 29 Del.C. §8205 to consider matters relating to police training and such other matters as may be referred to it by the Governor or the Secretary of the Department.
- “**Firearms Instructor**” means a law enforcement officer that has received specialized training related to firearms including knowledge of the types of firearms used in law enforcement; appropriate shooting

and tactical techniques; instruction methods; and the ability to perform inspection of weapons and range equipment for safety issues. A firearms instructor is not required to be an armorer.

“**Law Enforcement Agency**” or “**LEA**” means any police force or organization functioning within this State or any other state which has by statute or ordinance the responsibility of detecting crime and enforcing the criminal or penal laws of this State or any other state.

“**Law Enforcement Officer**” means a sworn member of a police force or other law-enforcement agency of this State or of any county or municipality who is responsible for the prevention and the detection of crime and the enforcement of laws of this State or other governmental units within the State as defined in 11 **Del.C.** §8401(5)(a)(b), irrespective of the number of the hours worked.

“**Master Firearms Instructor**” means any certified firearms instructor approved by the COPT to be a certifying instructor for a firearms instructor course.

“**Qualification**” means a level of skill or ability that an officer must achieve to be allowed to maintain certification to carry departmentally assigned or approved weapons, as specified in 1 **DE Admin. Code** 801 Section 12.0 for all weapon systems responsible for training.

“**Recertification**” means the renewal of the original certification based on additional training, testing, or a combination of both.

“**Sponsorship**” means any former COPT certified law enforcement officer, as defined in this section, who retired or separated in good standing from a Delaware law enforcement agency and has been contracted by a Delaware law enforcement agency to provide firearms instruction to Delaware law enforcement officers.

3.0 COPT Firearms Instructor Certification Requirements

- 3.1 No firearms instructor shall be utilized by any law enforcement agency for purposes of certifying firearms instructors unless the certifying instructor has been approved by the Council on Police Training.
- 3.2 All sworn law enforcement officers seeking Firearms Instructor Certification must submit proof of ~~successful completion of the following requirements to the COPT Administrator prior to being brought before the COPT:~~
 - 3.2.1 ~~Proof of successful~~ Successful completion of a COPT Certified Instructor Course.
 - 3.2.2 Minimum of three years' experience as a sworn law enforcement officer. This requirement may be waived for those who are deemed suited to instruct based upon special knowledge, education, or experience.
 - 3.2.3 ~~Those who, by their special knowledge and preparation, are suited to instruct certain courses requiring such special knowledge and education may have the three-year minimum experience waived.~~
 - 3.2.4 ~~3.2.3~~ Proof of successful Successful completion of an approved COPT Firearms Instructor Course, taught by a COPT Master Firearms Instructor, ~~at a firearms instructor course previously approved by the COPT,~~ or other firearms instructor courses if recommended for approval by the COPT Firearms Instructor Subcommittee and subsequently approved by Council taken within 3 years of the date of application and successful completion of a Delaware firearms instructor refresher course.
 - 3.2.5 A signed letter of endorsement from the Chief of Police of their respective law enforcement agency.
- 3.3 A firearms instructor is not required to be an armorer and being an armorer does not qualify you to be a firearms instructor.

4.0 Sponsored Firearms Instructor Certification Requirements

- 4.1 No firearms instructor shall be utilized by any police department for purposes of certifying firearms instructors unless the certifying instructor has been approved by the Council on Police Training.

-
- 4.2 All non-sworn individuals seeking Sponsored Firearms Instructor Certification must submit proof of successful completion of the following requirements to the Chief of Police of the sponsoring LEA for submission to the COPT Administrator prior to being brought before the COPT:
- 4.2.1 Proof of Certification as a COPT firearms instructor.
 - 4.2.2 Proof of being an active COPT certified instructor at the time of retirement or separation.
 - 4.2.3 Proof of retirement or separation in good standing.
- 4.3 The Chief of Police sponsoring an individual must submit an endorsement letter of the individual to the COPT along with acknowledging compliance with these regulations as set forth.

5.0 Firearms Instructor Course Requirements

- 5.1 Firearms instructor courses must be taught by a COPT Master Firearms Instructor and provide the candidate the necessary education and training in the safe and proper use of firearms, knowledge and skills necessary to teach others to shoot, and additional skills and techniques needed to organize and instruct.
- 5.2 Firearms instructor courses must be a minimum of 40 hours of education and training to be considered eligible for approval by the COPT.
- 5.3 Firearms instructor courses must meet the following minimum curricula requirements to be considered by the COPT Firearms Instructor Subcommittee for approval:
 - 5.3.1 Basic Marksmanship Instruction
 - 5.3.2 Target Analysis
 - 5.3.3 Instructional Techniques & Training Aids
 - 5.3.4 Range Organization & Administration
 - 5.3.5 Weapons Nomenclature & Function
 - 5.3.6 Fundamentals of Close Quarters Combat
 - 5.3.7 Introduction to Ammunition & Ballistics
 - 5.3.8 Judgment & Decision-Making Training
 - 5.3.9 Shooting Position, Movement, and Target Engagement
 - 5.3.10 Range & Weapon Safety
 - 5.3.11 Use-Of- Force & Legal Issues
 - 5.3.12 Coaching skills development

6.0 Firearms Instructors Training Requirements

- 6.1 An eight-hour firearms recertification course will be held annually and will include: legal updates, use of force, and review of Council on Police Training standards.
- 6.2 Instructors must attend a minimum of one ~~recertification~~ refresher course every three years and complete sixteen hours of additional training in firearms usage or complete sixteen hours of academy level instruction, or a combination of training and instruction in the same three-year period.
- 6.3 All firearms instructors must also annually meet the standards established in 1 **DE Admin. Code 801** Section 12.0 for all weapon systems responsible for training.

7.0 COPT Master Firearms Instructor Requirements

- 7.1 A COPT Certified Firearms Instructor seeking Master Firearms Instructor certification shall provide the following to the COPT Firearms Instructor Subcommittee:
 - 7.1.1 Current Curriculum Vitae (CV) or Resume indicating all relevant work history, training, certifications, experience and education.
 - 7.1.2 A signed letter of endorsement from the Chief of Police of their respective law enforcement ~~agency~~, agency:

PROPOSED REGULATIONS

- 7.1.3 ~~Proof of successful completion of a COPT approved Firearms Instructor Course and proof of successful completion of a COPT Master Instructor Course, Course; or~~
- 7.1.4 ~~Proof of successful completion of a COPT approved Current certification as a COPT Certified Firearms Instructor Course and:~~
- 7.1.4.1 ~~Seven Three years or more as a an active COPT Certified Firearms Instructor or a minimum of 2000 hours of combined firearms instruction and training, Instructor;~~
- 7.1.4.2 Proof of Firearms related administrative and teaching responsibilities such as lesson planning, record keeping, ~~etc.~~, and academy level instruction; and
- 7.1.4.3 Proof of successful completion of an Advanced or "Master" Firearms Instructor courses, totaling at least 40 hours in length combined, from approved vendors as agreed upon by the COPT Firearms Instructor Subcommittee and successful completion of a Delaware COPT Firearms Instructor Refresher course both completed within the last 3 years.
- 7.2 The COPT Firearms Instructor Subcommittee will review each request and required documentation. After a full review, the COPT Firearms Instructor Subcommittee shall either endorse or not endorse the request at the next regularly scheduled COPT Board meeting.
- 7.3 The COPT will be responsible for voting on all certifications for Master Firearms Instructors.
- 8.0 Training, Qualification and Records**
- 8.1 Complete records should reflect all firearms training, qualification, and re-evaluation activities, as well as the performance and proficiency of the law enforcement officer during such activities.
- 8.2 Copies of all training course schedules, curricula, and lesson plans must be maintained along with the records of individual trainees.

9.0 Training Site or Facility Requirements

The training site or facility should provide the environment necessary to conduct all aspects of the training and qualification as approved by the COPT, including appropriate simulation exercises.

DIVISION OF STATE POLICE State Bureau of Identification

Board of Examiners of Constables

Statutory Authority: 24 Delaware Code, Section 5604(1) (24 **Del.C.** §5604(1))
24 **DE Admin. Code** 2400

PUBLIC NOTICE

2400 Board of Examiners of Constables

Purpose: In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 24 of the Delaware Code, Chapter 56, Section 5604(1), the Constable Board of Examiners proposes to adopt regulations to allow the provisional grant of a constable license by the State Bureau of Identification pending approval by the Board

Written Comments: The Delaware Department of Safety and Homeland Security, State Bureau of Identification will receive written comments, suggestions, briefs or other written material until the close of business, 4:30 p.m., July 3, 2023. Written comments shall be submitted via e-mail to Frank.Kaleta@delaware.gov or via the USPS to Frank Kaleta, 600 South Bay Rd. Suite 1, Dover DE 19901.

***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/june2023/proposed/26 DE Reg 1040RFA 06-01-23.pdf>

2400 Board of Examiners of Constables

1.0 Licensing

(Break in Continuity Within Section)

- 1.9 If an applicant wishes to work for more than one agency, they must submit an application. All other requirements do not need to be submitted as they are already on file in the Professional Licensing Section. Any commissioned constable currently employed with an approved entity may, with the approval of the Director, be commissioned to work with any other approved entity for the purpose of new or secondary employment as a constable. The constable will be allowed to work for the new entity upon such approval and receiving their new commission and identification card. Any approval must be affirmed and voted on by the Board at the next scheduled meeting.
- 1.9.1 If an applicant meets all of the criteria exempting them from minimum training standards and attending the academy, Professional Licensing may administratively approve the commission in the same manner outlined in Section 1.0. Any such administrative approval must be affirmed and voted on by the Board at the next scheduled meeting.
- 1.9.2 If an administratively approved commission is denied by the Board, their commission shall be immediately suspended as outlined in Section 2.0 and notification shall be made to both the entity and applicant.
- 1.10 All applicants seeking a new commission as a constable shall be required to submit a \$200.00 licensing fee.
- 1.11 All applicants seeking a commission renewal as a constable shall be required to submit a \$100.00 renewal licensing fee and shall accompany each re-application thereafter.
- 1.12 All commissions will expire on December 31st, two years from the year the commission was first issued. Any commissions needing to be adjusted will be charged a pro-rated fee.

***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/june2023/proposed/26 DE Reg 1040 06-01-23.htm>

OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER
Statutory Authority: 4 Delaware Code, Section 304 (4 Del.C. §304)
4 DE Admin. Code 202

PUBLIC NOTICE

Rule 202 (Formerly Rule 19) A Rule Defining the Words Hotel, Motel, Restaurant and Dinner Theater

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 4 Del.C. §304, the Delaware Alcoholic Beverage Control Commissioner proposes to update its rules related to on-premise licensees, specifically seating in restaurants licensed by the OABCC.

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

Doug Denison
Deputy Commissioner

Office of the Delaware Alcoholic Beverage Control Commissioner
820 N. French St., 3rd Floor
Wilmington, DE 19801

Comments may also be directed via electronic mail to OABCCrulescomments@delaware.gov. Any written submission in response to this notice and relevant to the proposed regulations must be received by the Delaware Alcoholic Beverage Control Commissioner no later than 4:00 p.m. EST, July 1, 2023.

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

Background

The Delaware Alcoholic Beverage Control Commissioner ("Commissioner" or "Office") is authorized by the General Assembly of the State of Delaware, to establish, by rules and regulations, an effective control of the business of manufacture, sale, dispensation, distribution and importation of alcoholic liquors within and into the State of Delaware, including the time, place and manner in which alcoholic liquors shall be sold and dispensed, not inconsistent with Title 4 of the Delaware Code, known as the Delaware Liquor Control Act ("DLCA") or with any other law of the State. The Commissioner is further authorized to adopt and promulgate rules and regulations not inconsistent with Title 4 or of any other law of the State, and such rules and regulations shall have the force and effect of law; 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 Commissioner, shall focus primarily on public safety and the best interests of the consumer and shall not unduly restrict competition within the alcoholic beverage industry.

4 **DE Admin. Code** 202, subsection 3.1 is updated to change the dining seat to bar seat ratio in restaurants from a 4:1 ratio to a 3:1 ratio. Subsection 3.1 of 4 **DE Admin. Code** 202 has not been modified for decades while restaurants, in an effort to meet the needs of its consumers, have requested variances for additional bar seat options as part of their floor plans to serve complete meals to those who prefer a bar seat over a dining table. This update to the requirements of a licensed restaurant's floor plan will make it easier for restaurants to meet the needs of its consumers, not impact public safety, and preserve the distinction between a taproom and a restaurant.

Restaurants are distinguished from taprooms and taverns in the DLCA in that restaurants are required to provide complete meals at all times the establishment is open for business and have sufficient kitchen space on its floor plan with suitable equipment to prepare and serve complete meals. If a restaurant chooses to provide complete meals at its bar seating for its patrons, the requirement that a restaurant be open principally for the purpose of serving complete meals can be achieved even with a slightly lower dining seat to bar seat ratio, and still ensure public safety and a clear distinction between restaurants and taprooms and taverns. Adults dining in restaurants want to have more seating options, and restaurants will have more flexibility to serve its customers, thereby satisfying consumer demand while not impacting public safety.

Summary of Proposal

Restaurants must meet certain requirements to be licensed to sell and serve alcoholic beverages. One such requirement is providing complete meals to customers. In furtherance of that requirement, a licensed restaurant must have sufficient kitchen and dining space, and the dining space must meet the current requirement of 4 dining seats to 1 bar seat. This rule was written years ago, in part to distinguish a restaurant from a taproom or tavern that is licensed to sell alcoholic beverages, but is not required to provide food or complete meals. The Office has received a number of requests for variances from this rule to respond to increasing consumer demand to enjoy a complete meal while seated at the bar. In furtherance of updating the rules that apply to restaurants, subsection 3.1 of 4 **DE Admin. Code** 202 will be updated, consistent with demand, to permit a restaurant to offer seats at a bar not to exceed 1/3 of the total dining seats of the establishment.

Statutory Authority 4 Del. C. §304.

4 **Del.C.** §304 enables the Delaware Alcoholic Beverage Control Commissioner to adopt and promulgate rules and regulations not inconsistent with Title 4 of the Delaware Code and all such rules and regulations shall have the

force and effect of law; 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.

***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/june2023/proposed/26 DE Reg 1041RFA 06-01-23.pdf>

202 (Formerly Rule 19) A Rule Defining the Words Hotel, Motel, Restaurant and Dinner Theater

1.0 Purpose and Scope

This Rule supplements the definition of Hotel, Motel, Dinner Theater and Restaurant contained in the Liquor Control Act, 4 Delaware Code, Section 101 et seq.

~~4-0~~ 2.0 Hotel and Motel

~~4-1~~ 2.1 "Hotel" means any establishment provided with special space and accommodation, where, in consideration of payment, food and lodging are habitually furnished to travelers.

2.2 "Motel" means the same as the word "hotel" except that a motel may consist of one or more buildings so long as it otherwise qualifies with the requirements set forth in the above definition of "hotel". The provisions of the Liquor Control Act shall likewise apply to applications to sell alcoholic liquor in a motel.

~~4-2~~ 2.3 There shall also be adequate and sanitary kitchen and dining room equipment and an approved storage space where alcoholic liquor may be kept. A hotel and motel shall be advertised as such. A State or County license to operate the premises as a hotel and motel shall also be issued and in possession of the applicant prior to the issuance of the license and at all times thereafter during the term of the license.

2.0 Motel

~~"Motel" shall mean the same as the word "hotel" except that a motel may consist of one or more buildings so long as it otherwise qualifies with the requirements set forth in the above definition of "hotel". The provisions of the Liquor Control Act shall likewise apply to applications to sell alcoholic liquor in a motel.~~

3.0 Restaurant

3.1 "Restaurant" means any establishment which is regularly used and kept open principally for the purpose of serving complete meals to persons for consideration, and which has seating at tables for 12 or more persons and suitable kitchen facilities connected therewith for cooking an assortment of foods under the charge of a chef or cook.

3.2 Additional requirements to operate as a restaurant are:

3.2.1 Seats at a bar shall not exceed ~~25%~~ 1/3 of the dining seats.

3.2.2 The service of only such food ~~and victuals~~ as sandwiches or salads shall not be deemed to be the service of "meals".

~~3-1-4~~ 3.2.3 Complete meals shall be available at all hours that any restaurant is open for the sale of alcoholic liquor.

~~3-1-2~~ 3.2.4 There shall also be adequate and sanitary kitchen and dining room equipment, and an approved storage space where alcoholic liquor may be kept.

~~3-1-3~~ 3.2.5 A State or County license to operate the premises as a "restaurant" shall also be issued and in the possession of the applicant prior to the issuance of the license and at all times thereafter during the term of the license.

4.0 Complete Meals - Hotel, Motel, and Restaurant

PROPOSED REGULATIONS

- 4.1 The sale of alcoholic beverages by a hotel, motel, or restaurant shall be considered as a supplement to the original purpose of providing food and lodging and furnishing food, respectively.
- 4.2 "**Complete Meals**" shall be considered to mean the normal meals provided at breakfast, lunch and dinner, offered from menus consisting of, but not limited to: breakfast foods, soups, appetizers, entrees, salads, vegetables, ~~dessert's~~ desserts, and beverages other than alcoholic.
- 4.3 Restaurants licensed to sell "Beer Only" and "Wine Only" shall be required to furnish only two out of the four following accompaniments to meals: appetizers, soups, salads and vegetables.

5.0 Dinner Theater

- 5.1 The dinner theater shall serve at least one meal consisting of, but not limited to, appetizers, entrees, salads, vegetables, desserts and beverages other than alcoholic. There shall also be an adequate and sanitary kitchen and dining equipment with an approved storage space where alcoholic liquor may be kept.
- 5.2 The dinner theater licensee shall supply to the Commissioner the hours during which the licensee shall permit consumption of alcoholic beverages on its premises. In no event shall the dinner theater licensee allow consumption of alcoholic liquors on its premises at times other than in conjunction with meals served at the theatrical performances and during intermissions or at any other time which is not permitted by the Delaware Liquor Control Act. The hours of consumption of alcoholic liquors shall first be approved by the Commissioner before the issuance of a license.
- 5.3 Persons not of sufficient age to consume alcoholic liquors shall be allowed and permitted to be on the licensed premises of the dinner theater so long as all of the other provisions of the Liquor Control Act and Rules of this Commissioner are being complied with.

OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER

Statutory Authority: 4 Delaware Code, Section 304 (4 Del.C. §304)
4 DE Admin. Code 1201 &1202

PUBLIC NOTICE

1200 General Establishment Employment

Rule 1201 (Formerly Rule 7) A Rule Requiring Persons Between the Ages of 16 and 18 to Secure a Work Permit to be Employed by an On-Premises Licensee

Rule 1202 (Formerly Rule 7.1) Employment of Persons Who Have Reached the Age of 18 Years in Package Stores

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 4 Del.C. §304, the Delaware Alcoholic Beverage Control Commissioner proposes to update its rules related to on-premise and retail licensees, specifically employment requirements.

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

Doug Denison
Deputy Commissioner
Office of the Delaware Alcoholic Beverage Control Commissioner
820 N. French St., 3rd Floor
Wilmington, DE 19801

Comments may also be directed via electronic mail to OABCCrulescomments@delaware.gov. Any written submission in response to this notice and relevant to the proposed regulations must be received by the Delaware

Alcoholic Beverage Control Commissioner no later than 4:00 p.m. EST, July 1, 2023.

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

Background

The Delaware Alcoholic Beverage Control Commissioner ("Commissioner" or "Office") is authorized by the General Assembly of the State of Delaware, to establish, by rules and regulations, an effective control of the business of manufacture, sale, dispensation, distribution and importation of alcoholic liquors within and into the State of Delaware, including the time, place and manner in which alcoholic liquors shall be sold and dispensed, not inconsistent with Title 4 of the Delaware Code, known as the Delaware Liquor Control Act ("DLCA") or with any other law of the State. The Commissioner is further authorized to adopt and promulgate rules and regulations not inconsistent with Title 4 or of any other law of the State, and such rules and regulations shall have the force and effect of law; 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 Commissioner, shall focus primarily on public safety and the best interests of the consumer and shall not unduly restrict competition within the alcoholic beverage industry.

4 **DE Admin. Code** 1201 and 1202 are updated to permit a person 18 or older to work in an on-premise licensee, and to remove the requirement that an employee obtain a work permit from this Office. House Bill 373, signed by the Governor in April 2022, changed the age of employment from 16 to 14 in clubs with authorized dining facilities, hotels, racetracks and restaurants, so long as such person is not involved in the sale or service of alcoholic liquor. House Bill 463, passed by the 151st General Assembly and signed by the Governor in 2022, modified Section 904(h) of Title 4 of the Delaware Code to permit an 18-year-old to serve, but not prepare, alcoholic beverages in taverns and taprooms. In addition, House Bill 427, passed by the 151st General Assembly, and signed by the Governor on October 26, 2022, amended section 904(g) of Title 4 to remove the requirement that youth employed by licensees first obtain a work permit from this Office. Employees under 18 years old are already required to obtain a work permit from the Delaware Department of Labor.

Summary of Proposal

In 2022, the General Assembly passed House Bills 373, 427 and 463 (all signed by the Governor in 2022), which changed the age of employment in clubs with authorized dining facilities, hotels, racetracks and restaurants, taverns and taprooms and removed the duplicate requirement that youth employees obtain a work permit from the OABCC. Pursuant to the legislative changes made to Section 904 of Title 4 of the Delaware Code, 4 **DE Admin. Code** 1201 and 1202 are updated to reflect: 1) removal of the requirement that youth employees be issued a work permit from this Office; 2) youth 14 years of age and older are permitted to work in clubs with authorized dining facilities, hotels, racetracks and restaurants (provided that no such person be involved in the sale or service of alcoholic liquors); and 3) the change from 19 years of age to 18 years of age as the minimum age for employment to work in a taproom, pursuant to House Bill 463, and the change from 19 years to 18 years of age as the minimum age for employment to work in a retailer provided no one under 21 years sells or serves alcoholic beverages.

Statutory Authority 4 Del. C. §304.

4 **Del.C.** §304 enables the Delaware Alcoholic Beverage Control Commissioner to adopt and promulgate rules and regulations not inconsistent with Title 4 of the Delaware Code and all such rules and regulations shall have the force and effect of law; 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.

***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/june2023/proposed/26 DE Reg 1044RFA 06-01-23.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/june2023/proposed/26 DE Reg 1044 06-01-23.htm>

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION

Board of Accountancy

Statutory Authority: 24 Delaware Code, Section 105(a)(1) (24 Del.C. §105(a)(1))
24 DE Admin. Code 100

PUBLIC NOTICE

100 Board of Accountancy

Pursuant to 24 Del.C. §105(a)(1), the Delaware Board of Accountancy has proposed revisions to its rules and regulations. The rules are designed to revise what constitutes acceptable continuing education and the acceptable timeframe for successful completion of all parts of the Exam. Additional changes consistent with the *Delaware Administrative Code Drafting and Style Manual* are included in the amendments.

A public hearing is scheduled for July 19 2023 at 9:00 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. A public hearing will occur at the Board's meeting on July 19, 2023, where members of the public can offer comments on the proposed amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Accountancy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. Written comments will be accepted until August 4, 2023 in accordance with 29 Del.C. §10118(a).

***Please Note:**

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

<https://regulations.delaware.gov/register/june2023/proposed/26 DE Reg 1046RFA 06-01-23.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/june2023/proposed/26 DE Reg 1046 06-01-23.htm>

DIVISION OF PROFESSIONAL REGULATION

Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners

Statutory Authority: 24 Delaware Code, Section 1806(a)(2) (24 Del.C. §1806(a)(2))
24 DE Admin. Code 1800

PUBLIC NOTICE

1800 Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners

Pursuant to 24 Del.C. §1806(a)(2), the Delaware Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners has proposed revisions to its rules and regulations. The rules proposed establish a continuing education requirement. A public hearing is scheduled for July 11, 2023 at 8:30 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware and possibly via virtual technology where members of the public can offer comments on the proposed amendments to the rules and regulations. This proposed amendment is offered in place of a previous proposal that was published in the Register

at Vol. 26, Issue 9 because the new proposal is substantively different than the original submission. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address in accordance with 29 Del.C. §10118(a). Written public comments will be accepted until July 26, 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/june2023/proposed/26 DE Reg 1046aRFA 06-01-23.pdf>

1800 Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners
(Break in Continuity of Sections)

6.0 Reserved

5.0 Continuing Education

- 5.1 Continuing education (CE) is required of all licensees and shall be completed by June 30 of any year in which a license is to be renewed starting October 31, 2024. Extra continuing education hours do not carry over to the next licensing period. Licensees will only get CE credit for their first attendance of CE courses during each licensing period. Licensees may retake a CE course in the same licensing period but will not receive additional CE credit.
- 5.2 Courses must be approved by the Board in order to qualify as CE. Approved courses appear on the website of the Division of Professional Regulation at <https://www.dpr.delaware.gov>. Licensees may also contact the Administrative Specialist of the Board at the Division of Professional Regulation to determine whether particular courses have been approved.
 - 5.2.1 Courses shall be designed to maintain and enhance the knowledge and skills of licensees related to providing plumbing or HVACR services.
 - 5.2.2 Sponsors or licensees can obtain Board approval of courses at any time by completing a form approved by the Board and including a course outline with the number of classroom hours showing breakdown of time allotted for each part of course content, the curriculum vitae or resume of the instructor and the appropriate fee set by the Division. The completed application will be presented for review at the next regularly scheduled Board meeting.
- 5.3 Licensees shall complete 5 hours of approved CE during each renewal period.
 - 5.3.1 All licensees shall complete:
 - 5.3.1.1 3 hours in Code changes; and
 - 5.3.1.2 1 hour in safety;
 - 5.3.2 Plumbing licensees shall complete 1 hour in cross connections and back flow;
 - 5.3.3 HVACR licensees shall complete 1 hour in Energy Code.
 - 5.3.4 Dual licensees (Plumbing and HVACR) shall complete the required hours as set forth in subsections 5.3.1 through 5.3.3.
 - 5.3.5 Exceptions to the requirements in subsections 5.3.1 through 5.3.4 are:
 - 5.3.5.1 A person licensed less than 1 year does not need to complete CE at the first renewal;
 - 5.3.5.2 A person licensed 1 year but less than 2 years must submit 3 CE hours at the first renewal.
- 5.4 The Board may consider a waiver of CE requirements or acceptance of partial fulfillment based on the Board's review of a written request with supporting documentation of hardship.

***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/june2023/proposed/26 DE Reg 1046a 06-01-23.htm>

Symbol Key

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

Final Regulations

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

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

DELAWARE MOTION PICTURE AND TELEVISION DEVELOPMENT COMMISSION

Statutory Authority: 29 Delaware Code, Section 8750A (29 **Del.C.** §8750A)

ORDER**1501 Administration and Operation of the Delaware Motion Picture and Television Development Commission****I. NATURE OF PROCEEDINGS**

Pursuant to its authority under 29 **Del.C.** § 8750A, the State of Delaware Motion Picture and Television Development Commission proposed to adopt a regulation to establish certain procedures to be used in the administration and operation of the Delaware Motion Picture and Television Development Commission which shall include, without limitation, its receipt of applications for grants, rebates, and other financial assistance within the purview of the Commission; its review and evaluation of applications; and the exercise of its discretion to approve the award of grants, rebates, and other financial assistance for projects supported by the Entertainment Industry Fund.

Notice of a public comment period ending on May 3, 2023 on the Motion Picture and Television Development Commission's proposed regulation was published in the Delaware Register of Regulations for April 1, 2023 in accordance with 29 **Del.C.** §§ 10115 and 10118(a). This is the Motion Picture and Television Development Commission's Decision and Order adopting the proposed regulation pursuant to 29 **Del.C.** § 10118(b).

II. SUMMARY OF EVIDENCE, FINDINGS, AND CONCLUSIONS

1. Pursuant to 29 **Del.C.** § 8750A the Motion Picture and Television Development Commission has statutory authority to promulgate rules and regulations clarifying specific sections of its statute and its role in administering

the Entertainment Industry Fund.

2. The proposed regulation establishes procedures to be used in the administration and operation of the Delaware Motion Picture and Television Development Commission which shall include, without limitation, its receipt of applications for grants, rebates, and other financial assistance within the purview of the Commission; its review and evaluation of applications; and the exercise of its discretion to approve the award of grants, rebates, and other financial assistance for projects supported by the Entertainment Industry Fund.

3. The public was given the required notice of the Motion Picture and Television Development Commission's intention to adopt the proposed regulation and was given ample opportunity to provide the Motion Picture and Television Development Commission with comments opposing the Motion Picture and Television Development Commission's plan.

4. One public comment was submitted via email during the public comment period. In addition to public comment regarding the proposed regulation, the email included an attached draft of the proposed regulation highlighting certain sections and proposing the entire deletion of Section 8.2 thereof. No data, statistics, or other evidence was provided with the comment. The Commission accepted and considered the entirety of the comment. The sole public comment expressed concerns about delays that might be occasioned by allegedly duplicative processes for review and acceptance of grant applications and sought to eliminate the Chairperson's role in finalizing applications for submission to the Commission as a whole.

5. The Commission appreciates the submission of the comment regarding this regulation. After due consideration, the Commission rejected the changes requested in the public comment because it did not agree that undue or prejudicial delay will result from the processes set forth in the regulation and because it disagrees that applicants will be deterred from participation in the grant application process. Further, the Commission does not agree that deletion of Section 8.2 of the proposed regulation is in the best interests of the process, the Commission, or the State of Delaware.

6. Thus, the Delaware Motion Picture and Television Development Commission concludes that its consideration of the proposed regulation was entirely within its prerogatives and statutory authority and, having received, reviewed, and rejected the proposed amendments in the sole public comment, is now free to adopt the proposed amended regulation.

7. On May 11, 2023 during its public meeting, the Commission unanimously voted to approve and adopt the regulation without amendment to the language and form of the proposed regulation included in the April 2023 Register of Regulations at page 828.

III. DECISION AND ORDER CONCERNING THE REGULATION

AND NOW on this 12th day of May, 2023, it is hereby ordered that:

1. The Motion Picture and Television Development Commission regulation referenced herein is adopted;
2. The text of the final regulation shall be in the form referenced herein, which remains unchanged as initially published in the April 1, 2023 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.** §10118(e); and
4. The Motion Picture and Television Development Commission reserves to itself the authority to issue such other and further orders concerning its Regulation as it deems appropriate.

IT IS SO ORDERED by the Delaware Motion Picture and Television Development Commission:

/s/ Thomas J. Healy II

/s/ David K. Sheppard, Esq.

/s/ S. Elizabeth Lockman

/s/ Verity Watson

/s/ Joseph Zilcosky

/s/ Justin Healy

/s/ Brian McGlinchey

/s/ Raymond E. Bivens

***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**

April 2023 issue of the *Register* at page 828 (26 DE Reg. 828). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

<https://regulations.delaware.gov/register/june2023/final/26 DE Reg 1048 06-01-23.htm>

DEPARTMENT OF AGRICULTURE

OFFICE OF THE SECRETARY

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

ORDER

601 Delaware Pesticide Rules and Regulations

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

The proposed regulations were published in the February 1, 2023 edition of the *Delaware Register of Regulations*. Copies were also on file in the office of the Delaware Department of Agriculture, 2320 South DuPont Highway Dover, DE and were available for inspection during regular office hours. Copies were also published online at the *Delaware Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml.

Summary of the Evidence and Information Submitted

The Department received no written comments and further, no public hearing was held.

Findings of Fact and Conclusions

The public was given notice and an opportunity to provide the Office of the Secretary at the Delaware Department of Agriculture with comments in writing and by testimony on the proposed amendments, or submit written suggestions, data, briefs or other materials to the proposed regulations. There were no public comments provided to the Delaware Department of Agriculture.

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code and pursuant to Title 3 of the Delaware Code, Chapter 12 (3 **Del.C.** Ch. 12), the Department has the statutory authority to promulgate rules and regulations.

Having received no public comments, the Department finds no reason to amend the regulations as proposed.

Decision and Effective Date

The Department hereby adopts the changes to regulations as proposed, to be effective 10 days following publication of this Order in the *Delaware Register of Regulations*. The new regulations are attached hereto as Exhibit A.

IT IS SO ORDERED this 20th day of April 2023.

Michael T. Scuse,
Delaware Secretary of Agriculture

***Please note that no changes were made to the regulation as originally proposed and published in the February 2023 issue of the *Register* at page 650 (26 DE Reg. 650). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/june2023/final/26 DE Reg 1050 06-01-23.htm>

OFFICE OF THE SECRETARY

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

ORDER

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

This Order relates to the proposed regulation amendments to 3 DE Admin. Code 906: Possession, Sale or Exhibition of Live Wild Mammals or Hybrids of Wild Mammals or Live Reptiles not Native to or Generally Found in the State of Delaware. The purpose of the amended regulations is to provide clear detail regarding the authority of the Department and State Veterinarian to determine an animal species to be invasive and clarify the requirements for non-native species and animal species determined to be invasive. In 2022, there has been an alarming increase in potbellied pigs at large in the State of Delaware. Potbellied pigs are non-native to the State of Delaware and many animals have been abandoned by their owners; are not in good care; have been a nuisance for private property owners; and with the species' early reproductive capacity, can become feral quickly and may contract contagious and infectious diseases. The Department, State Veterinarian, and sister state agencies have a responsibility to mitigate and reduce the threat of infectious and contagious diseases in animals and those that may spread to humans. Given the concerns listed above, potbellied pigs have been determined to be an invasive animal species in the State of Delaware.

The proposed regulations were published in the February 1, 2023 edition of the *Delaware Register of Regulations*. Copies were also on file in the office of the Delaware Department of Agriculture, 2320 South DuPont Highway Dover, DE and were available for inspection during regular office hours. Copies were also published online at the *Delaware Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml.

Summary of the Evidence and Information Submitted

The Delaware Department of Agriculture received one written comment from one organization. That Pet Advocacy Network (formerly known as PIJAC) off the following summarized comment:

Clarification on State Vet determination of invasive or exotic species: This should be done through the regulatory process and that should be clear in the regulatory changes.

Agency Response: We agree and will adopt the proposed amendment to the regulations.

Findings of Fact and Conclusions

The public was given notice and an opportunity to provide the Office of the Secretary at the Delaware Department of Agriculture with comments in writing and by testimony on the proposed amendments, or submit written suggestions, data, briefs or other materials to the proposed regulations. The Pet Advocacy Network comment that was submitted was appropriate and helps to make the regulation clearer. Considering that this organization has worked closely with the National Association of State Public Health Veterinarians and is an active advocate for the

protection of the pet care industry, we accept their comments and amendments as appropriate and beneficial.

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code and pursuant to Title 3 of the Delaware Code, Chapters 1, 71, and 72 (3 **Del.C.** Chs. 1, 71, & 72), the Department has the statutory authority to promulgate rules and regulations.

Having received one public comment, the Department submits the below amendment to the proposed regulatory changes.

Decision and Effective Date

The Department hereby amends the changes to regulations as proposed, to be adopted effective 10 days following publication of this Order in the *Delaware Register of Regulations*. The new regulations are attached hereto as Exhibit A.

IT IS SO ORDERED this 20th day of April 2023.

Michael T. Scuse,
Delaware Secretary of Agriculture

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

3.0 Invasive Animal Species

- 3.1 The Department and State Veterinarian oversee exotic animal species in the State of Delaware and have the authority to determine whether an exotic animal species is invasive. [This will occur through the promulgation of regulations by the department.] If an animal species is determined to be invasive, the sale, trade, breeding, import, barter, gifting, release into the wild, and auction of the animal species is prohibited.
- 3.2 The State Veterinarian may determine that an animal species is invasive based on the potential of the animal species to become feral, and if that animal species is not native to or generally found in the State of Delaware and is at-large.
- 3.3 The Department will not issue a permit to possess, breed, sell, or exhibit an animal species that is determined to be invasive.
- 3.4 The State Veterinarian or the Department will issue a public notice indicating that an animal species is determined to be invasive. An owner or caretaker that possesses, breeds, sells, or exhibits an animal species, determined to be invasive, prior to the date of the public notice is required to:
 - 3.4.1 Tag the animal with a visible form of identification and register the device with the Department.
 - 3.4.2 Cease breeding or other activity that increases the count of the animal species that is determined to be invasive.
 - 3.4.3 Provide adequate housing and secure fencing such that the invasive animal species cannot escape.
 - 3.4.4 Report within 12 hours to the Department in-person or by telephone if the animal is at-large.
 - 3.4.5 House male and female animals, capable of reproducing, separately to ensure that breeding does not occur.
 - 3.4.6 Obtain an Invasive Animal Permit from the Department.
 - 3.4.7 Allow the Department, State Veterinarian, or duly authorized agent access to the premises where the animal species is being held to assess compliance with these Rules and Regulations, and to examine the welfare of the animal species in the event of or threat of a contagious or infectious disease.

*Please note that no additional changes were made to the regulation as originally proposed and published in the February 2023 issue of the *Register* at page 651 (26 DE Reg. 651). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

<https://regulations.delaware.gov/register/june2023/final/26 DE Reg 1051 06-01-23.htm>

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(15) and 303 (14 **Del.C.** §§122(b)(15) & 303)
14 **DE Admin. Code** 1040

ORDER

1040 Out-of-Season and Summer Athletic Activities and Contact

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§122(b)(15) and 303, the Delaware Interscholastic Athletic Association Board of Directors, acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1040 Out-of-Season and Summer Athletic Activities and Contact. The regulation concerns the requirements for activities and contact outside of the regular season and during the summer at the middle and high school levels. The proposed amendments include correcting the number of the subsection referenced in subsection 3.2.1 and correcting an oversight in subsection 9.3.2.8 by removing the specified sports and replacing them with DIAA recognized sports.

Notice of the proposed regulation was published in the *Register of Regulations* on March 1, 2023. The DIAA Board of Directors did not receive any written submittals concerning the proposed regulation.

II. FINDINGS OF FACTS

On April 20, 2023, the DIAA Board of Directors voted to propose 14 **DE Admin. Code** 1040 Out-of-Season and Summer Athletic Activities and Contact, 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 relates to interscholastic athletics at the middle and high school levels and is necessary to implement 14 **Del.C.** Ch. 3. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1040 Out-of-Season and Summer Athletic Activities and Contact.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1040 Out-of-Season and Summer Athletic Activities and Contact subject to the State Board of Education's approval. On April 20, 2023, the State Board of Education approved amending 14 **DE Admin. Code** 1040 Out-of-Season and Summer Athletic Activities and Contact. Therefore, pursuant to 14 **Del.C.** §§122(b)(15) and 303, 14 **DE Admin. Code** 1040 Out-of-Season and Summer Athletic Activities and Contact, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1040 Out-of-Season and Summer Athletic Activities and Contact amended hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1040 Out-of-Season and Summer Athletic Activities and Contact 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 20th day of April, 2023.

Department of Education

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

Approved this 20th day of April, 2023.

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 March 2023 issue of the Register at page 733 (26 DE Reg. 733). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/june2023/final/26 DE Reg 1053 06-01-23.htm>

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(8), 181(15), 183, 3402(c), and 3416 (14 Del.C. §§122(b)(8), 181(15), 183, 3402(c), & 3416)

ORDER

1211 Career-Based Scholarship Program

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §§ 122(b)(8), 181(15), 183, 3402(c), and 3416, the Delaware Department of Education ("Department"), through the Delaware Higher Education Office ("DHEO"), proposes the adoption of 14 DE Admin. Code 1211 Career-Based Scholarship Program. The Career-Based Scholarship Program is a student financial assistance for higher education program that is administered by DHEO. The proposed regulation provides the eligibility criteria, application requirements, and award process for the scholarship. The proposed regulation is consistent with House Bill 480 of the 151st General Assembly, which was signed into law on August 25, 2022.

Notice of the proposed regulation was published in the *Register of Regulations* on March 1, 2023. The Department did not receive any written submittals concerning the proposed regulation.

II. FINDINGS OF FACTS

The Department finds that the proposed regulation is necessary to implement 14 Del.C. Ch. 34 and the Career-Based Scholarship Program, which is a student financial assistance program that DHEO administers. In addition, the Department finds that House Bill 480 of the 151st General Assembly amended 14 Del.C. Ch. 34 and that the proposed regulation is consistent with the statute that went into effect on August 25, 2022.

III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to adopt 14 DE Admin. Code 1211 Career-Based Scholarship Program subject to the State Board of Education's approval. On April 20, 2023, the State Board of Education approved the adoption of 14 DE Admin. Code 1211 Career-Based Scholarship Program. Therefore, pursuant to 14 Del.C. §§ 122(b)(8), 181(15), 183, 3402(c), and 3416, 14 DE Admin. Code 1211 Career-Based Scholarship Program, attached hereto as Exhibit A, is hereby adopted.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1211 Career-Based Scholarship Program adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1211 Career-Based Scholarship Program 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 20th day of April, 2023.

Department of Education

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

Approved this 20th day of April, 2023.

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 March 2023 issue of the *Register* at page 737 (26 DE Reg. 737). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/june2023/final/26 DE Reg 1054 06-01-23.htm>

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(8), 181(15), 183, 3402(c), and 3436 (14 **Del.C.** §§122(b)(8), 181(15), 183, 3402(c), & 3436)

ORDER

1214 Critical Need Reimbursement Program

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§ 122(b)(8), 181(15), 183, 3402(c), and 3436, the Delaware Department of Education ("Department"), through the Delaware Higher Education Office ("DHEO"), proposes the adoption of 14 **DE Admin. Code** 1214 Critical Need Reimbursement Program. The Critical Need Reimbursement Program is a student financial assistance for higher education program that is administered by DHEO. The proposed regulation provides the eligibility criteria, application requirements, and award process for the program. The proposed regulation is consistent with House Bill 480 of the 151st General Assembly, which was signed into law on August 25, 2022.

Notice of the proposed regulation was published in the *Register of Regulations* on March 1, 2023. The Department did not receive any written submittals concerning the proposed regulation.

II. FINDINGS OF FACTS

The Department finds that the proposed regulation is necessary to implement 14 **Del.C.** Ch. 34 and the Critical Need Reimbursement Program, which is a student financial assistance program that DHEO administers. In addition, the Department finds that House Bill 480 of the 151st General Assembly amended 14 **Del.C.** Ch. 34 and

that the proposed regulation is consistent with the statute that went into effect on August 25, 2022.

III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to adopt 14 **DE Admin. Code** 1214 Critical Need Reimbursement Program subject to the State Board of Education's approval. On April 20, 2023, the State Board of Education approved the adoption of 14 **DE Admin. Code** 1214 Critical Need Reimbursement Program. Therefore, pursuant to 14 **Del.C.** §§ 122(b)(8), 181(15), 183, 3402(c), and 3436, 14 **DE Admin. Code** 1214 Critical Need Reimbursement Program, attached hereto as Exhibit A, is hereby adopted.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1214 Critical Need Reimbursement Program adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1214 Critical Need Reimbursement Program 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 20th day of April, 2023.

Department of Education

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

Approved this 20th day of April, 2023.

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).**

1214 Critical Need Reimbursement Program

1.0 Purpose

The purpose of this regulation is to provide the eligibility criteria, application requirements, and award process for the Critical Need Reimbursement Program pursuant to 14 **Del.C.** §3436.

2.0 Definitions

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

"Award" means a reimbursement awarded under the Critical Need Reimbursement Program.

"Critical Need Area" means one of the specific certification areas of critical need in Delaware as determined by the Delaware Department of Education pursuant to 14 **Del.C.** §3436(c).

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

3.0 Eligibility

3.1 In order to be eligible for an Award under the Critical Need Reimbursement Program, an applicant shall meet the requirements of subsections 3.1.1 through 3.1.6.

- 3.1.1 The applicant shall be a full-time employee of a Delaware public school district or charter school.
- 3.1.2 The applicant shall meet the definition of residency as defined in 14 Del.C. §3402(f).
- 3.1.3 The applicant shall hold an Emergency Certificate or Certificate of Eligibility in a Critical Need Area.
- 3.1.4 The applicant shall be teaching in a Critical Need Area.
- 3.1.5 The applicant shall have completed coursework or a seminar or workshop at a college or university that is accredited by an accrediting agency recognized by the U.S. Secretary of Education or through an Alternative Routes for Teacher Licensure or Certification program approved by the Department.
- 3.1.6 The applicant shall have earned a 2.0 or higher on a 4.0 scale for credit-bearing courses or an equivalent passing grade in non-credit bearing seminars and workshops.

4.0 Application Requirements

- 4.1 The application acceptance and submission period for the Critical Need Reimbursement Program shall be posted on the DHEO's website by December 1 of each calendar year.
 - 4.1.1 Applications shall not be accepted outside of the posted application acceptance period under any circumstances.
 - 4.1.2 Incomplete applications shall not be accepted or processed.
- 4.2 The applicant shall complete an application by the last date of the application acceptance period.

5.0 Awards

- 5.1 An applicant who meets the eligibility criteria in Section 3.0 may be awarded up to 1 of the following per academic year:
 - 5.1.1 Up to 6 credits; or
 - 5.1.2 Two noncredit-bearing seminars or workshops required for certification; or
 - 5.1.3 One noncredit-bearing seminar or workshop required for certification up to 1 3-credit course.
- 5.2 Award payments shall be disbursed directly to the applicant's college or university only upon the applicant's completion of the course, seminar, or workshop and after the college or university verifies the applicant's enrollment and grades.
- 5.3 An Award shall be used for, and not in excess of, tuition and mandatory fees.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(8), 181(15), 183, 3402(c), and 3438
(14 Del.C. §§122(b)(8), 181(15), 183, 3402(c), & 3438)

ORDER

1216 Educator Support Scholarship Program

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §§ 122(b)(8), 181(15), 183, 3402(c), and 3438, the Delaware Department of Education ("Department"), through the Delaware Higher Education Office ("DHEO"), proposes the adoption of 14 DE Admin. Code 1216 Educator Support Scholarship Program. The Educator Support Scholarship Program is a student financial assistance for higher education program that is administered by DHEO. The proposed regulation provides the eligibility criteria, application requirements, and award process for the scholarship. The proposed regulation is consistent with House Bill 480 of the 151st General Assembly, which was signed into law on August 25, 2022.

Notice of the proposed regulation was published in the *Register of Regulations* on March 1, 2023. The Department did not receive any written submittals concerning the proposed regulation.

FINAL REGULATIONS

II. FINDINGS OF FACTS

The Department finds that the proposed regulation is necessary to implement 14 **Del.C.** Ch. 34 and the Educator Support Scholarship Program, which is a student financial assistance program that DHEO administers. In addition, the Department finds that House Bill 480 of the 151st General Assembly amended 14 **Del.C.** Ch. 34 and that the proposed regulation is consistent with the statute that went into effect on August 25, 2022.

III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to adopt 14 **DE Admin. Code** 1216 Educator Support Scholarship Program subject to the State Board of Education's approval. On April 20, 2023, the State Board of Education approved the adoption of 14 **DE Admin. Code** 1216 Educator Support Scholarship Program. Therefore, pursuant to 14 **Del.C.** §§ 122(b)(8), 181(15), 183, 3402(c), and 3438, 14 **DE Admin. Code** 1216 Educator Support Scholarship Program, attached hereto as Exhibit A, is hereby adopted.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1216 Educator Support Scholarship Program adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1216 Educator Support Scholarship Program 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 20th day of April, 2023.

Department of Education

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

Approved this 20th day of April, 2023.

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).**

1216 Educator Support Scholarship Program

1.0 Purpose

The purpose of this regulation is to provide the eligibility criteria, application requirements, and award process for the Educator Support Scholarship Program pursuant to 14 Del.C. §3438.

2.0 Definitions

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

"Area of Need" means one of the specific areas of need in which there is a shortage of teachers or specialists in Delaware as determined by the DHEO pursuant to 14 Del.C. §3438(b).

"Award" means a scholarship awarded under the Educator Support Scholarship Program.

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

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

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

3.0 Eligibility

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

3.1.1 The applicant shall be enrolled in an undergraduate or graduate program of study leading to a career as a teacher or specialist in an Area of Need.

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

3.1.3 The applicant shall be enrolled at a college or university that is located in Delaware and is accredited by an accrediting agency recognized by the U.S. Secretary of Education.

4.0 Application Requirements

4.1 The application acceptance and submission period for the Educator Support Scholarship Program shall be posted on the DHEO's website by December 1 of each calendar year.

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

4.1.2 Incomplete applications shall not be accepted or processed.

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

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

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

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

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

5.0 Awards

5.1 DHEO determines the amount of scholarships to be awarded annually. Contingent upon funding appropriated for the Educator Support Scholarship Program and based on the size of the applicant pool, at least 1 applicant in each Area of Need will be awarded a scholarship annually.

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

5.3 An Award shall be used for, and not in excess of, tuition, mandatory fees, room, board, books, and other direct and indirect educational expenses.

5.4 An Award is renewable for up to 3 additional years.

5.5 To be eligible to renew an Award, a student shall update the student's enrollment information on the Student Account Access Site; continue to be enrolled in a program of study leading to a career as a teacher or specialist in an Area of Need; maintain satisfactory academic progress by successfully

completing coursework according to the standards of the college or university in which the student is enrolled; and continue to be eligible receive financial aid.

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

6.0 Award Payment

6.1 Award payments shall be disbursed directly to the student's college or university only.

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

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(8), 181(15), 183, 3402(c), and 3439(a)
(14 Del.C. §§122(b)(8), 181(15), 183, 3402(c), & 3439(a))

ORDER

1217 Mental Health Services Scholarship Program

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §§ 122(b)(8), 181(15), 183, 3402(c), and 3439(a), the Delaware Department of Education ("Department"), through the Delaware Higher Education Office ("DHEO"), proposes the adoption of 14 DE Admin. Code 1217 Mental Health Services Scholarship Program. The Mental Health Services Scholarship Program is a student financial assistance for higher education program that is administered by DHEO. The proposed regulation provides the eligibility criteria, application requirements, and award process for the scholarship. The proposed regulation is consistent with House Bill 480 of the 151st General Assembly, which was signed into law on August 25, 2022.

Notice of the proposed regulation was published in the *Register of Regulations* on March 1, 2023. The Department did not receive any written submittals concerning the proposed regulation.

II. FINDINGS OF FACTS

The Department finds that the proposed regulation is necessary to implement 14 Del.C. Ch. 34 and the Mental Health Services Scholarship Program, which is a student financial assistance program that DHEO administers. In addition, the Department finds that House Bill 480 of the 151st General Assembly amended 14 Del.C. Ch. 34 and that the proposed regulation is consistent with the statute that went into effect on August 25, 2022.

III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to adopt 14 DE Admin. Code 1217 Mental Health Services Scholarship Program subject to the State Board of Education's approval. On April 20, 2023, the State Board of Education approved the adoption of 14 DE Admin. Code 1217 Mental Health Services Scholarship Program. Therefore, pursuant to 14 Del.C. §§ 122(b)(8), 181(15), 183, 3402(c), and 3439(a), 14 DE Admin. Code 1217 Mental Health Services Scholarship Program, attached hereto as Exhibit A, is hereby adopted.

IV. TEXT AND CITATION

The text of 14 DE Admin. Code 1217 Mental Health Services Scholarship Program adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 DE Admin. Code 1217 Mental Health Services Scholarship Program 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 20th day of April, 2023.

Department of Education

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

Approved this 20th day of April, 2023.

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).

1217 Mental Health Services Scholarship Program

1.0 Purpose

The purpose of this regulation is to provide the eligibility criteria, application requirements, and award process for the Mental Health Services Scholarship Program pursuant to 14 Del.C. §3439(a).

2.0 Definitions

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

"Award" means a scholarship awarded under the Mental Health Services Scholarship Program.

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

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

"Full-Time Student" means a graduate student enrolled in 9 or more credit hours.

"High Need Field" means one of the specific fields identified as an area of need in Delaware by the committee established pursuant to 14 Del.C. §3416(b).

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

3.0 Eligibility

3.1 In order to be eligible for an Award under the Mental Health Services Scholarship Program, an applicant shall meet the requirements of subsections 3.1.1 and 3.1.2.

3.1.1 The applicant shall be enrolled as a Full-Time Student in a master's degree program in a Delaware postsecondary institution that will lead to certification as a school counselor, school psychologist, or school social worker in a Delaware public school.

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

4.0 Application Requirements

4.1 The application acceptance and submission period for the Mental Health Services Scholarship Program shall be posted on the DHEO's website by December 1 of each calendar year.

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

4.1.2 Incomplete applications shall not be accepted or processed.

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

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

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

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

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

5.0 Awards

5.1 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 Mental Health Services Scholarship Program.

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

5.3 An Award shall be used for, and not in excess of, tuition, mandatory fees, room, board, books, and other direct and indirect educational expenses.

5.4 An Award is renewable for up to 1 year.

5.5 To be eligible to renew an Award, a student shall update the student's enrollment information on the Student Account Access Site; continue to be enrolled in a master's degree program in a Delaware postsecondary institution that will lead to certification as a school counselor, school psychologist, or school social worker in a Delaware public school; maintain satisfactory academic progress by successfully completing coursework according to the standards of the college or university in which the student is enrolled; and continue to be eligible receive financial aid.

5.6 A student shall not receive more than 2 annual Awards.

6.0 Award Payment

6.1 Award payments shall be disbursed directly to the student's college or university only.

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

PROFESSIONAL STANDARDS BOARD

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

ORDER

1501 Salary Supplements for Educators

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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.

The proposed regulation was published in the *Register of Regulations* on January 1, 2023. The Board received written submittals from Rep. Sherea'a Moore, Stephanie Ingram, Kelly Connell, Danielle Freeman, Jason Lorentz, Jessica Lorentz, Jill Olshenske, Kristina Staab, Deanna Stevens, and Andrea Turner. Rep. Moore commented that the legislative intent of HB 348 was to increase compensation for school-based occupational therapists and to recognize and reward the professional development that occupational therapists complete in order to maintain national certification. Rep. Moore further commented that the American Occupational Therapy Association ("AOTA") certification is not recognized by professionals working in the field as the relevant and applicable certifying entity and that the National Board for Certification in Occupational Therapy (NBCOT) is held by occupational therapists working in schools across Delaware. Rep. Moore asked that the Board change the proposed regulation to ensure that occupational therapists who have earned their certification through either AOTA or NBCOT are eligible for the salary supplement. Ms. Ingram, who is the President of the Delaware State Education Association ("DSEA"), commented that DSEA opposes the proposed regulation and that the applicable national organization is NBCOT, not AOTA. Ms. Connell, Ms. Freeman, Mr. Lorentz, Ms. Lorentz, Ms. Olshenske, Ms. Staab, and Ms. Stevens each commented that the proposed regulation should be changed to include NBCOT certification. Ms. Turner commented that she is in support of the proposed regulation.

On February 2, 2023, the Board considered the written submittals. The Board voted to add the occupational therapist certification from NBCOT to subsection 4.1.8 as a result of the written submittals. In accordance with 29 Del.C. §10118(c), the Board's Chairperson determined the additional change is substantive. Therefore, the Board is reproposed the regulation. The proposed amendments in the regulation include the amendments that were published on January 1, 2023 and the additional change to subsection 4.1.8.

Notice of the proposed regulation was published in the *Register of Regulations* on March 1, 2023. The Professional Standards Board received 51 written submittals concerning the proposed regulation.

Stephanie Ingram commented that the Delaware State Education Association supports the proposed changes to the regulation and appreciates the Professional Standards Board's efforts and consideration in amending subsection 4.1.8 to include both the AOTA and NBCOT certifications. Kristi Hamilton also supported the proposed regulation.

Christine Holdren, Jennifer Horton, Erica O'Donnell, Emily Spangler, and Warna Warren commented that they support proposed subsections 4.1.7 and 4.1.8. Additionally, Alicia Postlewait commented that she supports including occupational and physical therapists in the proposed regulation.

Robin Adkins, Dawn Alexander, Autumn Apsley, Rebecca Coit, Darla Conaway, John Conaway, Ashley Connell, Cassidy Coppola, Michele Croft, Katrina Daniels, Tara Edwards, Caitlin Evans, Elizabeth Fedak, Lisa Halsey, Kevin Halsey, Sandi Holly, Deborah Hopkins, Amanda Kane, Alexandra Kiser, Tara Kulak, Michele Jones, Jessica Lorentz, Ashley Manion, Elizabeth Merrick, Annette Mestern, Mary Ockels, Jill Olshenske, Connie Shetler,

Lea Skipper, Jennifer Villec, Carrie Waldis, Azadeh Warren, Kendall Webb, John Wenige, Jordan Wenige, Sandra Wenige, and Jennifer Yoder commented that they support proposed subsection 4.1.8.

In addition, Danielle Freeman thanked the Professional Standards Board for changing subsection 4.1.8 and commented that the proposed change would help occupational therapists with not only the AOTA certification but also the NBCOT certification. Also, Deanna Stevens commented that she is an occupational therapist working with special needs children in a school district, she fully supports the salary supplement for educators, including occupational therapists, and occupational therapists are an integral part of the student's IEP in supporting their academic progress through the development of their fine motor and sensory processing skills. Ms. Stevens further commented that occupational therapists' salaries in the school system tend to be significantly lower than salaries of occupational therapists in the private sector and that although she has 28 years of experience, because she only has a bachelor's degree, she is stuck at a lower salary grade than a therapist or teacher with a higher degree and less experience.

Dawn Nielsen commented that she is a State-employed occupational therapist who supports the proposed amendment for an occupational therapist to receive a salary supplement so long as they achieve and maintain NBCOT certification. She further commented that "occupational therapy practitioner" should replace "occupational therapist" to be inclusive for all nationally certified practitioners. Meagen Barton commented that she is an occupational therapist who is employed by a school district. She also commented that "occupational therapy practitioner" should be considered because it is a term that encompasses both occupational therapists and occupational therapy assistants and both practitioners can maintain national certification. Briana Shuman commented that occupational therapy assistants should be included in the proposed regulation because occupational therapy assistants are nationally board certified and the legislative intent of HB 348 was to increase compensation for school-based occupational therapy practitioners and to recognize and reward the professional development that occupational therapy practitioners do.

II. FINDINGS OF FACTS

On April 18, 2023, the Professional Standards Board considered the written submittals. The Professional Standards Board found that the statute, 14 **Del.C.** §1305(l)(6), provides a stipend for an "occupational therapist," not an "occupational therapist assistant." The Professional Standards Board further found that there are different levels between occupational therapists and occupational therapist assistants. The Professional Standards Board found that a legislative change would be necessary in order for the Board to change the regulation so that an occupational therapist assistant could receive a stipend for holding national certification. The Professional Standards Board did not make any changes as a result of the written submittals and voted to propose 14 **DE Admin. Code** 1501 Salary Supplements for Educators, 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** 1501 Salary Supplements for Educators.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1501 Salary Supplements for Educators subject to the State Board of Education's approval. On April 20, 2023, the State Board of Education approved amending 14 **DE Admin. Code** 1501 Salary Supplements for Educators. Therefore, pursuant to 14 **Del.C.** §§1203, 1205(b), 1305(l), and 1305(o), 14 **DE Admin. Code** 1501 Salary Supplements for Educators, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1501 Salary Supplements for Educators amended hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1501 Salary Supplements for Educators 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 20th day of April, 2023.

Department of Education

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

Approved this 20th day of April, 2023.

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 March 2023 issue of the *Register* at page 748 (26 DE Reg. 748). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/june2023/final/26 DE Reg 1063 06-01-23.htm>

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), and 1221(1) (14 Del.C. §§1203, 1205(b), & 1221(1))
14 DE Admin. Code 1506

ORDER

1506 Emergency Certificate

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §§1203, 1205(b), and 1221(1), the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1506 Emergency Certificate. The regulation concerns the requirements for an Emergency Certificate in accordance with 14 Del.C. §1221(1). The proposed amendments include revising Section 1.0, which concerns the applicability of this regulation; adding defined terms to and striking defined terms from Section 2.0; revising Section 3.0, which concerns the issuance of an Emergency Certificate; adding Sections 4.0 through 9.0, which specify the Emergency Certificate requirements for individuals who completed long-term substitute teaching, ARTC participants, administrators, specialists, skilled and technical science teachers who are eligible for or hold an Initial License, and educators who already hold a content area Standard Certificate, respectively; adding Section 10.0, which concerns the validity of an Emergency Certificate; adding Section 11.0, which concerns notification to parents; adding Section 12.0, which concerns disciplinary actions; and adding Section 13.0, which concerns applicants' and Educators' contact information with the Department and specifies how they can change their name or address.

Notice of the proposed regulation was published in the *Register of Regulations* on March 1, 2023. The Professional Standards Board did not receive any written submittals concerning the proposed regulation.

II. FINDINGS OF FACTS

On April 18, 2023, the Professional Standards Board voted to propose 14 DE Admin. Code 1506 Emergency Certificate, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

FINAL REGULATIONS

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** 1506 Emergency Certificate.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1506 Emergency Certificate subject to the State Board of Education's approval. On April 20, 2023, the State Board of Education approved amending 14 **DE Admin. Code** 1506 Emergency Certificate. Therefore, pursuant to 14 **Del.C.** §§1203, 1205(b) and 1221(1), 14 **DE Admin. Code** 1506 Emergency Certificate, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1506 Emergency Certificate amended hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1506 Emergency Certificate 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 20th day of April, 2023.

Department of Education

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

Approved this 20th day of April, 2023.

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 March 2023 issue of the *Register* at page 750 (26 DE Reg. 750). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/june2023/final/26 DE Reg 1065 06-01-23.htm>

PROFESSIONAL STANDARDS BOARD

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

ORDER

1568 Elementary Dual Language Immersion Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

and cooperation with the Delaware Department of Education ("Department"), developed 14 **DE Admin. Code** 1568 Elementary Dual Language Immersion Teacher. The regulation concerns the requirements for an Elementary Dual Language Immersion Teacher Standard Certificate in accordance with 14 **Del.C.** §1220. Section 1.0 provides who would be required to hold the Elementary Dual Language Immersion Teacher Standard Certificate and exceptions to requirement; Section 2.0 provides definitions for the proposed regulation; Section 3.0 concerns the issuance of an Elementary Dual Language Immersion Teacher Standard Certificate; Section 4.0 provides the prescribed education, knowledge, and skill requirements for the issuance of an Elementary Dual Language Immersion Teacher Standard Certificate; Section 5.0 provides the application requirements; Section 6.0 concerns Secretary of Education review; Section 7.0 concerns the validity of a Elementary Dual Language Immersion Teacher Standard Certificate; Section 8.0 concerns disciplinary actions; and Section 9.0 concerns applicants' and Educators' contact information with the Department and specifies how they can change their name or address.

Notice of the proposed regulation was published in the *Register of Regulations* on February 1, 2023. The Professional Standards Board did not receive any written submittals concerning the proposed regulation.

II. FINDINGS OF FACTS

On April 18, 2023, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1568 Elementary Dual Language Immersion 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 adopt 14 **DE Admin. Code** 1568 Elementary Dual Language Immersion Teacher.

III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to adopt 14 **DE Admin. Code** 1568 Elementary Dual Language Immersion Teacher subject to the State Board of Education's approval. On April 20, 2023, the State Board of Education approved adopting 14 **DE Admin. Code** 1568 Elementary Dual Language Immersion Teacher. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1568 Elementary Dual Language Immersion Teacher, attached hereto as Exhibit A, is hereby adopted.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1568 Elementary Dual Language Immersion Teacher adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1568 Elementary Dual Language Immersion 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 20th day of April, 2023.

Department of Education

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

Approved this 20th day of April, 2023.

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 February 2023 issue of the *Register* at page 670 (26 DE Reg. 670). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

<https://regulations.delaware.gov/register/june2023/final/26 DE Reg 1066 06-01-23.htm>

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 6606 and 6010 (7 Del.C. §§6606 & 6010)
7 DE Admin. Code 3200

Secretary's Order No: 2023-F-0010

RE: Approving Final Amendments to 7 DE Admin. Code 3200 - Horseshoe Crabs

Date of Issuance: May 12, 2023

Effective Date: June 11, 2023

3200 Horseshoe Crabs

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

Background, Procedural History and Findings of Fact

This Order relates to 7 DE Admin. Code 3200 - *Horseshoe Crabs* ("Regulation"). The Department proposes revisions to the Regulation that will enable the Department to update the annual quota setting process, revise the metrics used to establish the daily possession limit, clarify the definition of the legal harvest methods, define the circumstances that will require a horseshoe crab dredge lottery, and modify the dredge lottery process.

In November 2022, the Atlantic States Marine Fisheries Commission ("ASMFC") approved the *Horseshoe Crab Fishery Management Plan's* Addendum VIII ("Addendum VIII") that updates the modeling software used to produce the annual quota for Horseshoe Crabs. The ASMFC implemented an updated version of the Adaptive Resource Management (ARM) modeling software that incorporates the most recent and reliable information for managing horseshoe crabs with consideration of the migrating shorebird's needs. The data from the ARM software produces an annual bait harvest recommendation for horseshoe crabs. The ASMFC then sets the annual bait harvest recommendations for the Delaware Bay-origin horseshoe crabs, which includes the quota for Delaware.

The ARM model generated the 2023 harvest quota for Delaware as 164,364 male horseshoe crabs. The harvest quota has increased by approximately 2,200 male horseshoe crabs from the 2022 harvest quota that was implemented by Addendum VII of the *Horseshoe Crab Fishery Management Plan*.

As Delaware is a member of the ASMFC, the Department is required to comply with the revisions set forth by Addendum VIII that include updating the quota setting process for the annual harvest of horseshoe crabs by using the new ARM model. Additionally, the Department proposes revisions to the Regulation to update the annual quota setting process, revise the metrics used to establish the daily possession limit, clarify the definition of the legal harvest methods, define the circumstances that will require a horseshoe crab dredge lottery, and modify the dredge lottery process.

The Department has established the daily possession limit of horseshoe crabs based upon a volume metric, using the square footage of a vehicle's storage area to determine the amount of horseshoe crabs' collection. Harvesters, however, are required to report a numeric count as the daily harvest of horseshoe crabs collected. The volume metric used to enforce daily harvest limits does not support the daily report requirement that is in a numerical unit metric and causes a challenge for enforcement of the possession limit. To align the numerical metric daily report requirement to the daily possession limit of horseshoe crabs, the Department is revising the daily

possession limit to a numerical metric unit.

In addition, the Department has added the term "Take and Reduce to Possession" to provide language to specify the outcome after the removal of the horseshoe crabs. The term "take" covers the act of either collecting or dredging the horseshoe crabs, while "reduce to possession" is the act of keeping the horseshoe crab. For example, a dredge will "take" both male and female horseshoe crabs, but the female horseshoe crabs must be returned to the water while the male horseshoe crabs are kept or "reduced to possession." The term "Take and Reduce to Possession" is used within 7 **DE Admin. Code** 3000- *Division of Fish and Wildlife*, to identify and enforce the taking of species, such as horseshoe crabs.

Lastly, the Department's proposed Amendments will align the dredging lottery process to reflect the current fishery operation. Language has been revised to define the circumstances necessary for the dredging lottery process. The dredge lottery will only occur if the annual quota is not met, after the horseshoe crabs season ends. Additionally, the dredge lottery process has been modified to remove the date of January 1, and should the dredge lottery be needed, the Department will announce the date and time. These revisions will allow the Department to better align with the current fishery operation.

The Amendments allow the Department to remain in compliance with the ASMFC, clarify and define the legal harvest methods, modify the horseshoe crabs dredge lottery, and revise outdated language throughout the Regulation. These Amendments will keep Delaware's horseshoe crabs harvest quota in compliance with the FMP and assist in preventing overharvest. It should be noted that general language throughout the Amendment has been revised to meet the current standard language used throughout the Department's Regulations.

The Department has the statutory basis and legal authority to act with regard to the formal promulgation of these proposed Amendments, pursuant to 7 *Del. C.* §103 (a & b). The Department published its proposed regulation Amendments in the March 1, 2023, Delaware Register of Regulations. Thereafter, the public hearing regarding this matter was held on March 23, 2023. Pursuant to 29 *Del.C.* §10118(a), the hearing record ("Record") remained open for receipt of additional written comment for 15 days following the public hearing. The Record formally closed for comment in this matter at close of business on April 7, 2023, with three (3) written comments received by the Department for the formal promulgation.

It should be noted that all notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

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

Following the receipt of the Department's TRM as noted above, the Hearing Officer prepared her Hearing Officer's Report dated May 4, 2023 ("Report"), which expressly incorporated both the Department's proposed Amendments and the TRM into the Record generated in this matter. The Report documents the proper completion of the required regulatory amendment process, establishes the Record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix "A."

Reasons and Conclusions

Based on the Record developed by the Department's experts in the Division of Fish and Wildlife, and established by the Hearing Officer's Report, I find that the proposed regulatory Amendments to 7 **DE Admin. Code** 3200 - *Horseshoe Crabs*, are well supported. I further find that the Department's experts fully developed the record to support adoption of these Amendments. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed Amendments be promulgated as final.

The following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to 7 *Del. C.* §2701;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Chapter 60, to issue an Order adopting these proposed Amendments as final;
3. The Department provided adequate public notice of the proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on March 23, 2023, and during the 15 days subsequent to the hearing (through April 7, 2023), before making any final decision;

4. Promulgation of the proposed Amendments to 7 DE Admin. 3200 - Horseshoe Crabs will enable the Department to: (1) comply with the ASMFC's Addendum VIII to the *Horseshoe Crab Fishery Management Plan*, by adopting the annual quota setting process using the new ARM model, (2) revise the metrics used to establish the daily possession limit, (3) clarify the definition of the legal harvest methods, (4) define the circumstances that will require a horseshoe crabs dredge lottery, and (5) modify the dredge lottery process;

5. The Department has reviewed the proposed Amendments in light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and believes the same to be lawful, feasible and desirable, and the recommendations as proposed should be applicable to all Delaware citizens equally;

6. The Department's proposed regulatory Amendments, as published in the March 1, 2023, *Delaware Register of Regulations*, as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and

7. The Department shall submit the proposed Amendments as final regulatory amendments to the *Delaware Register of Regulations* for publication in its next available issue and provide such other notice as the law and regulation require, and the Department determines is appropriate.

Lisa Borin Ogden
For Shawn M. Garvin
Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the March 2023 issue of the *Register* at page 757 (26 DE Reg. 757). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/june2023/final/26 DE Reg 1068 06-01-23.htm>

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901 (c & d) and 903(e)(2)a.1 (7 **Del.C.** §§901(c & d) & 903(e)(2)a.1)
7 **DE Admin. Code** 3504

Secretary's Order No.: 2023-F-0011

RE: Approving Final Regulation, pursuant to 7 *Del. C.* §903(e)(2)a.1, to Amend 7 DE Admin. Code 3504 - *Striped Bass Possession Size Limit; Exceptions*

Date of Issuance: May 19, 2023

Effective Date of the Amendment: 48 hours following publication of this Secretary's Order and regulation on the Department's website: <https://de.gov/dnrecorders>

3504 Striped Bass Possession Size Limit; Exceptions

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), pursuant to 7 *Del. C.* §903(e)(2)a.1, and all other relevant statutory authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory amendment.

Notwithstanding 29 *Del.C.* Ch. 101 (which sets forth the standardized procedures whereby a state agency shall promulgate regulations), the Department also has the statutory authority under 7 *Del. C.* §903(e)(2)a.1 to promulgate certain regulations in order to adopt a specified management measure for finfish, subject to 7 *Del.C.* Ch. 9, *Finfishing in Tidal Waters*, by the issuance of a Secretary's Order. The Department is allowed to follow this abbreviated regulatory promulgation process only in instances where the management measures are specified by,

and ensures compliance or maintains consistency with, a fisheries management plan or rule established by the Atlantic States Marine Fisheries Commission ("ASMFC"), the *Atlantic Coastal Fisheries Cooperative Management Act*, the Mid-Atlantic Fishery Management Council, or the National Marine Fisheries Service.

Whenever the Department promulgates a regulation pursuant to 7 *Del. C.* §903(e)(2)a.1, it shall also (1) publish on its website a public notice with a copy of the Secretary's Order and final regulation that implements the specific management measure; and (2) file the Secretary's Order and regulation that implements the specified management measure in the next available issue of the Delaware Register of Regulations. The final regulation becomes effective 48 hours after the Department has published the aforementioned public notice on its website, as mandated by 7 *Del. C.* §903(e)(2)a.2.

Background, Procedural History and Findings of Fact

This order amends 7 DE Admin. Code 3504 - *Striped Bass Possession Size Limit; Exceptions* as part of an effort to reduce Striped Bass mortality in the recreational fishery by adopting a specified emergency management measure approved by the Atlantic States Marine Fisheries Commission's ("ASMFC") Atlantic Striped Bass Management Board ("Board"). Specifically, this amendment reduces the maximum length of a striped bass that may be legally possessed by a recreational angler from 35 inches to 31 inches. This order is required for Delaware to remain compliant with the ASMFC Emergency Order, approved by the Board on May 2, 2023, mandating that all entities in the management unit put the reduction in maximum length into effect by July 2, 2023.

The estimated 2022 recreational striped bass removals (harvest and dead discards) increased by 40% from the 2021 removals. The increase is jeopardizing the rebuilding of the striped bass population to the target level by 2029, as required by Amendment 7 to the *Interstate Fishery Management Plan for Atlantic Striped Bass*. Striped bass recruitment, as observed in the size of year classes, has mostly been below average over the past ten years, except for the year 2015. The 2015 class was one of the largest populations in the past 30 years and the survival of its members is critical to maintaining the spawning stock biomass needed to rebuild the striped bass population. Unfortunately, nearly all surviving members of the 2015 class now fall within the current recreational size limit, not less than 28 inches or greater than or equal to 35 inches in total length. This emergency action should greatly reduce the proportion of the 2015 class vulnerable to harvest, allowing them to survive, continue to spawn and replenish the population.

The Department has the statutory basis and legal authority to act with regard to promulgation of the proposed amendments to 7 DE Admin. Code 3504 - *Striped Bass Possession Size Limit; Exceptions*, pursuant to 7 *Del. C.* §§901 (c & d) and 903(e)(2)a.1.

ORDER

In accordance with 7 *Del. C.* §903(e)(2)a.1, it is hereby ordered, this 19th day of May, 2023 that the above referenced amendments to 7 DE Admin. Code 3504 - *Striped Bass Possession Size Limit; Exceptions*, a copy of which is hereby attached, are supported by the evidence contained herein and are hereby adopted. The above referenced amendment shall take effect 48 hours following publication of this Secretary's Order and regulation on the Department's website in accordance with 7 *Del. C.* §903(e)(2)a.2.

Lisa Borin-Ogden
For Shawn M. Garvin
Secretary

3504 Striped Bass Possession Size Limit; Exceptions

3504 Striped Bass Possession Size Limit; Exceptions.

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

- 1.0 Notwithstanding, the provisions of 7 **Del.C.** §929(b)(1), it is unlawful for any recreational fisherman to take and reduce to possession any striped bass that measures less than 28 inches in total length or any striped bass that measures greater than or equal to ~~35~~ 31 inches in total length, except that a recreational hook and line fisherman may only take one striped bass measuring not less than 20

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

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901 (c & d) and 903(e)(2)a.1 (7 **Del.C.** §§901(c & d) & 903(e)(2)a.1)
7 DE Admin. Code 3507

Secretary's Order No.: 2023-F-0008

**RE: Approving Final Regulation, pursuant to 7 Del. C. §903(e)(2)a.1, to Amend 7 DE Admin. Code 3507:
 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas**

Date of Issuance: April 28, 2023

Effective Date of the Amendment: 48 hours following publication of this Secretary's Order and regulation on the Department's website

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

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), pursuant to 7 *Del. C.* §903(e)(2)a.1, and all other relevant statutory authority, the

following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory amendment.

Notwithstanding 29 *Del.C.* Ch. 101 (which sets forth the standardized procedures whereby a state agency shall promulgate regulations), the Department also has the statutory authority under 7 *Del. C.* §903(e)(2)a.1 to promulgate certain regulations in order to adopt a specified management measure for finfish, subject to 7 *Del.C.* Ch. 9, *Finfishing in Tidal Waters*, by the issuance of a Secretary's Order. The Department is allowed to follow this abbreviated regulatory promulgation process only in instances where the management measures are specified by, and ensures compliance or maintains consistency with, a fisheries management plan or rule established by the Atlantic States Marine Fisheries Commission ("ASMFC"), the *Atlantic Coastal Fisheries Cooperative Management Act*, the Mid-Atlantic Fishery Management Council, or the National Marine Fisheries Service.

Whenever the Department promulgates a regulation pursuant to 7 *Del. C.* §903(e)(2)a.1, it shall also (1) publish on its website a public notice with a copy of the Secretary's Order and final regulation that implements the specific management measure; and (2) file the Secretary's Order and regulation that implements the specified management measure in the next available issue of the *Delaware Register of Regulations*. The final regulation becomes effective 48 hours after the Department has published the aforementioned public notice on its website, as mandated by 7 *Del. C.* §903(e)(2)a.2.

Background, Procedural History and Findings of Fact

This order amends 7 DE Admin. Code 3507: *Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas* as part of an effort to reduce Black Sea Bass mortality in the recreational fishery by adopting specified management measures approved by the ASMFC's Summer Flounder, Scup, and Black Sea Bass Board ("Board") at its March 2, 2023 meeting. Specifically, this amendment sets the recreational open season as May 15 through December 31 with a 9-day in-season closure from October 1 through 9. This order is necessary to keep Delaware compliant with the ASMFC Addendum XXXIV to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan: Harvest Control Rule for Recreational Management of Summer Flounder, Scup, Black Sea Bass, and Bluefish.

The estimated 2022 recreational Black Sea Bass harvest exceeded the 2022 Recreational Harvest Limit ("RHL"), the Board was then required to take action to constrain the 2023 recreational Black Sea Bass harvest to the 2023 RHL by using the percent reduction method under the Harvest Control Rule. To that, the Board has required all regions in the management unit to develop management measures that are expected to reduce 2023 recreational harvest by 10% in their region, based on projections generated by the Recreational Demand Model and thus constrain harvest to the RHL for the management unit. The Southern Black Sea Bass Region, to which Delaware belongs, proposed and had approved by the Board, the previously stated measure that reduces the harvest by 10%.

The Department has the statutory basis and legal authority to act with regard to promulgation of the proposed amendments to 7 DE Admin. Code 3507: *Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas* pursuant to 7 *Del. C.* §§901 (c), (d) and 903(e)(2)a.1. This specific management measure is required by the ASMFC Summer Flounder, Scup, and Black Sea Bass Board action taken on March 2, 2023.

ORDER

In accordance with 7 *Del. C.* §903(e)(2)a.1, it is hereby ordered, this 28th day of April, 2023 that the above referenced amendments to 7 DE Admin. Code 3507: *Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas*, a copy of which is hereby attached, are supported by the evidence contained herein and are hereby adopted. The above referenced amendment shall take effect 48 hours following publication of this Secretary's Order and regulation on the Department's website in accordance with 7 *Del. C.* §903(e)(2)a.2.

Shawn M. Garvin
Secretary

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

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

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

- 1.0 It shall be unlawful for any commercial person to have in possession any black sea bass (*Centropristis striata*) that measures less than eleven inches, total length excluding any caudal filament.
- 2.0 It shall be unlawful for any recreational person to have in possession any black sea bass that measures less than thirteen inches total length excluding any caudal filament.
- 3.0 It shall be unlawful for any commercial fisherman to land, to sell, trade and or barter any black sea bass in Delaware unless authorized by a black sea bass landing permit issued by the Department. The black sea bass landing permit shall be presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred to an eligible transferee as defined in 7 **Del.C.** §2903, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.
- 4.0 The black sea bass pot fishery and the black sea bass commercial hook and line fishery shall be considered separate black sea bass fisheries. The total pounds allocated to each fishery by the Department shall be as follows: 96 percent of the State's commercial quota, as determined by the Atlantic States Marine Fisheries Commission, for the pot fishery; 4 percent for the commercial hook and line fishery.
- 5.0 The Department may only issue a black sea bass landing permit for the pot fishery to a person who is the owner of a vessel permitted by the National Marine Fisheries Service in accordance with 50 CFR §§ 648.4 pertaining to black sea bass and was either issued a black sea bass landing permit by the Department in 2013 or was the transferee of black sea bass landing permit issued by the Department as per 3507 (3.0). The number of black sea bass landings permits issued by the Department for the pot fishery in any year will not exceed six.
- 6.0 The Department may only issue a black sea bass landing permit for the commercial hook and line fishery to a person who has applied for and secured from the Department a commercial food fishing license and a fishing equipment permit for hook and line and was either issued a black sea bass landing permit by the Department in 2013 or was the transferee of black sea bass landing permit issued by the Department as per 3507 (3.0). The number of black sea bass landings permits issued by the Department for the commercial hook and line fishery in any year will not exceed thirteen.
- 7.0 Any overage of the State's commercial quota will be subtracted by the Atlantic States Marine Fisheries Commission from the next year's commercial quota.
Any overage of an individual's allocation will be subtracted from that individual's allocation the next year and distributed to those individuals in the appropriate fishery that did not exceed their quota.
- 8.0 Each participant in a black sea bass fishery shall be assigned an equal share of the total pounds of black sea bass allotted by the Department for that particular fishery. A share shall be determined by dividing the number of pre-registered participants in one of the two recognized fisheries into the total pounds of black sea bass allotted to the fishery by the Department. In order to pre-register an individual must indicate their intent in writing to participate in this fishery.
- 9.0 Individual shares of the pot fishery quota may be transferred to another participant in the pot fishery. Any transfer of black sea bass individual pot quota shall be limited by the following conditions:
 - 9.1 A maximum of one transfer per year per person.
 - 9.2 No transfer of shares of the black sea bass pot fishery quota shall be authorized unless such transfer is documented on a form provided by the Department and approved by the Secretary in advance of the actual transfer.
- 10.0 Individual shares of the commercial hook and line fishery quota may be transferred to another participant in the commercial hook and line fishery. Any transfer of black sea bass individual commercial hook and line quota shall be limited by the following conditions:
 - 10.1 A maximum of one transfer per year per person.

-
- 10.2 No transfer of shares of the black sea bass commercial hook and line quota shall be authorized unless such transfer is documented on a form provided by the Department and approved by the Secretary in advance of the transfer.
- 11.0 Each commercial food fisherman participating in a black sea bass fishery shall report to the Department, via the interactive voice phone reporting system operated by the Department, each days landings in pounds at least one hour after packing out their harvest.
- 12.0 It shall be unlawful for any recreational fisherman to take and reduce to possession or to land any black sea bass beginning at 12:01 a.m. ~~December 12~~ January 1, and ending midnight May 14 and beginning at 12:01 a.m. October 1 and ending midnight October 9.
- 12.1 It shall be unlawful for any recreational fisherman to have in possession more than 15 black sea bass at or between the place where said black sea bass were caught and said recreational fisherman's personal abode or temporary or transient place of lodging during the period of May 15 through September 30 and October 10 through December 44 31.
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DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(e)(2)a.1 (7 Del.C. §903(e)(2)a.1)
7 DE Admin. Code 3526

Secretary's Order No.: 2023-F-0009

**RE: Approving Final Regulation, pursuant to 7 Del. C. §903(e)(2)a.1, to Amend 7 DE Admin. Code 3526:
*Scup***

Date of Issuance: April 28, 2023

Effective Date of the Amendment: 48 hours following publication of this Secretary's Order and regulation on the Department's website

3526 Scup Size Limit

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), pursuant to 7 Del. C. §903(e)(2)a.1, and all other relevant statutory authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory amendment.

Notwithstanding 29 Del.C. Ch. 101 (which sets forth the standardized procedures whereby a state agency shall promulgate regulations), the Department also has the statutory authority under 7 Del. C. §903(e)(2)a.1 to promulgate certain regulations in order to adopt a specified management measure for finfish, subject to 7 Del.C. Ch. 9, *Finfishing in Tidal Waters*, by the issuance of a Secretary's Order. The Department is allowed to follow this abbreviated regulatory promulgation process only in instances where the management measures are specified by, and ensures compliance or maintains consistency with, a fisheries management plan or rule established by the Atlantic States Marine Fisheries Commission ("ASMFC"), the *Atlantic Coastal Fisheries Cooperative Management Act*, the Mid-Atlantic Fishery Management Council, or the National Marine Fisheries Service.

Whenever the Department promulgates a regulation pursuant to 7 Del. C. §903(e)(2)a.1, it shall also (1) publish on its website a public notice with a copy of the Secretary's Order and final regulation that implements the specific management measure; and (2) file the Secretary's Order and regulation that implements the specified management measure in the next available issue of the *Delaware Register of Regulations*. The final regulation becomes effective 48 hours after the Department has published the aforementioned public notice on its website, as mandated by 7 Del. C. §903(e)(2)a.2.

Background, Procedural History and Findings of Fact

This order amends 7 DE Admin. Code 3526: *Scup* as part of an effort to reduce Scup mortality in the

recreational fishery by adopting specified management measures approved by the ASMFC's Summer Flounder, Scup, and Black Sea Bass Board ("Board") at its March 2, 2023 meeting. Specifically, this amendment decreases the recreational daily possession limit from 50 Scup to 40 Scup. This order is necessary to keep Delaware compliant with the ASMFC Addendum XXXIV to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan: Harvest Control Rule for Recreational Management of Summer Flounder, Scup, Black Sea Bass, and Bluefish.

The estimated 2022 recreational Scup harvest exceeded the 2022 Recreational Harvest Limit ("RHL"), the Board was then required to take action to constrain the 2023 recreational Scup harvest to the 2023 RHL by using the percent reduction method under the Harvest Control Rule. To that, the Board has required all regions in the management unit to develop management measures that are expected to reduce 2023 recreational harvest by 10% coastwide, based on projections generated by the Recreational Demand Model and thus constrain harvest to the RHL for the management unit. The Southern Scup Region, to which Delaware belongs, proposed and had approved by the Board, the previously stated measure that reduces the harvest by 10%.

The Department has the statutory basis and legal authority to act with regard to promulgation of the proposed amendments to 7 DE Admin. Code 3526: *Scup* pursuant to 7 Del. C. §§901 (c), (d) and 903(e)(2)a.1. This specific management measure is required by the ASMFC Summer Flounder, Scup, and Black Sea Bass Board action taken on March 2, 2023.

ORDER

In accordance with 7 Del. C. §903(e)(2)a.1, it is hereby ordered, this 28th day of April, 2023 that the above referenced amendments to 7 DE Admin. Code 3526: *Scup*, a copy of which is hereby attached, are supported by the evidence contained herein and are hereby adopted. The above referenced amendment shall take effect 48 hours following publication of this Secretary's Order and regulation on the Department's website in accordance with 7 Del. C. §903(e)(2)a.2.

Shawn M. Garvin
Secretary

3526 Scup Size Limit

3526 Scup Size Limit.

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 It shall be unlawful for any recreational fisherman to have in possession any scup, *Stenotomus chrysops*, that measures less than nine inches, total length.
- 2.0 It shall be unlawful for any person who has been issued a commercial food fishing license by the Department to possess any scup that measures less than nine inches, total length.
- 3.0 It shall be unlawful for any commercial finfisherman to sell, trade or barter or attempt to sell, trade or barter any scup or part thereof that is landed in this State by said commercial finfisherman after a date when the de minimis amount of commercial landings of scup is determined to have been landed in this State by the Department. The de minimis amount of scup shall be 0.1% of the coastwide commercial quota as set forth in the Scup Fishery Management Plan approved by the Atlantic State Marine Fisheries Commission.
- 4.0 It shall be unlawful for any recreational fisherman to have in possession more than ~~50~~ 40 scup at or between the place where said scup were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
Board of Cosmetology and Barbering

Statutory Authority: 24 Delaware Code, Section 5106(a)(1) (24 **Del.C.** §5106(a)(1))
24 **DE Admin. Code** 5100

ORDER

5100 Board of Cosmetology and Barbering

After due notice in the Delaware Register of Regulations and two Delaware newspapers, a public hearing was held on March 27, 2023 at a scheduled meeting of the Delaware Board of Cosmetology and Barbering ("Board") to receive comments regarding proposed amendments to the Board's rules and regulations. The proposed amendments set forth standards and requirements for apprenticeships, including apprentice teachers, apprentice supervision and curriculum and equipment requirements for the apprentices regulated by the board.

The proposed changes to the rules and regulations were published in the *Delaware Register of Regulations*, Volume 26, Issue 9, on March 1, 2023. Notice of the March 27, 2023 hearing was published in the *News Journal* (Exhibit 1) and the *Delaware State News*. Exhibit 2. Pursuant to 29 **Del.C.** § 10118(a), the date to receive final written comments was April 11, 2023, 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on April 24, 2023.

Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

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

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

There were no comments presented by testimony at the public hearing on March 27, 2023. Further, no written comments were submitted.

Findings of Fact and Conclusions

The public was given notice and an opportunity to provide the Board with comments in writing and by testimony on the proposed amendments to the Board's rules and regulations. There were no public comments provided to the Board either in writing or during the public hearing.

Pursuant to 24 **Del.C.** § 5106(a)(1), the Board has the statutory authority to promulgate rules and regulations. Having received no comments, either by testimony or in writing, the Board finds no reason to amend the regulations as proposed.

Decision and Effective Date

The Board hereby adopts the changes to the rules and regulations as proposed, to be effective 10 days following publication of this Order in the *Register of Regulations*. The new rules and regulations are attached hereto as Exhibit A.

IT IS SO ORDERED this 24th day of April 2023.

DELAWARE BOARD OF COSMETOLOGY AND BARBERING

/s/ John Cook, President

/s/ Selina Davis, Vice President

Tammy Parris, Secretary (Absent)

/s/ Victor David

/s/ Ashley Catlett

/s/ Rebecca Barry

/s/ Lucy Deo

/s/ Jeffrey Benson

/s/ Gwendolyn Fulwood

/s/ Valarie Lacey

***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 March 2023 issue of the Register at page 760 (26 DE Reg. 760). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/june2023/final/26 DE Reg 1077 06-01-23.htm>

DEPARTMENT OF TRANSPORTATION**DIVISION OF TRANSPORTATION SOLUTIONS**

Statutory Authority: 21 Delaware Code, Section 4504 (21 Del.C. §4504)

2 DE Admin. Code 2405

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

Pursuant to the authority provided by 21 Del. C. § 4504, the Delaware Department of Transportation proposed to adopt changes to its regulation entitled the Oversize/Overweight Hauling Permit Policy and Procedures Manual.

The Department, through its Division of Transportation Solutions, published proposed revisions to the existing regulation, the Oversize/Overweight Hauling Permit Policy and Procedures Manual, seeking public comment through the public notice appearing in **26 DE Reg. 829 (04/01/23)**.

The Department indicated in its April 1, 2023 notice that it would accept written public comments on the proposed changes to the Oversize/Overweight Hauling Permit Policy and Procedures Manual from April 1, 2023 through May 1, 2023.

Summary of the Evidence and Information Submitted.

There were no comments received by the Department. The proposed changes to the Oversize/Overweight Hauling Permit Policy and Procedures Manual intended to revise Regulation 2405 are procedural changes and create a new permit code supporting economic development. The collective changes are administrative in nature and serve in part to 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 Oversize/Overweight Hauling Permit Policy and Procedures Manual 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 Oversize/Overweight Hauling Permit Policy and Procedures

Manual 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 June 11, 2023.

IT IS SO ORDERED this 4 day of May 2023.

Nicole Majeski, Secretary
Delaware Department of Transportation

*Please note that no changes were made to the regulation as originally proposed and published in the April 2023 issue of the *Register* at page 829 (26 DE Reg. 829). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

<https://regulations.delaware.gov/register/june2023/final/26 DE Reg 1078 06-01-23.htm>

GENERAL NOTICES

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

Board of Home Inspectors

Statutory Authority: 24 Delaware Code, Section 4106(a)(1) (24 **Del.C.** §4106(a)(1)
24 **DE Admin. Code** 4100

PUBLIC NOTICE

4100 Board of Home Inspectors

The Delaware Board of Home Inspectors, pursuant to 24 **Del.C.** §4106(a)(1), proposes to amend its rules and regulations. The proposed regulation changes aim to address a growing practice in the profession of licensed home inspectors performing partial home inspections and not producing written reports. In addition, they expand the list of certifying bodies acceptable to the Board for experience applicants.

The original amendments were published on page 383 of the November 1, 2022 issue of the Delaware Register of Regulations (26 **DE Reg.** 383 (11/01/22)). The Board planned to hold a hearing on January 10, 2023 at 9:00 a.m., but the hearing was cancelled. As a result, the Board planned to hold a public hearing on the proposed regulation change on May 9, 2023 at 9:00 a.m., as published in the April 1, 2023 Delaware Register of Regulations (26 **DE Reg.** 893 (4/1/23)). The May 9, 2023 hearing was cancelled. As a result, the Board will now hold a public hearing on the proposed regulation change on July 11, 2023 at 9:00 a.m., either telephonically or in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Michelle Loper at the Delaware Board of Home Inspectors, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until July 26, 2023 pursuant to 29 **Del.C.** §10118(a).

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 - I-95 (N56) and SR 273 (N18) Interchange Ramps

May 8, 2023

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

Ms. Smallwood,

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

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

§4505. Traffic control devices.

(d)(1) The Secretary of the Department shall submit an order issued under subsection (c) of this section to

the Registrar of Regulations for publication in the Register of Regulations. The Secretary shall also publish the order on the Department's website with other similar orders.

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

"Trailers, semi-trailers, and recreational trailers unattached to a motor vehicle, shall be prohibited from stopping, standing, or parking" on the ramps at the I-95 and SR 273 Interchange.

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 - N. Old Baltimore Pike (N26)

May 4, 2023

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

Ms. Smallwood,

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

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

§4505. Traffic control devices.

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

In accordance with 21 *Del. C.* §4505(d)(1), Notice is hereby given by 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 devices for the safe movement of traffic in the area:

"No Trucks Over 2 Axles Except Local Services" on N. Old Baltimore Pike (N26) between SR 273 (N3) and Road A (N336A).

GENERAL NOTICES

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)(2) (21 **Del.C.** §4505(d)(2))

NOTICE

Senate Bill 89 as amended by Senate Amendment 1 - Town of Kenton

April 25, 2023

Town of Kenton
284 S. Main Street
P.O. Box 102
Kenton, DE 19955

Mayor Paul Caple,

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)(2) An incorporated municipality exercising its authority under § 134(e) of Title 17 shall submit notice of the municipality's action to the Registrar of Regulations for publication in the Register of Regulations. For a state-maintained highway, the notice must include a certification from the Department that the notice has been approved by the Department. The Secretary shall publish the notice on the Department's website with orders issued by the Department under paragraph (d)(1) of this section.

In accordance with 21 *Del. C.* §4505(d)(2), the Delaware Department of Transportation, Traffic Engineering Section, hereby certifies, as authorized by the Secretary of the Department of Transportation pursuant to 21 *Del. C.* §4505, that it has approved the below restriction proposed by Town of Kenton.

"Trucks with three or more axles should be prohibited " on all municipal streets within the Town of Kenton

Please accept this certification by the Delaware Department of Transportation in order to enable the Town of Kenton to publish the information in the Register of Regulations.

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

***Please note: A copy of the accompanying resolution is attached here as a PDF document:**

<https://regulations.delaware.gov/register/june2023/general/TSTR - Resolution - TOWN OF KENTON.pdf>

DELAWARE RIVER BASIN COMMISSION**PUBLIC NOTICE**

The Commission's quarterly business meeting will be held in person on Wednesday, June 7, 2023 commencing at 1:00 p.m. at Rutgers University - Camden, Campus Center, 326 Penn Street, Camden, NJ 08102. An agenda will be posted on the Commission's website, www.drbc.gov, at least ten (10) days prior to the meeting date.

For additional information, including a link to the live stream of this event, please visit the DRBC website at www.drbc.gov or contact Patricia Hausler at patricia.hausler@drbc.gov.

DEPARTMENT OF EDUCATION**PUBLIC NOTICE**

The State Board of Education meets monthly, generally at 5:00pm on the third Thursday of the month. These meetings are open to the public. The Board rotates locations of regular meetings among the three counties.

The State Board of Education provides information about meeting dates and times, materials, minutes, and audio recordings on its website:

<https://education.delaware.gov/community/governance/state-board-of-education/sbe-monthly-meetings/>

DEPARTMENT OF FINANCE**DIVISION OF REVENUE****PUBLIC NOTICE****Regulation Governing Tax Refund Offset and Lottery Winnings Intercept Programs**

In accordance with 30 **Del.C.** §545(c), the Delaware Department of Finance, through its Division of Revenue ("Revenue"), is proposing regulations governing the tax refund offset and lottery winnings intercept programs authorized under 30 **Del.C.** §545.

Members of the public may receive a copy of the proposed regulations at no charge by sending a letter via U.S. mail, or by emailing or calling, the following Revenue contact person:

Donna Owens
820 N. French St., Eighth Floor
Wilmington, Delaware 19801
Donna.owens@delaware.gov
(302) 577-8682

Members of the public may present written comments on the proposed regulations by submitting such comments to Donna Owens as provided above. Written comments must be received on or before July 1, 2023.

The Director of Revenue and the Director of the State Lottery Office are required under 30 **Del.C.** §545 to take certain steps to collect debts owed to State agencies by a taxpayer (owed a refund) or a lottery winner. The proposed regulations impose certification and other requirements on State agencies that refer debts for collection under the tax refund offset and lottery winnings intercept programs and establish procedures for Revenue, Lottery and state agencies to follow in connection with the programs. The regulations require, among other things, notice and opportunity for an administrative hearing prior to offsetting against a state tax refund and notice of intercepted lottery winnings.

OFFICE OF THE STATE LOTTERY**PUBLIC NOTICE****203 Video Lottery and Table Game Regulations**

Pursuant to 29 **Del.C.** §4805, the Delaware Lottery Office proposes amendments to subsections 20.6 and 21.7 in 10 **DE Admin. Code** 203. The first proposed amendment is to subsection 20.6 and would remove subsection

20.6.3.2 entirely. The second proposed amendment is to subsection 21.7 and would remove the verbiage requiring a Delaware State Lottery representative to be present in the court room to observe the casinos' daily table game counts.

Persons wishing to present their views regarding this matter may do so by submitting written comments by the close of business on or before July 5, 2023 at the offices of the Delaware State Lottery at 1575 McKee Road, Suite 102, Dover, DE 19904. A copy of these regulations is available from the above address or may be viewed at the Delaware State Lottery office at the same address.

The regulations currently require that a Delaware State Lottery Representative be present during each casino's daily table games count. The proposed amendments to subsections 20.6 and 21.7 seek to remove certain requirements relating to those counts as unnecessary and inconsistent with industry standard. By deleting subsection 20.6.3.2, Delaware State Lottery will no longer be required to control one of the two keys needed for the performance of the daily table games drop box count. The revision to subsection 21.7 maintains the requirement that empty drop boxes be shown to surveillance and count team members but eliminates the requirement that they also be shown to a Delaware State Lottery representative.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

PUBLIC NOTICE

2023 Quality Strategy

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 the Diamond State Health Plan Medicaid Managed Care Strategy, regarding 2023 Quality Strategy, specifically, to serve as a roadmap for Delaware on our contracted health plans and assessing the quality of care that beneficiaries receive while setting forth measurable goals and targets for improvement.

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 July 3, 2023. Please identify in the subject line: 2023 Quality Strategy.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

PUBLIC NOTICE

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

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 regarding the Temporary Extension to COVID-19 Disaster Relief Co-pay & Premium Provisions, specifically, to request that an extension for co-pays and premiums to be waived.

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 July 3, 2023. Please identify in the subject line: Temporary Extension to COVID-19 Disaster Relief Co-pay & Premium Provisions.

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

DIVISION OF SOCIAL SERVICES**PUBLIC NOTICE****Delaware's SNAP EBT System**

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 Social Services (DHSS/DSS) is proposing to amend the Division of Social Services Manual (DSSM) to define Delaware's EBT system and EBT card responsibilities for the Supplemental Nutrition Assistance Program (SNAP).

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, Division of Social Services (DSS), 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 July 1, 2023. Please identify in the subject line: Delaware's SNAP EBT System

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

DIVISION OF SUBSTANCE ABUSE AND MENTAL HEALTH**PUBLIC NOTICE****6002 Credentialing Mental Health Screeners and Payment for Voluntary Admissions**

In compliance with the *Administrative Procedures Act* (29 **Del.C.** Ch. 101) and under the authority of 16 **Del.C.** § 5004, the State of Delaware Department of Health and Social Service's Division of Substance Abuse and Mental Health ("the Division") is proposing amending regulations governing credentialed mental health screeners ("screeners").

A person may make suggestions or provide compilations of data, testimony, briefs, or other materials concerning the Division's proposal by written submission to the Division of Substance Abuse and Mental Health. The Division will receive submissions made before 4:30 p.m. on July 3, 2023, by mail to 1901 North DuPont Highway, New Castle, DE 19720-0906, by fax to (302) 255-4427, and by email to joe.aronson@delaware.gov. Please identify in the subject line: 6002 Credentialed Mental Health Screeners.

The Division's determination to adopt this proposal will include analysis and consideration of submissions received.

DEPARTMENT OF INSURANCE**OFFICE OF THE COMMISSIONER****PUBLIC NOTICE****1316 Arbitration of Health Insurance Disputes Between Carriers And Non-Network Providers of Emergency Care Services**

Regulation 1316 implements 18 **Del.C.** §§3349 and 3565 by setting forth regulations pertaining to the arbitration of health insurance disputes between carriers and non-network providers of emergency care services. The purpose of the proposed amendment is to eliminate the need for carriers to provide the Department with a quarterly list of exempt plan numbers by deleting subsection 3.15 of this regulation.

The Department is also taking the opportunity of this proposal to make grammatical and formatting edits throughout the regulation.

The proposed amendments appear 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 amendments.

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

EST, the 1st day of July 2023. Any such requests and any questions concerning connecting to the public hearing should be directed to:

Alisa L. Pritchard, Regulatory Specialist
Delaware Department of Insurance
1351 West North Street, Suite 101
Dover, DE 19904
(302) 674-7379
Email: Alisa.Pritchard@delaware.gov

OFFICE OF THE COMMISSIONER
PUBLIC NOTICE

2102 Termination of Coverage for Policies of Commercial Governmental and Professional Liability Insurance [Formerly Regulation 54]

The Department of Insurance hereby gives notice of a proposal to repeal Regulation 2102, Termination of Coverage for Policies of Commercial Governmental and Professional Liability Insurance. Regulation 2102 was enacted on May 9, 1986 and expired by operation of law effective November 5, 1986. As such, the Insurance Commissioner finds it necessary to repeal Regulation 2102.

The proposed regulation appears below and may also be viewed at 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 1st day of July, 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 SAFETY AND HOMELAND SECURITY
DELAWARE COUNCIL ON POLICE TRAINING
PUBLIC NOTICE

801 Regulations of the Delaware Council on Police Training

The Council on Police Training (COPT), pursuant to 11 Del. C. 8404 (a)(14), proposes to amend 801 Regulations of the Delaware Council on Police Training. The proposed amendments, which were voted on during a public meeting of the COPT on April 11, 2023, seek to modify COPT's minimum qualifications for police instructors.

The COPT will allow for the submission of written comments, suggestions, or other materials regarding the proposed rules to the COPT Attn: Lacey Neeld, P.O. Box 430, Dover DE 19903 or e-mail lacey.neeld@delaware.gov. Any written submission in response to this notice and the relevant proposed regulations must be received by the COPT no later than 4:30 p.m. (EST) on July 3, 2023. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml.

DELAWARE COUNCIL ON POLICE TRAINING**PUBLIC NOTICE****803 COPT Firearms Instructors Standards and Requirements**

The Council on Police Training (COPT), pursuant to 11 Del. C. 8404 (a)(14), proposes to amend 803 COPT Firearms Instructors Standards and Requirements. The proposed amendments, which were voted on during a public meeting of the COPT on April 11, 2023, seek to modify regulations concerning COPT firearms and master firearms instructors qualifications.

The COPT will allow for the submission of written comments, suggestions, or other materials regarding the proposed rules to the COPT Attn: Lacey Neeld, P.O. Box 430, Dover DE 19903 or e-mail lacey.neeld@delaware.gov. Any written submission in response to this notice and the relevant proposed regulations must be received by the COPT no later than 4:30 p.m. (EST) on July 3, 2023. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml.

DIVISION OF STATE POLICE**State Bureau of Identification****PUBLIC NOTICE****2400 Board of Examiners of Constables**

Purpose: In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 24 of the Delaware Code, Chapter 56, Section 5604(1), the Constable Board of Examiners proposes to adopt regulations to allow the provisional grant of a constable license by the State Bureau of Identification pending approval by the Board

Written Comments: The Delaware Department of Safety and Homeland Security, State Bureau of Identification will receive written comments, suggestions, briefs or other written material until the close of business, 4:30 p.m., July 3, 2023. Written comments shall be submitted via e-mail to Frank.Kaleta@delaware.gov or via the USPS to Frank Kaleta, 600 South Bay Rd. Suite 1, Dover DE 19901.

OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER**PUBLIC NOTICE****Rule 202 (Formerly Rule 19) A Rule Defining the Words Hotel, Motel, Restaurant and Dinner Theater**

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 4 Del.C. §304, the Delaware Alcoholic Beverage Control Commissioner proposes to update its rules related to on-premise licensees, specifically seating in restaurants licensed by the OABCC.

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

Doug Denison
Deputy Commissioner
Office of the Delaware Alcoholic Beverage Control Commissioner
820 N. French St., 3rd Floor
Wilmington, DE 19801

Comments may also be directed via electronic mail to OABCCrulescomments@delaware.gov. Any written submission in response to this notice and relevant to the proposed regulations must be received by the Delaware Alcoholic Beverage Control Commissioner no later than 4:00 p.m. EST, July 1, 2023.

The action concerning determination of whether to adopt the proposed regulations will be based upon

consideration of the written comments and any other written materials filed by the public.

OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER
PUBLIC NOTICE

1200 General Establishment Employment

Rule 1201 (Formerly Rule 7) A Rule Requiring Persons Between the Ages of 16 and 18 to Secure a Work Permit to be Employed by an On-Premises Licensee

Rule 1202 (Formerly Rule 7.1) Employment of Persons Who Have Reached the Age of 18 Years in Package Stores

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 4 **Del.C.** §304, the Delaware Alcoholic Beverage Control Commissioner proposes to update its rules related to on-premise and retail licensees, specifically employment requirements.

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

Doug Denison
Deputy Commissioner
Office of the Delaware Alcoholic Beverage Control Commissioner
820 N. French St., 3rd Floor
Wilmington, DE 19801

Comments may also be directed via electronic mail to OABCCrulescomments@delaware.gov. Any written submission in response to this notice and relevant to the proposed regulations must be received by the Delaware Alcoholic Beverage Control Commissioner no later than 4:00 p.m. EST, July 1, 2023.

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

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
PUBLIC NOTICE
100 Board of Accountancy

Pursuant to 24 **Del.C.** §105(a)(1), the Delaware Board of Accountancy has proposed revisions to its rules and regulations. The rules are designed to revise what constitutes acceptable continuing education and the acceptable timeframe for successful completion of all parts of the Exam.

A public hearing is scheduled for July 19 2023 at 9:00 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. A public hearing will occur at the Board's meeting on July 19, 2023, where members of the public can offer comments on the proposed amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Accountancy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address. Written comments will be accepted until August 4, 2023 in accordance with 29 **Del.C.** §10118(a).

DIVISION OF PROFESSIONAL REGULATION**PUBLIC NOTICE****1800 Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners**

Pursuant to 24 **Del.C.** §1806(a)(2), the Delaware Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners has proposed revisions to its rules and regulations. The rules proposed establish a continuing education requirement. A public hearing is scheduled for July 11, 2023 at 8:30 p.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware and possibly via virtual technology where members of the public can offer comments on the proposed amendments to the rules and regulations. This proposed amendment is offered in place of a previous proposal that was published in the Register at Vol. 26, Issue 9 because the new proposal is substantively different than the original submission. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address in accordance with 29 **Del.C.** §10118(a). Written public comments will be accepted until July 26, 2023.
