
Delaware Register of Regulations

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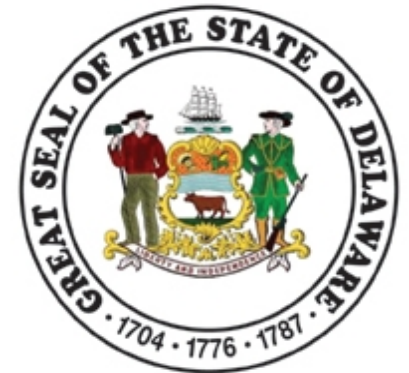
Volume 27 - Issue 11, Pages 791-911

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Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before April 15, 2024.

*Cover Photo
Rehoboth Beach*



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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

ISSUE DATE	CLOSING DATE	CLOSING TIME
June 1	May 15	4:30 p.m.
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.

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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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DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
BOARD OF REGISTRATION FOR PROFESSIONAL LAND SURVEYORS
Statutory Authority: 24 Delaware Code, Section 2706(a)(1) (24 **Del.C.** §2706(a)(1))
24 **DE Admin. Code** 2700

ERRATA

2700 Board of Registration for Professional Land Surveyors

* **Please Note:** The Department of State regulation, 24 **DE Admin. Code** 2700 Board of Registration for Professional Land Surveyors, was published as proposed in the *Delaware Register of Regulations*, 27 **DE Reg.** 325 (11/01/23), and as final in the *Delaware Register of Regulations*, 27 **DE Reg.** 690 (03/01/24). The following subsection was inadvertently published incorrectly.

Subsection 10.9 was published as:

- 10.9 Noncompliance – Extenuating Circumstances. A licensee may request an extension and be given up to an additional ~~twelve (12)~~ 12 months to make up all outstanding required PDHs providing ~~he/she the licensee~~ the licensee can show good cause why ~~he/she the licensee~~ the licensee was unable to ~~comply with such~~ follow the requirements and provided the statement is received and reviewed by the Board prior to the licensee renewing their license. The licensee must state the reason for ~~such the~~ the extension along with whatever documentation ~~he/she the licensee~~ the licensee feels is relevant. The Board shall consider requests such as extensive travel outside the United States, military service, extended illness of the licensee or ~~his/her the licensee's~~ the licensee's immediate family, or a death in the immediate family of the licensee. The written request for extension must be received and reviewed by the Board ~~prior~~ before to the licensee renewing their license. The Board shall issue an extension when it determines that one or more of these criteria have been met or if circumstances beyond the control of the licensee have rendered it impossible for the licensee to obtain the required PDHs. A licensee who has successfully applied and received Board approval for an extension under this subsection shall make up all outstanding hours of professional development within the extension period approved by the Board.

Subsection 10.9 should have read:

- 10.9 Noncompliance – Extenuating Circumstances. A licensee may request an extension and be given up to an additional ~~twelve (12)~~ 12 months to make up all outstanding required PDHs providing ~~he/she the licensee~~ the licensee can show good cause why ~~he/she the licensee~~ the licensee was unable to ~~comply with such~~ follow the requirements and provided the statement is received and reviewed by the Board prior to the licensee renewing their license. The licensee must state the reason for ~~such the~~ the extension along with whatever documentation ~~he/she the licensee~~ the licensee feels is relevant. The Board shall consider requests such as extensive travel outside the United States, military service, extended illness of the licensee or ~~his/her the licensee's~~ the licensee's immediate family, or a death in the immediate family of the licensee. The written request for extension must be received and reviewed by the Board ~~prior to~~ before the licensee renewing their license. The Board shall issue an extension when it determines that one or more of these criteria have been met or if circumstances beyond the control of the licensee have rendered it impossible for the licensee to obtain the required PDHs. A licensee who has successfully applied and received Board approval for an extension under this subsection shall make up all outstanding hours of professional development within the extension period approved by the Board.

The effective date for the final order and regulation remains the same as stated in the March 2024 *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(a) and 8905(a) (14 **Del.C.** §§122(a) & 8905(a))

14 **DE Admin. Code** 235

PUBLIC NOTICE

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

235 Teacher of the Year Award**A. TYPE OF REGULATORY ACTION REQUESTED**

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 **Del. C.** §122(a) and 14 **Del. C.** §8905(a), the Secretary of Education seeks to amend 14 **DE Admin. Code** 235 Teacher of the Year Award. This regulation is being amended to add former Teachers of the Year as individuals who will read submitted portfolios as part of the evaluation and selection process for the annual Teacher of the Year Award. Other grammatical changes were made as needed to comply with the *Delaware Administrative Code Drafting and Style Manual*.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before May 31, 2024. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

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

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

<https://regulations.delaware.gov/register/may2024/proposed/27 DE Reg 802RFA 05-01-24.pdf>

235 Teacher of the Year Award

1.0 Purpose

Pursuant to 14 Del.C. Ch. 89, this regulation provides guidance to Delaware public schools, districts and charter schools regarding the qualifications and nomination of candidates for Teacher of the Year.

2.0 Definitions

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

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

“**Teacher of the Year Award**” means recognition and a monetary award given by either a teacher’s employing school, district or charter school, or the Department of Education as a way to reward outstanding teachers in the state.

“**Teacher of the Year Award Fund**” means a \$5000 set aside fund within the budget of the Department to be used for the statewide Teacher of the Year Award recipient’s exclusive assignment and disbursement.

3.0 Qualifications for a Local Teacher of the Year Award

- 3.1 To be considered for the local Teacher of the Year Award a person shall:

- 3.1.1 Have taught, continuously or intermittently, for an accumulative period of 3 years or more in a Delaware public school previous to the date of such person's nomination;
- 3.1.2 Have been formally nominated;
- 3.1.3 Be actively teaching in the nominating district or charter school in Delaware at the time of nomination.
- 3.1.4 Meet all the requirements for a Standard Certificate for the position held and hold a valid and current license, as issued by the Department pursuant to the regulations promulgated by the Professional Standards Board and approved by the State Board of Education.

4.0 Nomination Procedure for State Teacher of the Year Award

- 4.1 The following procedure shall apply for identifying and nominating candidates for the state Teacher of the Year:
 - 4.1.1 The Department shall meet annually with appropriate district personnel and the representative for the charter schools for the purpose of providing detailed instructions and proper forms for the nomination of candidates for the state Teacher of the Year Award.
 - 4.1.2 Each district is invited to nominate 1 teacher employed by the district who has been chosen as a Teacher of the Year from amongst 1 of its school buildings.
 - 4.1.3 Charter schools are invited to select 1 teacher to represent all of the charter schools.
 - 4.1.4 Nominees for the state Teacher of the Year Award shall be skillful and dedicated teachers who teach a grade prekindergarten through grade 12.
 - 4.1.5 Nominees for State Teacher of the Year Award who are not actively engaged in teaching in a public school at the time at which observations are made pursuant to Section 5.0 below shall be disqualified.
 - 4.1.6 Administrative personnel such as principals and school counselors are not eligible to be considered for the State Teacher of the Year Award.

5.0 Requirements for State Teacher of the Year Award nominees

Nominees shall submit a portfolio describing themselves and setting forth their positions on educational issues in a Department-approved format that is also consistent with the National Teacher of the Year program.

6.0 Evaluation and Selection of the State Teacher of the Year Award Recipient

- 6.1 The following procedure shall occur to evaluate and select the state Teacher of the Year award recipient from amongst all nominated candidates:
 - 6.1.1 Following the submission of portfolios, selected Department staff members and selected former ~~state and local~~ Teachers of the Year shall be assigned in pairs to read the portfolios of 2 nominees and observe those nominees in the classroom based on the criteria stipulated in the Teacher of the Year Program Guide that is updated each year.
 - 6.1.2 Another group of Department staff members and former Teachers of the Year shall be assigned to read all ~~of the~~ portfolios and rate them based on forms found in the Teacher of the Year Program Guide. Based on the numerical ratings from both the portfolio readers and from the observations, 3 nominees shall be identified as finalists for consideration by a panel of judges.
 - 6.1.3 The panel of judges shall include: the current State Teacher of the Year; the President of the State Parent Teacher Association; the President of the Future Educators Association; a member of the State Board of Education; a representative of the Chamber of Commerce; the President of the Delaware State Education Association; and the Chair of the Professional Standards Board or, if necessary, their designees.
 - 6.1.4 The judges shall recommend 1 person for the Secretary of Education to declare as the State Teacher of the Year.
 - 6.1.5 The final selection of the state Teacher of the Year Award recipient is made solely at the discretion of the Secretary of Education and the Secretary's decision shall be final.

7.0 Funding and Use of Funds

- 7.1 The Teacher of the Year Award Fund, in the amount of \$5,000, shall be set aside within the budget of the Department to be used for the statewide Teacher of the Year Award recipient's exclusive assignment and disbursement.
- 7.1.1 The Teacher of the Year Award Funds, shall not be used for the personal benefit of the award recipient, but shall be used solely to accomplish educational purposes or objectives for students; however that in the use of such funds for educational purposes, the recipient may be an indirect or incidental beneficiary as teacher of the benefited pupils.
- 7.1.1.1 In the event all funds for an Award recipient have not been completely expended by the time a subsequent award is granted, the remainder of the former recipient's award shall not revert, but shall remain set aside in the name of the former recipient such time as it is totally expended or the recipient dies or leaves the state.
- 7.1.2 In order to withdraw funds, the recipient shall present to the superintendent of the local school district or the head of the charter school in which the recipient is employed a plan for utilization of the award in order to avoid wasteful duplication of materials or violation of school district or charter school policy.
- 7.1.3 Possible use of funds includes:
- 7.1.3.1 Purchase of non-consumable materials and supplies (library books, audio/visual equipment, computer equipment, etc.);
- 7.1.3.2 Purchase of otherwise consumable materials that are used in the production of a student designed item (artist's paper, canvas, instruments, wood, etc.);
- 7.1.3.3 Payment for student travel (museum, theatres, historic sites, etc.);
- 7.1.3.4 Employment of performers or consultants (musical group, author, poet or historian, etc.);
or
- 7.1.3.5 Reimbursements to the recipient, not to exceed \$500, for personal expenses.
- 7.1.4 Materials, equipment or other items purchased with such funds shall be the property of the Delaware public school district or charter school in which the recipient is employed at the time of expenditure.
- 7.1.5 Invoices, purchase orders or personal reimbursement forms related to withdrawals from the Teacher of the Year Award Fund shall be retained by the local school district or charter school and shall be available for inspection as public records and subject to regular audit by the State Auditor of Accounts.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 1315 (14 **Del.C.** §§122(b) & 1315)
14 **DE Admin. Code** 729

PUBLIC NOTICE

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

729 School Custodians**A. TYPE OF REGULATORY ACTION REQUESTED**

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 **Del.C.** §122 (b) and 14 **Del.C.** §1315, the Secretary of Education intends to amend 14 **DE Admin. Code** 729 School Custodians. This regulation is being amended to update the custodial formula and to correct

grammatical and style errors in order to comply with the *Delaware Administrative Code Drafting and Style Manual*.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before August 1, 2024. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not specifically address the improvement of student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure all students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation, by ensuring proper employment of school custodians, will help ensure all students' health and safety are adequately protected.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all students' legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any new reporting or administrative requirements or mandates on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amended regulation does not change the decision making authority and accountability for addressing the subject to be regulated.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation is consistent with and not an impediment to the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? The revisions to the regulations could increase the number of custodial units in schools, which would lead to increased costs in salary and related categories, and salary increases included in the state budget will increase costs.

***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/may2024/proposed/27 DE Reg 805RFA 05-01-24.pdf>

729 School Custodians

1.0 Definitions

The following words and terms shall have the following meaning:

"Assistant Chief Custodian" means a custodian who has completed the Assistant Chief Custodian certificate training as prescribed by the Department in subsection 5.2.2.

"Central Heating Plant heating plant" means all the component parts and systems used to heat, air condition and ventilate a school facility to include traditional mechanical systems and computer building automation systems.

“Certificate of Occupancy occupancy” means the certificate issued by code enforcement agencies certifying that a building meets all building and safety codes required by the jurisdiction of that agency.

“Chief Custodian” means a ~~Custodian~~ custodian who has completed the 120-class hour Chief Custodian training as prescribed by the Department in subsection ~~5.1.4~~ 5.2.1.

“Classroom” means an area or space within a school building that is used for student instruction.

“Classroom Equivalent equivalent” means areas or spaces in school buildings that are used for student instruction, but not classified as a classroom, such as, but not limited to, computer labs and centers, libraries, media centers, multiple intelligence rooms and areas, and athletic training rooms.

“Custodial Unit unit” means a formula used to determine the number of custodial positions earned by an a local educational facility agency.

“Custodian” means a ~~school district~~ local educational agency employee who is paid in accordance with 14 Del.C. §1311(a).

“Department” means the Delaware Department of Education.

“Firefighter and Custodian Firefighter” means a ~~Custodian who has completed the 90 class hour Firefighter and Custodian Firefighter certificate training as prescribed by the Department in subsection 5.1.2. This training includes, but is not limited to, the operation of boilers and central heating plant systems.~~

“Local educational agency” or “LEA” means a public board of education or other public authority legally constituted within Delaware for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a school district, or for a combination of school districts. The term includes an educational service agency and any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

“Maintenance Mechanic” means an employee filling a custodial position with specialized technical skill in a particular trade or trades as determined by the ~~school district~~ local educational agency in accordance with subsection 4.3 and paid in accordance with the pay scale identified in 14 Del.C. §1311(a).

“Office” means a room or area within a school building meant for continuous occupancy and typically used by 1 or more individuals for administrative and other non-instructional purposes. Areas separated by cubicles or other dividers shall be considered 1 office equivalent.

“Office equivalent” means areas or spaces within school buildings that are meant for continuous occupancy, but not typically used for group instruction, such as, but not limited to conference rooms, meeting rooms, staff break rooms, and copier rooms.

“Skilled Craftsperson” means an employee filling a custodial position with specialized technical certification or licensure in a particular trade or trades as determined by the ~~school district~~ local educational agency in accordance with subsection 4.4 and paid in accordance with the pay scale identified in 14 Del.C. §1311(a).

2.0 Experience

Custodians may be allowed ~~one (1)~~ 1 year of experience for each creditable year of experience in similar employment as determined by the ~~district~~ LEA.

3.0 Allocation of Custodial Units

3.1 The custodial units allocated to a ~~district~~ LEA may be assigned to various locations at the discretion of the ~~local school board and the chief school officer~~ LEA.

3.2 ~~Districts and charter schools~~ LEAs are allocated ~~one (1)~~ 1 full-time custodial position for each ~~twelve (12)~~ 12 custodial units or for a major fraction thereof. The number of units ~~is~~ allocated for each school is determined in the following way:

3.2.1 ~~One (1) unit for each classroom or classroom equivalent.~~

3.2.2 ~~One (1) unit for a small auditorium (less than 150 students).~~

3.2.3 ~~Two (2) units for a large auditorium (more than 150 students).~~

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- 3.2.4 ~~One (1) unit for a cafeteria having a seating capacity up to 150. One (1) unit for each 150 capacity or major fraction thereof.~~
- 3.2.5 ~~One (1) unit for a gymnasium.~~
- 3.2.6 ~~One (1) unit for a combined auditorium and gymnasium (less than 150 students).~~
- 3.2.7 ~~Two (2) units for a combined auditorium and gymnasium (more than 150 students).~~
- 3.2.8 ~~One (1) unit for two locker rooms.~~
- 3.2.9 ~~Seven (7) units for a swimming pool.~~
- 3.2.10 ~~Units for a central heating plant are determined as follows:~~
- 3.2.1 Classrooms
- 3.2.1.1 One unit for each classroom or classroom equivalent.
- 3.2.1.2 One and one-half units for each vocational, technical or specialized instructional room exceeding 1,000 square feet.
- 3.2.2 Cafeteria
- 3.2.2.1 One unit for a cafeteria with a capacity of 150 students or less.
- 3.2.2.2 One additional unit for each additional 150 students or fraction thereof.
- 3.2.3 Gymnasiums and Auditoriums
- 3.2.3.1 One unit for a gymnasium or auditorium of less than 5,000 square feet.
- 3.2.3.2 One and a half units for a gymnasium or auditorium of 5,000 to 10,000 square feet.
- 3.2.3.3 Two units for a gymnasium or auditorium over 10,000 square feet.
- 3.2.4 One unit for 2 locker rooms.
- 3.2.5 Seven units for a swimming pool.
- 3.2.6 Units for a central heating plant are determined as follows:

No. of Classrooms or equivalent	No. of Units
1 to 6	1/2
7 to 9	3/4
10 to 15 Up to 15	1
16 to 20	1 1/2
21 to 25	2
26 to 30	2 1/2
31 to 35	3
36 to 40	3 1/2
41 to 45	4
46 to 50	4 1/2
51 to 55	5
56 to 60	5 1/2
61 or more	1/2 unit per 5 additional classrooms

- 3.2.11 ~~One half (1/2) unit for each developed acre of the school plant site, not to exceed 48 acres or 24 units on a given site. If two schools are located on the same site of 100 acres or more, the second school shall receive credit for half of the acres for that site.~~
- 3.2.6.1 One unit for the first 15 classrooms or classroom equivalents.
- 3.2.6.2 One additional one-half units for each 5 classrooms or classroom equivalents.
- 3.2.7 One-half unit for each developed acre of the school plant site. If multiple schools are located on the same site, the acreage will be divided equally among the schools.
- 3.2.8 One-quarter unit for each office or office equivalent.

3.2.9 One-half unit for each gang bathroom.

3.2.10 One-quarter unit for each single bathroom.

- 3.3 Part-time custodians equivalent to ~~one (1)~~ 1 or more full-time custodians may be employed with the provision that proper records will be maintained at the ~~school district~~ LEA for review.
- 3.4 A full custodial staff for a new school building may be employed ~~two (2)~~ 2 months prior to the pupil occupancy of the building.
 - 3.4.1 In order to maintain building climate and secure new school buildings completed with a certificate of occupancy date further in advance of student occupancy than the ~~two (2)~~ 2 months identified in subsection 3.4, the ~~district~~ LEA is eligible to earn the custodial units provided for site maintenance and central heating plant as of the certificate of occupancy date, until eligible to employ the full custodial staff in accordance with subsection 3.4.
- 3.5 The termination date for custodial units in closed buildings shall be ~~six (6)~~ 6 weeks from the last day classes are held in the building.
- 3.6 Buildings which are closed and retained under the control of the ~~school district~~ LEA shall lose all custodial units except units provided for site maintenance and heating.
- 3.7 When the ~~school district~~ LEA signs a lease or in any way loses direct control of the building, through transfer, sale or legislation, the custodial units for site maintenance and heating shall terminate on the effective date of the lease, transfer, sale or legislation.
- 3.8 It is the ~~school district's~~ LEA's responsibility to notify the Department when the function of a building is changed. When the notification is received, a re-evaluation of the custodial units will be completed by the Department. The Department will notify the ~~district~~ LEA by letter of the results of the re-evaluation.
- 3.9 The Department shall calculate and approve all custodial unit allocation requests submitted by the ~~local school districts and charter schools~~ LEAs.

4.0 Classification

- 4.1 ~~Custodian-Firefighter~~ Assistant Chief Custodian
 - 4.1.1 When there is only ~~one (1)~~ 1 custodian in a ~~district~~ LEA building, the custodian may be classified as a ~~Custodian-Firefighter~~ an Assistant Chief Custodian.
 - 4.1.2 There shall be only ~~one (1)~~ Custodian-Firefighter employed 1 Assistant Chief Custodian position in each building.
- 4.2 ~~Chief Custodian~~ Custodian.
 - 4.2.1 A custodian may be classified as a Chief Custodian when at least ~~two (2)~~ 2 other full time custodians or the equivalent are employed in the school building or other ~~district~~ LEA facility. There shall only be ~~one (1)~~ 1 Chief Custodian per position in each building.
- 4.3 Maintenance Mechanic. Each ~~school district~~ LEA may classify up to ~~ten (10) percent~~ 10% of the total number of custodial personnel as maintenance mechanics. Qualifications shall be as defined by the employing ~~school district~~ LEA.
- 4.4 ~~Skilled Craftsperson~~ Craftsperson.
 - 4.4.1 Each ~~school district~~ LEA may classify an incumbent in ~~one (1)~~ 1 or more of its Maintenance Mechanic positions as a Skilled Craftsperson for purposes of this section if the incumbent:
 - 4.4.1.1 4.4.1Has received a certificate as a union journeyman or equivalent in any of the following fields: Boiler Maker, Carpenter, Electrician, HVAC Mechanic, Mill Wright, Heavy Machinery Operator, Pipe Fitter, Plumber, Roofer, or Sheet Metal Worker; or
 - 4.4.1.2 4.4.2Possesses a current state license in any of the fields listed in subsection 4.4.1.1 4.4.1; or
 - 4.4.1.3 4.4.3Is an Automobile Mechanic who possesses ~~two (2)~~ 2 or more National Institute for Automotive Service Excellence (ASE) Certifications in the Automotive, Truck or School Bus categories; or
 - 4.4.1.4 4.4.4Is a Boiler Maker who possesses either an AWS or ASME Welding Certification; or
 - 4.4.1.5 4.4.5Is a Computer Technician who possesses an A Plus Certification from CompTIA (Computing Technology Industry Association); or

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- 4.4.1.6 ~~4.4.6~~ Is an HVAC Mechanic who possesses ~~two (2)~~ 2 or more certifications from manufacturers of digital control systems in use by the ~~district~~ LEA, or possesses a certification from a manufacturer of centrifugal chillers used within the ~~district~~ LEA; or
- 4.4.1.7 ~~4.4.7~~ Possesses ~~two (2)~~ 2 or more Hazardous Material Certifications from the State of Delaware, OSHA, or the United States Environmental Protection Agency; or
- 4.4.1.8 ~~4.4.8~~ Is a Pipe Fitter who possesses an AWS or ASME Welding Certification; or
- 4.4.1.9 ~~4.4.9~~ Is a Roofer who possesses Training Certifications from ~~two (2)~~ 2 or more manufacturers of Roofing Systems in use by the ~~District~~ LEA; or
- 4.4.1.10 ~~4.4.10~~ Is a Burner Mechanic who possesses a certification from a manufacturer of oil or gas burners used within the ~~District~~ LEA.
- 4.5 Building and Grounds Supervisor: Each ~~district with ninety five (95)~~ LEA with 95 or more custodial units may employ a ~~school~~ buildings and grounds supervisor according to the salary schedule. This position is included in the total number of custodial personnel allowed.

5.0 Certificates Granted by the Department for Additional Hours of Special Training

- 5.1 The Department shall specify the special training needed in order for an individual to receive a certificate for ~~the additional pay stipends as~~ custodial positions outlined in 14 ~~Del.C. §1311(b)~~ §1311(a).
- 5.2 The following hourly requirements shall be met in order for the Department to grant the custodial certificates listed in subsections ~~5.1.1 through 5.1.3~~ 5.2.1 through 5.2.3. The certificate guarantees additional pay as specified in 14 Del.C. §1311(b), but only the local school district can change a custodian's classification for purposes of 14 Del.C. §1311(a). provides eligibility to qualify for positions identified in subsections 5.2.2 and 5.2.3.
- ~~5.1.1~~ 5.2.1 Chief Custodian Certificate (120-class hours). ~~Employees who have earned the Chief Custodian certificate shall be paid an additional pay stipend in accordance with 14 Del.C. §1311(b). Achievement of this certification requires completion of the Assistant Chief Custodian certificate and an additional 30 hours of Department-approved training. Employees hired into Chief Custodian positions who have not completed the trainings identified in subsections 5.2.1, 5.2.2 and 5.2.3 must do so within 60 days of hire, except Fire School training which should be completed on the next available training date. Employees who have earned the Chief Custodian certificate pursuant to 14 Del.C. §1311(b) are eligible to compete for chief custodial positions when they become vacant and earn pay in accordance with the pay scale identified in 14 Del.C. §1311(a).~~
- ~~5.1.2~~ 5.2.2 Firefighter and Custodian-Firefighter Assistant Chief Custodian Certificate (90-class 60-90-class hours). ~~The Assistant Chief Custodian is paid in accordance with the Custodian Firefighter as referenced in 14 Del.C. §1311(a). Achievement of this certification requires the completion of the Custodian certificate and an additional 30 hours of Department-approved training. This training includes the operation of boilers and central heating plant systems. Employees hired into Assistant Chief Custodian positions who have not completed the trainings identified in subsections 5.2.1 and 5.2.2 must do so within 60 days of hire, except Fire School training which should be completed on the next available training date. Employees who have earned the Firefighter and Custodian-Firefighter Assistant Chief Custodian certificate shall be paid an additional pay stipend in accordance with 14 Del.C. §1311(b). Employees with the Firefighter and Custodian-Firefighter certificate pursuant to 14 Del.C. §1311(b) are eligible to compete for Custodian-Firefighter positions when they become vacant and earn pay in accordance with the pay scale identified in 14 Del.C. §1311(a) eligible for training as a Chief Custodian and may apply for Assistant Chief Custodian positions as they become vacant.~~
- ~~5.1.3~~ 5.2.3 Custodian Certificate (60 on-the-job hours). Achievement of this certification requires the completion of 60 hours of on-the-job training, Fire School training, and submission of documentation of training completion to the Department. Employees hired as custodians shall complete the 0-60 training within 60 days of hire and the Fire School training on the next available training date. Custodians who have earned the Custodian Certificate shall be paid an additional

~~pay stipend in accordance with 14 Del.C. §1311(b) eligible for Assistant Chief Custodian training and may apply for Assistant Chief Custodian positions as they become available.~~

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 1009

PUBLIC NOTICE

1009 DIAA High School Interscholastic Athletics

A. TYPE OF REGULATORY ACTION REQUESTED

Repeal of Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§122(b)(15) and 303, the Delaware Interscholastic Athletic Association ("DIAA"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), proposes to repeal subsection 2.4 of 14 DE Admin. Code 1009 DIAA High School Interscholastic Athletics because it will be incorporated into a new regulation, 14 DE Admin. Code 1029 Student Athlete Eligibility: Transfers.

In accordance with 14 Del.C. §122(d), the Department is required to perform and issue a written educational impact analysis of any new proposed regulation and of any regulation that is proposed to be continued. Because this regulation is proposed to repeal a subsection only, the Department is not required to perform and issue a written educational impact analysis.

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 June 3, 2024. 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.

*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/may2024/proposed/27 DE Reg 811RFA 05-01-24.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/may2024/proposed/27 DE Reg 811 05-01-24.htm>

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(15) and 303(b)(1)d (14 **Del.C.** §§122(b)(15) & 303(b)(1)d)

PUBLIC NOTICE**Educational Impact Analysis Pursuant to 14 Del. C. §122(d)****1029 Student Athlete Eligibility: Transfers****A. TYPE OF REGULATORY ACTION REQUESTED**

Adoption of a New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 **Del.C.** §§122(b)(15) and 303(b)(1)d, the Delaware Interscholastic Athletic Association Board of Directors ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), proposes the adoption of 14 **DE Admin. Code** 1029 Student Athlete Eligibility: Transfers. The regulation sets forth the transfer requirements for students to be eligible to participate in interscholastic athletics. The Board is simultaneously proposing to repeal existing sections from 14 **DE Admin. Code** 1009 regarding transfers and incorporate the new transfer regulations here. The proposed regulations specify the content of the regulation, definitions, and purpose in Section 1.0-3.0. Section 4.0 spells out when a student may transfer without consequence as well as the consequences for transferring other times, including periods of ineligibility. Section 5.0 specifies the exceptions to the transfer rule.

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 June 3, 2024. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation will help improve student achievement as measured against state achievement standards by facilitating students' school transfers for reasons related to bullying, educational needs, family moves, court action or military reassignment.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation concerns eligibility requirements for students and is not designed to 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 new regulation will help to help ensure that all students' health and safety are adequately protected as it keeps in place protections against students transferring strictly for athletic advantage.

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation will help ensure students' legal rights are respected by simplifying the transfer process. The new regulation aims to be consistent with the philosophies and decisions of the DIAA legislative task force.

5. Will the new regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The new regulation does not change authority 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 high 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 new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation does not place unnecessary reporting or

administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Board enforces the regulations relating to interscholastic athletics in Delaware (14 Del.C. §304).

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

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

10. What is the cost to the state and to the local school boards of compliance with the new regulation? The new regulation concerns eligibility requirements for students. There is no cost to the state or local school boards for complying with the new regulation.

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

<https://regulations.delaware.gov/register/may2024/proposed/27 DE Reg 812RFA 05-01-24.pdf>

1029 Student Athlete Eligibility: Transfers

1.0 Content

In accordance with 14 Del.C. §303, this regulation sets forth the eligibility to participate in interscholastic athletics at the middle and high school levels for students who transfer schools.

2.0 Definitions

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

"Athletic advantage" means any transfer where the primary reason for the student's transfer was for any of the following reasons: to seek a superior team; to seek a team more compatible with the student's abilities; dissatisfaction with the student's position or playing time; to follow a coach to another school to which the coach has transferred; dissatisfaction with the philosophy, policies, methods, or actions of a coach or administrator pertaining to interscholastic athletics; to avoid disciplinary action imposed by another state athletic association; or to avoid disciplinary action imposed by the sending school related to or affecting interscholastic athletic participation.

"HIB transfer" Delaware school bullying prevention law, a state law that public schools are required to follow and non-public schools are encouraged to follow, harassment, intimidation and bullying (HIB) are matters that are investigated and addressed by the school. The DIAA does not hold hearings to determine whether a student was bullied or has suffered from mental health issues. A "HIB transfer" will exist when a school, after investigating a HIB complaint, determines that the proper action to remediate the complaint is an alternative placement or a school transfer.

"Participate" or "participated" means having played or joined in an interscholastic tryout, practice, scrimmage, or contest.

"Receiving school" means the school a student transfers to after leaving their previous school.

"Sending school" means the school a student transfers from to go to a different school.

"Transfer" means the student has officially withdrawn from the sending school and has officially enrolled in the receiving school in accordance with the receiving school's established registration process.

3.0 Purpose

The purpose of the transfer rule is to deter students from transferring schools for athletic advantage, to help discourage recruitment, and to reduce the opportunity for undue influence to be exerted by persons who seek to benefit from a student's athletic talent. Transfers strictly for athletic reasons undermine the stability of sports programs, elevate athletics over academics, lead to disparities in competitiveness, and erode the level playing field that the DIAA seeks to foster. This rule is designed to discourage transfers for athletic reasons, multiple transfers,

and transfers after a sports season has begun, by imposing defined periods of ineligibility for those who transfer after the 1 allowable period.

4.0 Transfer Rule

- 4.1 A student who transfers schools shall be eligible immediately upon registration at the receiving school provided the student meets all other DIAA eligibility requirements and:
- 4.1.1 Has not participated in interscholastic athletics during the previous 180 school days;
 - 4.1.2 Is released by the sending school;
 - 4.1.3 Has completed the registration process at the receiving school; and
 - 4.1.4 Is pursuing an approved course of study at the receiving school.
- 4.2 A student who has participated in interscholastic athletics at any high school level may transfer 1 time to a DIAA Member School without loss of eligibility if the following are met:
- 4.2.1 The student's transfer takes place prior to the start of the earliest allowable start date of the fall sport's season of the student's third year of eligibility at the high school level; and
 - 4.2.2 The student does not participate in a contest in the same sport for different schools during the same school year.
- 4.3 If the student transfers more than 1 time or the transfer takes place after the earliest allowable start date of the fall sport season of the student's third year of eligibility at the high school level, the student will be subject to the periods of ineligibility listed below for all sports they participated in during the previous 180 school days at any level, not just varsity. The period of ineligibility will begin on the receiving school's first day of competition, for each team's published schedule.
- 4.3.1 Students who transfer after the earliest allowable start date of the fall sport's season of the student's third year of eligibility at the high school level will be subject to a 30-day period of ineligibility or half the maximum number of regular season contests in that sport, whichever is less, for all sports they participated in during the previous 180 school days.
 - 4.3.2 Students who transfer a second or subsequent time will be subject to an additional 30-day period of ineligibility or half the maximum number of regular season contests, whichever is less, for all DIAA sanctioned sports in which the student participated during the previous 180 school days, and the loss of post-season eligibility.
 - 4.3.3 When calculating the period of ineligibility using the maximum number of contests, if there are an odd number of contests, DIAA will round down to the nearest whole number.
- 4.4 Transferring students may participate in a new sport without an ineligibility period.

5.0 Exceptions

- 5.1 Immediate eligibility, without serving the defined period of ineligibility will be granted for transfers resulting from the following:
- 5.1.1 McKinney-Vento Act (Homeless Students). The transfer is the result of the student becoming homeless as defined in the McKinney-Vento Education for Homeless Children and Youths Act, 42 U.S.C. §11434a(2).
 - 5.1.2 Transfer Due to Court Action. The transfer is caused by an order from a court of law affecting legally committed students. In the case of a transfer of guardianship or custody, the transfer shall be the result of a court order signed by a judge, commissioner, or master of a court of competent jurisdiction. A petition for the transfer of guardianship or custody, an affidavit, or a notarized statement signed by the affected parties shall not be sufficient to render the student eligible to participate in interscholastic athletics.
 - 5.1.3 Relative Caregivers School Authorization. The transfer is based upon the submission of a Caregivers School Authorization in accordance with 14 Del.C. §202(f).
 - 5.1.4 Unsafe School Choice Policy. The student attends a persistently dangerous school or is the victim of a violent felony while in or on the grounds of a school in which the student is enrolled and the

student opts to transfer to a safe school in the same school district in accordance with 14 DE Admin. Code 608 Unsafe School Choice Option Policy.

- 5.1.5 HIB Transfer.
- 5.1.6 Transfer Because Sending School Closed or Dropped Sport/Athletic Program. A sending school drops its athletic program when it discontinues all of its interscholastic athletics sports programs. For this exception to apply, adequate documentation must be submitted to the receiving school and sent to the DIAA Executive Director for approval.
- 5.1.7 Military Assignment. A student transferring in a situation where change in education and living arrangements is directly related to an order from any branch of the United States military service, including the reserve components.
- 5.1.8 Bona Fide Change of Residence. A change of residence occurs when an out-of-state student changes residence and attends high school for the first time in Delaware or a Delaware student moves and is required to transfer to a new school as verified by the receiving school. A student shall not participate in interscholastic athletics following a change in primary residence unless it is made for a bona fide purpose. A bona fide purpose means that the change in primary residence is not for athletic purposes and meets all of the following criteria:
 - 5.1.8.1 The receiving school verifies and accepts the student.
 - 5.1.8.2 The family move is a permanent change in the family's legal residence. The legal residence is that place in which the family's habitation is fixed and in which the student's custodial parent or legal guardian has the present intention to reside permanently.
 - 5.1.8.3 The original residence must be abandoned by the student's family as a residence; that is sold, rented or disposed of as a residence, and must not be used as residence by any member of the family. Maintaining dual residency for the purpose of athletic eligibility will render the student ineligible.
 - 5.1.8.4 The family move is to a new school district or school zone. A move within the current district where a student does not have to change schools will not be considered a bona fide change of residence.
 - 5.1.8.5 Proof of a bona fide residence change includes utility bills, closing documents, voter registration, or other legal documentation. A driver's license alone will not serve as proof of bona fide residence change.

6.0 Documentation Tracking of Transfers

- 6.1 In order to become eligible to participate in interscholastic athletics at the receiving school, a student's DIAA Transfer Tracking Form shall be submitted as follows:
 - 6.1.1 The student's receiving school shall initiate the process by completing and sending the DIAA Transfer Tracking Form to the student's sending school; and
 - 6.1.2 The student's sending school shall complete the DIAA Transfer Tracking Form and send the completed form to the student's receiving school and the DIAA Executive Director for review.

7.0 Transfers under the School District Enrollment Choice Program (14 Del.C. Ch. 4)

- 7.1 Pursuant to 14 Del.C. §410(a), if a student was enrolled in a traditional public, vocational, or charter school outside of the student's feeder pattern through the School District Enrollment Choice Program during the preceding school year and the student transfers to and enrolls in grades 10, 11, or 12 at a different traditional public, vocational, or charter school outside of the student's feeder pattern through the program, the student shall be ineligible to participate in interscholastic athletic contests or competitions during the student's first year of enrollment at the receiving school.
- 7.2 For the purpose of Section 7.0, a student's feeder pattern consists of the public schools in which the student would normally be enrolled based on the student's place of residence.
- 7.3 If a student is ineligible under Section 7.0, the student may submit a waiver request.
- 7.4 The waiver, if granted, would still be subject to the periods of ineligibility listed in subsection 4.3.

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)
14 DE Admin. Code 1211

PUBLIC NOTICE**Educational Impact Analysis Pursuant to 14 Del.C. §122(d)****1211 Career-Based Scholarship Program****A. TYPE OF REGULATORY ACTION REQUESTED**

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

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"), developed amendments to 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 amendments include striking the definition of Free Application for Federal Student Aid ("FAFSA") from Section 2.0, striking the requirement that applicants complete the FAFSA for the school year in which the scholarship is sought by the application deadline in subsection 4.2.2, and revising the information that DHEO will consider to determine an applicant's financial need for the scholarship's purpose in subsection 5.2. The proposed changes are a result of the U.S. Department of Education's recent transformation of the FAFSA form, which delayed the opening of the 2024-2025 application by three months and has had significant system glitches. Additionally, the federal processor has transmitted significantly fewer FAFSA results to states, including Delaware, which would delay financial aid and scholarship awarding. Therefore, the Department intends to remove the FAFSA requirement for the 2024-2025 academic year. The Department will determine whether to reinstate the requirement for the 2025-2026 academic year.

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/governance/regulations-code/post-a-comment/> by the close of business (4:30 p.m. EST) on or before June 3, 2024. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation concerns a student financial assistance for higher education program and is not designed to help improve student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation concerns a student financial assistance for higher education program and is not designed to help ensure that all students receive an equitable education.
3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation concerns a student financial assistance for higher education program and is not designed to help to ensure all students' health and safety are adequately protected.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation concerns a student financial assistance for higher education program and is not designed to help to ensure that all students' legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation concerns a student financial assistance for higher education

program and does not change authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation concerns a student financial assistance for higher education program and does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Department, through DHEO, implements the regulations promulgated and adopted relating to student financial assistance for higher education programs that are administered by DHEO.

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

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

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

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

<https://regulations.delaware.gov/register/may2024/proposed/27 DE Reg 816RFA 05-01-24.pdf>

1211 Career-Based Scholarship Program

1.0 Purpose

The purpose of this regulation is to provide the eligibility criteria, application requirements, and award process for the Career-Based Scholarship Program pursuant to 14 **Del.C.** §3416.

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 Career-Based 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.~~

"High need field" means 1 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 Career-Based 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 program of study leading to a career in a high need field.

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 Career-Based 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~~ the requirement in subsection 4.2.1.
- 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.~~ Reserved.

5.0 Awards

- 5.1 DHEO determines the amount of scholarships to be awarded annually. Contingent upon funding appropriated for the Career-Based Scholarship Program and based on the size of the applicant pool, at least 1 applicant in each high need area career field will be awarded a scholarship annually.
- 5.2 To determine an applicant's financial need for the purpose of the Career-Based Scholarship, DHEO will consider ~~the applicant's EFC; the expense of attending the applicant's college or university; university and the applicant's eligibility for Pell grants and other federal, state, 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 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 in a high need field; 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), 3402(h), and 3438 (14 Del.C. §§122(b)(8), 181(15), 183, 3402(c), 3402(h), & 3438)
14 DE Admin. Code 1216

PUBLIC NOTICE

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

1216 Educator Support Scholarship Program

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§ 122(b)(8), 181(15), 183, 3402(c), 3402(h), and 3438, the Delaware Department of Education ("Department"), through the Delaware Higher Education Office ("DHEO"), developed amendments to 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 amendments include striking the definition of Free Application for Federal Student Aid ("FAFSA") from Section 2.0, striking the requirement that applicants complete the FAFSA for the school year in which the scholarship is sought by the application deadline in subsection 4.2.2, and revising the information that DHEO will consider to determine an applicant's financial need for the scholarship's purpose in subsection 5.2. The proposed changes are a result of the U.S. Department of Education's recent transformation of the FAFSA form, which delayed the opening of the 2024-2025 application by three months and has had significant system glitches. Additionally, the federal processor has transmitted significantly fewer FAFSA results to states, including Delaware, which would delay financial aid and scholarship awarding. Therefore, the Department intends to remove the FAFSA requirement for the 2024-2025 academic year. The Department will determine whether to reinstate the requirement for the 2025-2026 academic year.

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/governance/regulations-code/post-a-comment/> by the close of business (4:30 p.m. EST) on or before June 3, 2024. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation concerns a student financial assistance for higher education program and is not designed to help improve student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation concerns a student financial assistance for higher education program and is not designed to help ensure that all students receive an equitable education.
3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation concerns a student financial assistance for higher education program and is not designed to help to ensure all students' health and safety are adequately protected.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation concerns a student financial assistance for higher education program and is not designed to help to ensure that all students' legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation concerns a student financial assistance for higher education program and does not change authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation concerns a student financial assistance for higher education program and does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Department, through DHEO, implements the regulations promulgated and adopted relating to student financial assistance for higher education programs that are administered by DHEO.

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

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

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

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

<https://regulations.delaware.gov/register/may2024/proposed/27 DE Reg 819RFA 05-01-24.pdf>

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 1 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 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.

3.1.1.1 Applicants who are enrolled in an undergraduate program of study shall be enrolled full-time. For the purpose of subsection 3.1.1.1, full-time means the minimum college credit

hours for full-time status as an undergraduate student as required by the applicant's college or university. Generally, this is a minimum of 12 credit hours per term.

3.1.1.2 Applicants who are enrolled in a graduate program of study shall be enrolled full-time or part-time.

3.1.1.2.1 For the purpose of subsection 3.1.1.2, full-time means the minimum college credit hours for full-time status as a graduate student as required by the applicant's college or university. Generally, this is a minimum of 9 credit hours.

3.1.1.2.2 For the purpose of subsection 3.1.1.2, part-time means the minimum college credit hours for part-time status as a graduate student as required by the applicant's college or university. Generally, this is less than 9 credit hours.

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~~ the requirement in subsection 4.2.1.

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.~~ Reserved.

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; university and the applicant's eligibility for Pell grants and other federal, state, 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))
14 **DE Admin. Code** 1217

PUBLIC NOTICE

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

1217 Mental Health Services Scholarship

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

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"), developed amendments to 14 **DE Admin. Code** 1217 Mental Health Services Scholarship. The Mental Health Services Scholarship is a student financial assistance for higher education program that is administered by DHEO. The proposed amendments include striking the definition of Free Application for Federal Student Aid ("FAFSA") from Section 2.0, striking the requirement that applicants complete the FAFSA for the school year in which the scholarship is sought by the application deadline in subsection 4.2.2, and revising the information that DHEO will consider to determine an applicant's financial need for the scholarship's purpose in subsection 5.2. The proposed changes are a result of the U.S. Department of Education's recent transformation of the FAFSA form, which delayed the opening of the 2024-2025 application by three months and has had significant system glitches. Additionally, the federal processor has transmitted significantly fewer FAFSA results to states, including Delaware, which would delay financial aid and scholarship awarding. Therefore, the Department intends to remove the FAFSA requirement for the 2024-2025 academic year. The Department will determine whether to reinstate the requirement for the 2025-2026 academic year.

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/governance/regulations-code/post-a-comment/> by the close of business (4:30 p.m. EST) on or before June 3, 2024. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation concerns a student financial assistance for higher education program and is

not designed to help improve student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation concerns a student financial assistance for higher education program and is not designed to help ensure that all students receive an equitable education.

3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation concerns a student financial assistance for higher education program and is not designed to help to ensure all students' health and safety are adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation concerns a student financial assistance for higher education program and is not designed to help to ensure that all students' legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation concerns a student financial assistance for higher education program and does not change authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation concerns a student financial assistance for higher education program and does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Department, through DHEO, implements the regulations promulgated and adopted relating to student financial assistance for higher education programs that are administered by DHEO.

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

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

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

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

<https://regulations.delaware.gov/register/may2024/proposed/27 DE Reg 822RFA 05-01-24.pdf>

1217 Mental Health Services Scholarship

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 1 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~~ the requirement in subsection 4.2.1.
- 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.~~ Reserved.

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; university~~ and the applicant's eligibility for Pell grants and other federal, state, 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), and 1220 (14 **Del.C.** §§1203, 1205(b), & 1220)
14 **DE Admin. Code** 1549

PUBLIC NOTICE

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

1549 Dance Teacher

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 1220, the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1549 Dance Teacher. The regulation concerns the requirements for a Dance Teacher Standard Certificate in accordance with 14 **Del.C.** §1220. The proposed amendments include revising subsection 4.1.5, which concerns the requirements for an applicant who has completed a minimum of 91 days of successful long-term substitute teaching in a Delaware public school, and striking subsections 5.3.3 and 5.4.2. The revisions to subsection 4.1.5 and striking subsections 5.3.3 and 5.4.2 were prompted by HB 315 w/ HA 2 of the 151st General Assembly, which was signed into law on August 4, 2022. In addition, the definition of "Regionally Accredited" in Section 2.0 has been revised based on changes the U.S. Department of Education made to its recognition of accrediting bodies and the term "Employing Authority" has been revised to eliminate a redundant phrase. Also, the proposed amendments include striking subsection 4.1.6, revising subsection 4.2.1, and amending the title of the certificate in subsection 4.2.2.

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/governance/regulations-code/post-a-comment/> by the close of business (4:30 p.m. EST) on or before June 3, 2024. 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 education, knowledge, and skill requirements in Section 4.0 are designed to improve the quality of the educator workforce, which will help to improve student achievement.

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

which will help to ensure students in Delaware public schools receive an equitable education.

3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation addresses a standard certificate for educators 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 a standard certificate for educators 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 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 a Dance Teacher Standard Certificate 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. Section 6.0 is consistent with the statute.

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

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

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

***Please Note:**

(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/may2024/proposed/27 DE Reg 825RFA 05-01-24.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/may2024/proposed/27 DE Reg 825 05-01-24.htm>

PROFESSIONAL STANDARDS BOARD

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

PUBLIC NOTICE

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

1558 Theatre Teacher

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 1220, the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1558 Theatre Teacher. The regulation concerns the requirements for a Theatre Teacher Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include revising subsection 4.1.4, which concerns the requirements for an applicant who has completed a minimum of 91 days of successful long-term substitute teaching in a Delaware public school, and striking subsection 5.3.2. The revisions to subsection 4.1.4 and striking subsection 5.3.2 were prompted by HB 315 w/ HA 2 of the 151st General Assembly, which was signed into law on August 4, 2022. In addition, the definition of "Regionally Accredited" in Section 2.0 has been revised based on changes the U.S. Department of Education made to its recognition of accrediting bodies and the term "Employing Authority" has been revised to eliminate a redundant phrase.

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/governance/regulations-code/post-a-comment/> by the close of business (4:30 p.m. EST) on or before June 3, 2024. 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 education, knowledge, and skill requirements in Section 4.0 are designed to improve the quality of the educator workforce, which will help to improve student achievement.

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

3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation addresses a standard certificate for educators 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 a standard certificate for educators 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 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 a Theatre Teacher Standard Certificate 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. Section 6.0 is consistent with the statute.

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

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

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

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

<https://regulations.delaware.gov/register/may2024/proposed/27 DE Reg 827RFA 05-01-24.pdf>

1558 Theatre Teacher

1.0 Content

This regulation shall apply to the issuance of a Theatre Teacher Standard Certificate, pursuant to 14 **Del.C.** §1220(a). This Standard Certificate is required for grades K to 12 in Delaware public schools.

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~~ institutional accreditation from an agency that was designated as a regional accreditor before July 1, 2020, and is currently recognized by the U.S. Secretary of Education as a reliable indicator of the institution's educational quality.

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

4.0 Prescribed Education, Knowledge, and Skill Requirements

- 4.1 For an applicant who does not hold a content area Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.1.1 and 4.1.2.
 - 4.1.1 The applicant shall have satisfied 1 of the following education requirements:
 - 4.1.1.1 Earned a bachelor’s degree from a Regionally Accredited college or university with a minimum of 30 semester hours of coursework in theater education from an educator preparation program approved or recognized by the Council for the Accreditation of Educator Preparation (CAEP) or a state where the state approval body employed the appropriate standards; or
 - 4.1.1.2 Satisfactorily completed an alternative routes for licensure or certification program to teach theater as provided in 14 **Del.C.** §§1260 – 1266; or
 - 4.1.1.3 Satisfactorily completed a Department-approved educator preparation program in theater education; or
 - 4.1.1.4 ~~If the applicant is applying for an Initial License after the applicant completed a minimum of 91 days of successful long term substitute teaching in a Delaware public school as provided in subsection 4.1.3.1 of 14 **DE Admin. Code** 1510, earned a bachelor’s degree from a Regionally Accredited college or university in any content area and also satisfactorily completed 15 college credits related to theater education of which at least 6 credits focus on pedagogy or an equivalent number of hours in professional development with 1 credit equating to 15 hours taken either as part of a degree program or in addition to a degree program from a Regionally Accredited college or university or a professional development provider approved by the Department. If the applicant has been issued an Initial License and a Theatre Teacher Emergency Certificate after the applicant has~~

PROPOSED REGULATIONS

completed a minimum of 91 days of successful long-term substitute teaching in a Delaware public school, as provided in subsection 4.1.3.1 of 14 DE Admin. Code 1510, in order to be issued the Theatre Teacher Standard Certificate, the applicant shall have satisfactorily completed 15 college credits from a Regionally Accredited college or university in generic or content-specific education courses that are applicable to the Theatre Teacher Standard Certificate of which at least 6 credits focus on pedagogy and as approved by the Department. A course is applicable to the Theatre Teacher Standard Certificate if the course is equivalent to a course that is included in the curriculum of an equivalent education degree from a program approved by the Department.

- ~~4.1.1.4.1 The applicant, in consultation with the applicant's Employing Authority, shall select the 15 credits or the equivalent number of hours in professional development subject to the Department's approval.~~
- ~~4.1.1.4.2 If the applicant does not have an Employing Authority or is applying for a Standard Certificate outside of the applicant's current spectrum of employment, the applicant shall select the 15 credits or the equivalent number of hours in professional development in consultation with the Department and subject to the Department's approval.~~
- ~~4.1.1.4.3 For the purpose of subsection 4.1.1.4, professional development means a combination of focused, in-depth learning, practice, feedback, reflection, and expert support experiences designed to change the participants' attitudes, insights, and perspectives and ultimately results in improved professional practice.~~
- ~~4.1.1.4.4 Professional development hours may be approved if the applicant shows that the activity meets all of the following criteria:

 - ~~4.1.1.4.4.1 Relevant courses from a Regionally Accredited college or university in theater education are not available to the applicant online or in the applicant's county of residence; and~~
 - ~~4.1.1.4.4.2 The activity is grounded in research and current best practices as judged by the Department's content specialist in theater education; and~~
 - ~~4.1.1.4.4.3 The activity is documented by the provider to provide knowledge and skills that are required for the theater education certification; and~~
 - ~~4.1.1.4.4.4 The activity is part of a professional development program that includes knowledge acquisition, skill mastery, descriptive feedback, and refinement of practice in the work setting.~~~~

4.1.2 The applicant shall have achieved a minimum score of 153 on the Praxis Subject Assessment – Theatre (ETS Test Code # 5641). Notwithstanding the foregoing, if the applicant did not achieve the minimum score, the applicant shall meet the requirements set forth in 14 **DE Admin. Code** 1519 Multiple Measures for Demonstrating Content Knowledge.

4.2 For an applicant who holds at least 1 content area Standard Certificate, the applicant shall have achieved the minimum score on the examination as provided in subsection 4.1.2. Notwithstanding the foregoing, if the applicant did not achieve the minimum score, the applicant shall meet the requirements set forth in 14 **DE Admin. Code** 1519 Multiple Measures for Demonstrating Content Knowledge.

5.0 Application Requirements

- 5.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with 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 Theatre Teacher Standard Certificate.

5.3 For an applicant who does not hold a content area Standard Certificate, the following documentation is required with the application for a Theatre Teacher Standard Certificate:

5.3.1 Official transcript from the applicant's Regionally Accredited college or university.

5.3.1.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or

5.3.1.2 Sealed paper transcripts may be submitted.

5.3.1.3 The Department will not accept copies of transcripts; and

~~5.3.2 Documents verifying successful completion of Department approved professional development, if applicable; and~~

~~5.3.3~~ 5.3.2 Official score on the Praxis Subject Assessment as provided in subsection 4.1.2; and

~~5.3.4~~ 5.3.3 Additional documentation as required by the Department.

5.4 For an applicant who holds at least 1 content area Standard Certificate, the following documentation is required in the application for a Theatre Teacher Standard Certificate:

5.4.1 Official score on the Praxis Subject Assessment as provided in subsection 4.2; and

5.4.2 Additional documentation as required by the Department.

5.5 For applicants who have met the requirements for licensure as an educator in Delaware and hold a Valid and Current License or Certificate as a theater education teacher from another state or jurisdiction, the following documentation is required in the application for a Theatre Teacher Standard Certificate:

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

5.5.2 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 Theatre Teacher Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a Theatre Teacher Standard Certificate but whose effectiveness is documented by the local school district or charter school.

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

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

7.0 Validity of a Standard Certificate

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

7.2 A Theatre Teacher Standard Certificate is not subject to renewal.

8.0 Disciplinary Action

8.1 An Educator's Theatre Teacher Standard Certificate may be revoked, suspended, or limited for cause as provided in 14 **DE Admin. Code** 1514 Limitation, Suspension, and Revocation of Licenses, Certificates, and Permits.

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

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

9.0 Past Certificate Recognized

The Department shall recognize a Theatre Teacher Standard Certificate issued by the Department prior to effective date of this regulation. An Educator holding such a Standard Certificate shall be considered certified to teach theater education.

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 Theatre Teacher 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)
14 **DE Admin. Code** 1560

PUBLIC NOTICE

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

1560 Visual Arts Teacher

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 1220, the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1560 Visual Arts Teacher. The regulation concerns the requirements for a Visual Arts Teacher Standard Certificate in accordance with 14 **Del.C.** §1220. The proposed amendments include revising subsection 4.1.1.5, which concerns the requirements for an applicant who has completed a minimum of 91 days of successful long-term substitute teaching in a Delaware public school, and striking subsection 5.3.3. The revisions to subsection 4.1.1.5 and striking subsection 5.3.3 were prompted by HB 315 w/ HA 2 of the 151st General Assembly, which was signed into law on August 4, 2022. In addition, the definition of "Regionally Accredited" in Section 2.0 has been revised based on changes the U.S. Department of Education made to its recognition of accrediting bodies and the term "Employing Authority" has been revised to eliminate a redundant phrase.

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/governance/regulations-code/post-a-comment/> by the close of business (4:30 p.m. EST) on or before June 3, 2024. 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 education, knowledge, and skill requirements in Section 4.0 are designed to improve the quality of the educator workforce, which will help to improve student achievement.

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

3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation addresses a standard certificate for educators 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 a standard certificate for educators 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 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 a Visual Arts Teacher Standard Certificate 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. Section 6.0 is consistent with the statute.

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

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

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

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

<https://regulations.delaware.gov/register/may2024/proposed/27 DE Reg 832RFA 05-01-24.pdf>

1560 Visual Arts Teacher**1.0 Content**

This regulation shall apply to the issuance of a Visual Arts Teacher Standard Certificate, pursuant to 14 **Del.C.** §1220(a). This Standard Certificate is required for grades K to12 in Delaware public schools.

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~~ institutional accreditation from an agency that was designated as a regional accreditor before July 1, 2020, and is currently recognized by the U.S. Secretary of Education as a reliable indicator of the institution's educational quality.

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

4.0 Prescribed Education, Knowledge, and Skill Requirements

- 4.1 For an applicant who does not hold a content area Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.1.1 and 4.1.2.
 - 4.1.1 The applicant shall have satisfied 1 of the following education requirements:
 - 4.1.1.1 Obtained and currently maintain an Art certificate from the National Board for Professional Teaching Standards; or

- 4.1.1.2 Earned a bachelor’s degree from a Regionally Accredited college or university with a minimum of 30 semester hours of coursework in art education from an educator preparation program approved or recognized by the Council for the Accreditation of Educator Preparation (CAEP) or a state where the state approval body employed the appropriate standards; or
- 4.1.1.3 Satisfactorily completed an alternative routes for licensure or certification program to teach art as provided in 14 **Del.C.** §§1260 – 1266; or
- 4.1.1.4 Satisfactorily completed a Department-approved educator preparation program in art education; or
- 4.1.1.5 ~~If the applicant is applying for an Initial License after the applicant completed a minimum of 91 days of successful long term substitute teaching in a Delaware public school as provided in subsection 4.1.3.1 of 14 **DE Admin. Code** 1510, earned a bachelor’s degree from a Regionally Accredited college or university in any content area and also satisfactorily completed 15 college credits related to art education of which at least 6 credits focus on pedagogy or an equivalent number of hours in professional development with 1 credit equating to 15 hours taken either as part of a degree program or in addition to a degree program from a Regionally Accredited college or university or a professional development provider approved by the Department. If the applicant has been issued an Initial License and a Visual Arts Teacher Emergency Certificate after the applicant has completed a minimum of 91 days of successful long-term substitute teaching in a Delaware public school, as provided in subsection 4.1.3.1 of 14 **DE Admin. Code** 1510, in order to be issued the Visual Arts Teacher Standard Certificate, the applicant shall have satisfactorily completed 15 college credits from a Regionally Accredited college or university in generic or content-specific education courses that are applicable to the Visual Arts Teacher Standard Certificate of which at least 6 credits focus on pedagogy and as approved by the Department. A course is applicable to the Visual Arts Teacher Standard Certificate if the course is equivalent to a course that is included in the curriculum of an equivalent education degree from a program approved by the Department.~~
- 4.1.1.5.1 ~~The applicant, in consultation with the applicant’s Employing Authority, shall select the 15 credits or the equivalent number of hours in professional development subject to the Department’s approval.~~
- 4.1.1.5.2 ~~If the applicant does not have an Employing Authority or is applying for a Standard Certificate outside of the applicant’s current spectrum of employment, the applicant shall select the 15 credits or the equivalent number of hours in professional development in consultation with the Department and subject to the Department’s approval.~~
- 4.1.1.5.3 ~~For the purpose of subsection 4.1.1.5, professional development means a combination of focused, in depth learning, practice, feedback, reflection, and expert support experiences designed to change the participants’ attitudes, insights, and perspectives and ultimately results in improved professional practice.~~
- 4.1.1.5.4 ~~Professional development hours may be approved if the applicant shows that the activity meets all of the following criteria:~~
 - 4.1.1.5.4.1 ~~Relevant courses from a Regionally Accredited college or university in art education are not available to the applicant online or in the applicant’s county of residence; and~~
 - 4.1.1.5.4.2 ~~The activity is grounded in research and current best practices as judged by the Department’s content specialist in art education; and~~
 - 4.1.1.5.4.3 ~~The activity is documented by the provider to provide knowledge and skills that are required for the art education certification; and~~
 - 4.1.1.5.4.4 ~~The activity is part of a professional development program that includes knowledge acquisition, skill mastery, descriptive feedback, and refinement of practice in the work setting.~~

4.1.2 The applicant shall have achieved a minimum score of 158 on the Praxis Subject Assessment – Art: Content Knowledge (ETS Test Code # 5134). Notwithstanding the foregoing, if the applicant did not achieve the minimum score, the applicant shall meet the requirements set forth in 14 **DE Admin. Code** 1519 Multiple Measures for Demonstrating Content Knowledge.

4.2 For an applicant who holds at least 1 content area Standard Certificate, the applicant shall have achieved the minimum score on the examination as provided in subsection 4.1.2. Notwithstanding the foregoing, if the applicant did not achieve the minimum score, the applicant shall meet the requirements set forth in 14 **DE Admin. Code** 1519 Multiple Measures for Demonstrating Content Knowledge.

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 Visual Arts Teacher Standard Certificate.

5.3 For an applicant who does not hold a content area Standard Certificate, the following documentation is required with the application for a Visual Arts Teacher Standard Certificate:

5.3.1 Evidence of obtaining and maintaining an Art certificate from the National Board for Professional Teaching Standards, if applicable; and

5.3.2 Official transcript from the applicant's Regionally Accredited college or university.

5.3.2.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or

5.3.2.2 Sealed paper transcripts may be submitted.

5.3.2.3 The Department will not accept copies of transcripts; and

~~5.3.3 Documents verifying successful completion of Department approved professional development, if applicable; and~~

~~5.3.4~~ 5.3.3 Official score on the Praxis Subject Assessment as provided in subsection 4.1.2; and

~~5.3.5~~ 5.3.4 Additional documentation as required by the Department.

5.4 For an applicant who holds at least 1 content area Standard Certificate, the following documentation is required in the application for a Visual Arts Teacher Standard Certificate:

5.4.1 Official score on the Praxis Subject Assessment as provided in subsection 4.2; and

5.4.2 Additional documentation as required by the Department.

5.5 For applicants who have met the requirements for licensure as an educator in Delaware and hold a Valid and Current License or Certificate as a visual arts teacher from another state or jurisdiction, the following documentation is required in the application for a Visual Arts Teacher Standard Certificate:

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

5.5.2 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 Visual Arts Teacher Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a Visual Arts Teacher Standard Certificate but whose effectiveness is documented by the local school district or charter school.

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

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

7.0 Validity of a Standard Certificate

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

8.0 Disciplinary Action

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

9.0 Past Certificate Recognized

The Department shall recognize a Visual Arts Teacher Standard Certificate issued by the Department prior to effective date of this regulation. An Educator holding such a Standard Certificate shall be considered certified to teach visual arts.

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 Visual Arts Teacher 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)
14 **DE Admin. Code** 1563

PUBLIC NOTICE**Educational Impact Analysis Pursuant to 14 Del. C. §122(d)****1563 Music Teacher****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 1220, the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1563 Music Teacher. The regulation concerns the requirements for a Music Teacher Standard Certificate in accordance with 14 **Del.C.** §1220. The proposed amendments include revising subsection 4.1.1.5, which concerns the requirements for an applicant who has completed a minimum of 91 days of successful long-term substitute teaching in a Delaware public school, and striking subsection 5.3.3. The revisions to subsection 4.1.1.5 and striking subsection 5.3.3 were prompted by HB 315 w/ HA 2 of the 151st General Assembly, which was signed into law on August 4, 2022. In addition, the definition of "Regionally Accredited" in Section 2.0 has been revised based on changes the U.S. Department of Education made to its recognition of accrediting bodies and the term "Employing Authority" has been revised to eliminate a redundant phrase.

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/governance/regulations-code/post-a-comment/> by the close of business (4:30 p.m. EST) on or before June 3, 2024. 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 education, knowledge, and skill requirements in Section 4.0 are designed to improve the quality of the educator workforce, which will help to improve student achievement.

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

3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation addresses a standard certificate for educators 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 a standard certificate for educators 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 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 a Music Teacher Standard Certificate 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. Section 6.0 is consistent with the statute.

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

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

less burdensome method for addressing the purpose of this amended regulation.

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

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

<https://regulations.delaware.gov/register/may2024/proposed/27 DE Reg 837RFA 05-01-24.pdf>

1563 Music Teacher

1.0 Content

This regulation shall apply to the issuance of a Music Teacher Standard Certificate, pursuant to 14 **Del.C.** §1220(a). This Standard Certificate is required for grades K to 12 in Delaware public schools.

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 institutional accreditation from an agency that was designated as a regional accreditor before July 1, 2020, and is currently recognized by the U.S. Secretary of Education as a reliable indicator of the institution's educational quality.~~

"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 Music Teacher Standard Certificate to an applicant who:

PROPOSED REGULATIONS

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

4.0 Prescribed Education, Knowledge, and Skill Requirements

- 4.1 For an applicant who does not hold a content area Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.1.1 and 4.1.2.
 - 4.1.1 The applicant shall have satisfied 1 of the following education requirements:
 - 4.1.1.1 Obtained and currently maintain a Music certificate from the National Board for Professional Teaching Standards; or
 - 4.1.1.2 Earned a bachelor's degree from a Regionally Accredited college or university with a minimum of 30 semester hours of coursework in music from an educator preparation program approved or recognized by the Council for the Accreditation of Educator Preparation (CAEP) or a state where the state approval body employed the appropriate standards; or
 - 4.1.1.3 Satisfactorily completed an alternative routes for licensure or certification program to teach music as provided in 14 **Del.C.** §§1260 - 1266; or
 - 4.1.1.4 Satisfactorily completed a Department-approved educator preparation program in music education; or
 - 4.1.1.5 ~~If the applicant is applying for an Initial License after the applicant completed a minimum of 91 days of successful long-term substitute teaching in a Delaware public school as provided in subsection 4.1.3.1 of 14 **DE Admin. Code** 1510, earned a bachelor's degree from a Regionally Accredited college or university in any content area and also satisfactorily completed 15 college credits related to music education of which at least 6 credits focus on pedagogy or an equivalent number of hours in professional development with 1 credit equating to 15 hours taken either as part of a degree program or in addition to a degree program from a Regionally Accredited college or university or a professional development provider approved by the Department. If the applicant has been issued an Initial License and a Music Teacher Emergency Certificate after the applicant has completed a minimum of 91 days of successful long-term substitute teaching in a Delaware public school, as provided in subsection 4.1.3.1 of 14 **DE Admin. Code** 1510, in order to be issued the Music Teacher Standard Certificate, the applicant shall have satisfactorily completed 15 college credits from a Regionally Accredited college or university in generic or content-specific education courses that are applicable to the Music Teacher Standard Certificate of which at least 6 credits focus on pedagogy and as approved by the Department. A course is applicable to the Music Teacher Standard Certificate if the course is equivalent to a course that is included in the curriculum of an equivalent education degree from a program approved by the Department.~~
 - 4.1.1.5.1 ~~The applicant, in consultation with the applicant's Employing Authority, shall select the 15 credits or the equivalent number of hours in professional development subject to the Department's approval.~~
 - 4.1.1.5.2 ~~If the applicant does not have an Employing Authority or is applying for a Standard Certificate outside of the applicant's current spectrum of employment, the applicant shall select the 15 credits or the equivalent number of hours in professional~~

- ~~development in consultation with the Department and subject to the Department's approval.~~
- 4.1.1.5.3 ~~For the purpose of subsection 4.1.1.5, professional development means a combination of focused, in-depth learning, practice, feedback, reflection, and expert support experiences designed to change the participants' attitudes, insights, and perspectives and ultimately results in improved professional practice.~~
- 4.1.1.5.4 ~~Professional development hours may be approved if the applicant shows that the activity meets all of the following criteria:~~
- 4.1.1.5.4.1 ~~Relevant courses from a Regionally Accredited college or university in music education are not available to the applicant online or in the applicant's county of residence; and~~
- 4.1.1.5.4.2 ~~The activity is grounded in research and current best practices as judged by the Department's content specialist in music education; and~~
- 4.1.1.5.4.3 ~~The activity is documented by the provider to provide knowledge and skills that are required for the music education certification; and~~
- 4.1.1.5.4.4 ~~The activity is part of a professional development program that includes knowledge acquisition, skill mastery, descriptive feedback, and refinement of practice in the work setting.~~
- 4.1.2 The applicant shall have achieved a minimum score of 155 on the Praxis Subject Assessment - Music: Content Knowledge (ETS Test Code # 5113). Notwithstanding the foregoing, if the applicant did not achieve the minimum score, the applicant shall meet the requirements set forth in 14 **DE Admin. Code** 1519 Multiple Measures for Demonstrating Content Knowledge.
- 4.2 For an applicant who holds at least 1 content area Standard Certificate, the applicant shall have achieved the minimum score on the examination as provided in subsection 4.1.2. Notwithstanding the foregoing, if the applicant did not achieve the minimum score, the applicant shall meet the requirements set forth in 14 **DE Admin. Code** 1519 Multiple Measures for Demonstrating Content Knowledge.

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 Music Teacher Standard Certificate.
- 5.3 For an applicant who does not hold a content area Standard Certificate, the following documentation is required with the application for a Music Teacher Standard Certificate:
- 5.3.1 Evidence of obtaining and currently maintaining a Music certificate from the National Board for Professional Teaching Standards, if applicable; and
- 5.3.2 Official transcript from the applicant's Regionally Accredited college or university.
- 5.3.2.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
- 5.3.2.2 Sealed paper transcripts may be submitted.
- 5.3.2.3 The Department will not accept copies of transcripts; and
- 5.3.3 ~~Documents verifying successful completion of Department approved professional development, if applicable; and~~
- 5.3.4 5.3.3 Official score on the Praxis Subject Assessment as provided in subsection 4.1.2; and
- ~~5.3.5~~ 5.3.4 Additional documentation as required by the Department.

5.4 For an applicant who holds at least 1 content area Standard Certificate, the following documentation is required in the application for a Music Teacher Standard Certificate:

5.4.1 Official score on the Praxis Subject Assessment as provided in subsection 4.2; and

5.4.2 Additional documentation as required by the Department.

5.5 For applicants who have met the requirements for licensure as an educator in Delaware and hold a Valid and Current License or Certificate as a music teacher from another state or jurisdiction, the following documentation is required in the application for a Music Teacher Standard Certificate:

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

5.5.2 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 Music Teacher Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a Music Teacher Standard Certificate but whose effectiveness is documented by the local school district or charter school.

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

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

7.0 Validity of a Standard Certificate

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

7.2 A Music Teacher Standard Certificate is not subject to renewal.

8.0 Disciplinary Action

8.1 An Educator's Music Teacher Standard Certificate may be revoked, suspended, or limited for cause as provided in 14 **DE Admin. Code** 1514 Limitation, Suspension, and Revocation of Licenses, Certificates, and Permits.

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

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

9.0 Past Certificate Recognized

The Department shall recognize a Music Teacher Standard Certificate issued by the Department prior to effective date of this regulation. An Educator holding such a Standard Certificate shall be considered certified to teach music.

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 Music Teacher Standard Certificate shall provide a notarized copy of evidence of the name change such as a marriage license or court action.

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

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 15000, 18000

PUBLIC NOTICE**Continuous Eligibility and Removal of Premiums for CHIP**

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 Division of Social Services Manual (DSSM) 15300.4, 18300, 18600, 18700, 18800.1, 18800.2, and Title XXI CHIP State Plan Sections 1, 4, 8 and 9, specifically, to provide 12 months of continuous eligibility for children under age 19 in CHIP (with limited exceptions) and to remove the premium requirement for the CHIP program.

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 May 31, 2024. Please identify in the subject line: Continuous Eligibility and Removal of Premiums for CHIP

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 XXI CHIP State Plan and Division of Social Services Manual (DSSM) regarding Continuous Eligibility and Removal of Premiums for CHIP.

Statutory Authority

- The Consolidated Appropriations Act of 2023 (CAA)
- 42 CFR 457.342

Background

Prior to the CAA 2023, states had the option to provide continuous eligibility (CE) for children in Medicaid and/or CHIP. Under section 5112 of the Consolidated Appropriations Act of 2023 (CAA), all states are required to provide 12 months of continuous coverage for children under 19 in Medicaid and Children's Health Insurance Program (CHIP) with limited exceptions. The provisions are effective January 1, 2024.

The 12-month CE period for begins on the effective date of the child's last eligibility determination at application or renewal.

Sections 1902(e)(12) and 2107(e)(1)(K) of the Social Security Act (the Act), as modified by Section 5112 of the Consolidated Appropriations Act, 2023 (CAA, 2023), provide for limited exceptions to the requirement that all states provide 12 months of continuous eligibility for children regardless of any changes in circumstances that otherwise would result in loss of coverage.

On October 27, 2023, CMS issued guidance that the existing regulatory option at 42 CFR § 457.342(b) for states operating a separate CHIP to consider non-payment of premiums as an exception to CE would end on December 31, 2023, and states are no longer permitted to terminate the Medicaid or CHIP eligibility of a child under age 19 during a CE period for non-payment of premiums. As such, DMMA is proposing to remove the premium requirement for the CHIP program.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to provide 12 months of continuous eligibility for children under age 19 in CHIP (with limited exceptions) and to remove the premium requirement for the CHIP program.

Summary of Proposed Changes

Effective January 1, 2024, the DHSS/DMMA proposes to amend the Division of Social Services Manual (DSSM) and Title XXI CHIP State Plan regarding continuous eligibility for children enrolled in CHIP, specifically, to provide 12 months of continuous eligibility for children enrolled in CHIP and remove the premium requirement.

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 May 31, 2024.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact

	Federal Fiscal Year 2024	Federal Fiscal Year 2025
General (State) funds	\$1,783,562.45	\$2,850,476.78
Federal funds	\$4,541,127.09	\$7,434,226.06

***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/may2024/proposed/27 DE Reg 843RFA 05-01-24.pdf](https://regulations.delaware.gov/register/may2024/proposed/27%20DE%20Reg%20843RFA%2005-01-24.pdf)

15000 Family and Community Medicaid Eligibility Groups

15300.4 **Mandatory Continuation of Eligibility Coverage for Children Receiving Inpatient Services**

A child receiving inpatient services in a hospital or long-term care facility at the end of the month in which the

child turns age 19 remains eligible until the end of the inpatient stay. The child must continue to meet the general and financial eligibility requirements described in Section 15300.1 and Section 15300.3.

18000 Delaware Healthy Children Program

18300 Technical Eligibility

Age: The child must be under age 19.

Uninsured: The child must be uninsured. Children cannot be found eligible for DHCP if they:

- are eligible for Medicaid;
- are eligible for Medicare;
- ~~have insurance coverage, in the month of application, that meets the definition of comprehensive health insurance;~~
- ~~have Military Health Insurance for Active Duty, Retired Military, and their dependents; or~~
- ~~have the following types of insurance coverage at the initial determination of eligibility or at the annual redetermination of eligibility.~~
 - Insurance coverage that meets the requirements of comprehensive health insurance, or
 - Military Health Insurance for Active Duty, Retired Military, and their dependents.
- are eligible for or ~~who~~ have access to coverage under a state health benefits plan ~~on the basis of a family member's employment with a public agency in the state.~~

A child who has a family member who works for a public agency within Delaware and is eligible to participate in the State health benefits plan with an employer premium subsidy is not eligible for DHCP. Family member is defined as the parent of the child or the individual who has legal custody of the child. The State health benefits plan is the plan that is offered or organized by the State of Delaware on behalf of State employees or other public agency employees within the state. The State health benefits plan does not include separately run county plans, city plans, or other municipal plans.

Residents of Institutions: A child who is a patient in an institution for mental disease (IMD) or who is an inmate of a public institution is not eligible. Exception: If a child enrolled in DHCP subsequently requires inpatient services in an IMD, the receipt of inpatient services will not make the child ineligible during a period of continuous eligibility.

18600 Managed Care Enrollment Requirements

Children who are found eligible must enroll with a managed care organization ~~and pay a monthly premium to receive coverage of medical services.~~ The Health Benefits Manager (enrollment broker) will be responsible for the enrollment process ~~including premium payment requirements.~~

18700 Premium Requirements

~~Statutory Authority~~
~~42 C.F.R. 435.926~~

~~Families with eligible children are required to pay a premium in order to receive coverage. The premium is per family per month regardless of the number of eligible children in the family. The monthly premium will vary according to age, household size and family income as follows:~~

Age	Percent Federal Poverty Level based on Household size	Monthly Premium
1 through 5	143% through 159% FPL	\$10.00
6 through 18	134% through 159% FPL	\$10.00
1 through 18	160% through 176% FPL	\$15.00
1 through 18	177% through 212% FPL	\$25.00

~~Payments that are less than one (1) month's premium will not be accepted.~~

~~Coverage begins the first of the month following payment of the initial premium. Payments for the initial premium will be accepted through a monthly cut off date known as the authorization date. The authorization date is set by the automated eligibility system. If payment of the initial premium is received by the authorization date, coverage under DHCP will be effective the following month. Premium payments for ongoing coverage will be accepted through the last day of the month.~~

~~Families will be able to pay in advance and purchase up to one year's coverage. The following incentive is offered for advance payments:~~

~~Pay three (3) months — get one (1) premium free month~~

~~Pay six (6) months — get two (2) premium free months~~

~~Pay nine (9) months — get three (3) premium free months.~~

~~The advance premium payments for coverage may extend beyond the scheduled eligibility renewal. If the child is determined to be ineligible, the advance premium payments will be refunded to the family.~~

~~Coverage will be cancelled when the family is in arrears for two premium payments. The coverage will end the last day of the month when the second payment is due. If one premium payment is received by the last day of the cancellation month, coverage will be reinstated.~~

~~Families who lose coverage for nonpayment of premiums will have received two unpaid months of coverage. Families who are cancelled for nonpayment of premiums may reenroll at any time without penalty. Reenrollment will begin with the first month for which the premium paid.~~

~~Good cause for nonpayment of premiums will be determined on a case-by-case basis.~~

Postpartum 12 Month Continuous Eligibility Exception

~~Coverage for any child that is pregnant, or within the 12-month postpartum period, may not be terminated for nonpayment.~~

~~See 18700 Premium Requirements — History~~

~~Effective January 1, 2024, premiums are no longer required.~~

18800.1 Continuous Eligibility for Target Low-Income Children

~~Continuous eligibility means continued eligibility under DHCP during the 12-month period of time between the first month of eligibility and the next scheduled renewal.~~

~~The initial month of the continuous period of eligibility is the first month of eligibility. A new period of continuous eligibility will be established beginning with the month following the last month of the previous period of continuous eligibility, when a scheduled renewal is completed and the child is determined to be eligible. A new 12-month period of continuous eligibility will also begin after any break in DHCP eligibility.~~

~~There is no interruption of the continuous eligibility period because of an increase in household income. This includes an increase in income because of a change in family size. If there is a decrease in household income or an increase in family size, eligibility will be redetermined. A decrease in income could result in the family becoming eligible for Medicaid or the child remaining eligible for DHCP with a lower premium. If the decrease in income results in a lower premium for the family, the child will receive a new 12-month period of continuous eligibility.~~

~~A child who is determined eligible for DHCP remains eligible for a 12-month period of continuous eligibility. A child's eligibility may not be terminated during a continuous eligibility period, regardless of any changes in circumstances, unless:~~

- ~~• The child turns 19 years old;~~
- ~~• The child or child's representative requests a voluntary termination of eligibility;~~
- ~~• The child ceases to be a resident of the State;~~
- ~~• The agency determines that eligibility was erroneously granted at the most recent determination, redetermination or renewal of eligibility because of agency error or fraud, abuse, or perjury attributed to the child or the child's representative;~~
- ~~• The child dies;~~
- ~~• The child becomes eligible for Medicaid; or~~

~~There is a failure to pay required premiums or enrollment fees on behalf of a child, as provided for in the DHCP State Plan.~~

Continuous eligibility for targeted low-income children provides coverage to children in DHCP for a full 12-month period regardless of changes in circumstance, with certain exceptions. Continuous eligibility is based on the effective date of the child's last eligibility determination at application or renewal.

The continuous eligibility period begins:

- For applicants on the date of the individual's eligibility.
- Following an annual renewal, on the effective date of the individual's renewal, which begins a new eligibility period.

A child's eligibility may not be terminated during a period of continuous eligibility for changes in circumstance, unless one of the following allowable exceptions applies. These exceptions have been revised effective January 1, 2024.

- (1) The child attains age 19, unless the child is in a 12-month postpartum period;
- (2) The child or child's representative requests a voluntary termination of eligibility;
- (3) The child ceases to be a resident of the State;
- (4) The agency determines that eligibility was erroneously granted at the most recent determination, or renewal of eligibility because of agency error or fraud, abuse, or perjury attributed to the child or the child's representative;
- (5) The child dies; or
- (6) The child becomes eligible for Medicaid.

Children who have been determined eligible based on self-attested information are entitled to the 12-month continuous eligibility period. Coverage may not be terminated for such children during a continuously eligible period if, in conducting post-enrollment verification, the state obtains information that indicates that the child does not meet all the eligibility requirements unless the information indicates that one of the limited exceptions to continuous eligibility above applies.

If the self-attested information indicates that the child is eligible, the state is not considered to have made an erroneous determination, even if there is an inconsistency between the attested information and information subsequently obtained from family or electronic data sources after enrollment. The receipt of information is considered a change in circumstance. See Section 14800 Verifications of Factors of Eligibility.

Children whose citizenship or satisfactory immigration status is not verified have not been determined eligible. Continuous Eligibility does not apply to children who are receiving benefits under a reasonable opportunity to provide (ROP) period if the child's status cannot be verified. See Section 14390.1 Reasonable Opportunity to Provide Documentation of Citizenship and Identity or Alien Status.

18800.2 12-month Postpartum Continuous Eligibility

~~Continuous eligibility is provided to targeted low-income children who, while pregnant, were eligible and received services under DHCP throughout the duration of the pregnancy (including any period of retroactive eligibility) and the 12-month postpartum period. Coverage begins on the day the pregnancy ends and continues through the last day of the month in which the 12-months ends.~~

~~For individuals first enrolled at the end of their pregnancy, the regularly scheduled renewal date may coincide with the end of the extended 12-month postpartum period. For most, however, the 12-month postpartum period will end after their regularly scheduled renewal date. Therefore, the renewal must be conducted at the end of the individual's extended 12-month postpartum period and not at the regularly scheduled renewal date.~~

~~A child may not be terminated during a period of 12-month postpartum continuous eligibility, regardless of change in circumstances, unless:~~

- ~~• The child or child's representative requests a voluntary termination of eligibility;~~
- ~~• The child ceases to be a resident of the State;~~
- ~~• The agency determines that eligibility was erroneously granted at the most recent determination, redetermination or renewal of eligibility because of agency error or fraud, abuse, or perjury attributed to the child or the child's representative; or~~
- ~~• The child dies.~~

PROPOSED REGULATIONS

~~Unlike continuous eligibility for children, 12-month postpartum continuous eligibility may not be terminated due to:~~

- ~~• Non-payment of premiums,~~
- ~~• A child turning 19 years old, or~~
- ~~• A child becoming eligible for Medicaid.~~

~~The 12-month postpartum period is a mandatory extension of coverage for DCHP members who were determined eligible in the month the pregnancy ends or in a month prior to the month the pregnancy ends (while still pregnant). A targeted low-income child cannot apply and be found eligible for the postpartum period alone.~~

~~The 12-month postpartum period begins on the date a pregnancy ends, extends 12 months, and ends on the last day of the month in which the 12-month period ends.~~

~~Once it has been determined that a DHCP member is eligible for the 12-month postpartum continuous eligibility, they will transfer to the Pregnant Woman Medicaid group and remain continuously eligible throughout the 12-month postpartum period, regardless of changes in income.~~

***Please Note: Due to formatting of certain amendments to the regulation, they are not being published here. Copies of the documents are available at:**

[https://regulations.delaware.gov/register/may2024/proposed/Amended CHIP CS27 Continuous Eligibility.pdf](https://regulations.delaware.gov/register/may2024/proposed/Amended%20CHIP%20CS27%20Continuous%20Eligibility.pdf)

[https://regulations.delaware.gov/register/may2024/proposed/Amended CHIP State Plan Premium Pages.pdf](https://regulations.delaware.gov/register/may2024/proposed/Amended%20CHIP%20State%20Plan%20Premium%20Pages.pdf)

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 1700

PUBLIC NOTICE

Medicaid Workers with Disabilities (MWD) Premiums

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 Division of Social Services Manual (DSSM) 17800, 17908, 17911, 17912, 17913, Title XIX Medicaid State Plan Attachment 2.6-A pages n-o and Attachment 2.6-A Supplement 8A page 1 regarding Medicaid Workers with Disabilities Premiums, specifically, to remove the requirement of premiums for participation in the MWD Program.

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 May 31, 2024. Please identify in the subject line: Medicaid Workers with Disabilities Premiums

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan and Division of

Social Services Manual (DSSM) regarding Medicaid Workers with Disabilities Premiums.

Statutory Authority

- 42 CFR 435.926 (d)
- The Consolidated Appropriations Act (CAA) 2023

Background

The Consolidated Appropriations Act (CAA) of 2023 requires states to provide 12-months continuous eligibility to children under the age of 19 in Medicaid and Childrens Healthy Insurance Program (CHIP). This requirement is regardless of the Medicaid program the child is enrolled in. Medicaid for Workers with Disabilities (MWD) may include eligible individuals within the ages 16-65. Under Delaware's current MWD program, individuals are required to pay a monthly premium, depending on their income.

Sections 1902(e)(12) and 2107(e)(1)(K) of the Social Security Act (the Act), as modified by Section 5112 of the Consolidated Appropriations Act, 2023 (CAA, 2023), provide for limited exceptions to the requirement that all states provide 12 months of continuous eligibility for children regardless of any changes in circumstances that otherwise would result in loss of coverage.

On October 27, 2023, CMS issued guidance explaining that states will no longer be permitted to terminate the Medicaid or CHIP eligibility of a child under age 19 during a CE period for non-payment of premiums.

Summary of Proposal*Purpose*

The purpose of this proposed regulation is to remove the requirement of premiums for participation in the MWD Program, and to provide clarity to other sections of the MWD regulations.

Summary of Proposed Changes

Effective July 1, 2024, the DHSS/DMMA proposes to amend the Division of Social Services Manual (DSSM) and Title XIX Medicaid State Plan to remove the requirement of premiums for participation in the MWD Program, and to provide clarity to other sections of the MWD regulations.

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 May 31, 2024.

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>

PROPOSED REGULATIONS

Fiscal Impact

	Federal Fiscal Year 2024	Federal Fiscal Year 2025
General (State) funds	\$237	\$952
Federal funds	\$353	\$1411

***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/may2024/proposed/27 DE Reg 848RFA 05-01-24.pdf](https://regulations.delaware.gov/register/may2024/proposed/27%20DE%20Reg%20848RFA%2005-01-24.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/may2024/proposed/27 DE Reg 848 05-01-24.htm](https://regulations.delaware.gov/register/may2024/proposed/27%20DE%20Reg%20848%2005-01-24.htm)

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Third Party Liability

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 Attachment 4.11-A - Attachment 7.7.C Supplement to Attachment 4.22, specifically, to comply with the Consolidated Appropriations Act of 2022 and Senate Bill 220 of the 152nd Delaware General Assembly.

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 May 31, 2024. Please identify in the subject line: Third Party Liability

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 Third Party Liability.

Statutory Authority

- Section 1902(a)(25)(A) of the Social Security Act
- Consolidated Appropriations Act of 2022 (CAA 2022)

Background

Medicaid is generally the "payer of last resort," meaning that Medicaid only pays claims for covered items and services if there are no other liable third-party payers for the same items and services. When Medicaid beneficiaries have one or more additional sources of coverage for health care services, third-party liability (TPL) rules govern the legal obligation of such third parties. Section 1902(a)(25)(A) of the Social Security Act defines third-party payers as health insurers, managed care organizations, and group health plans, among others.

The federal Consolidated Appropriations Act of 2022 (CAA 2022), enacted March 15, 2022, increased state flexibility with respect to TPL. Section 202 of the CAA, 2022 amended section 1902(a)(25)(I) of the Act to require a state plan for medical assistance to provide assurances satisfactory to the Secretary that the state has state laws in place that bar responsible third-party payers (other than Medicare plans) from refusing payment for an item or service solely on the basis that such item or service did not receive prior authorization under the third-party payer's rules. Specifically, if the responsible third party requires prior authorization for an item or service furnished to a Medicaid-eligible individual, the responsible third party must accept the authorization provided by the state that the item or service is covered under the state plan (or waiver of such plan) for such individual, as if such authorization was made by the third party for such item or service. Authorization by the state means that the item or service an individual received (and for which third-party reimbursement is being sought) is a covered service or item under the Medicaid state plan (or waiver of such plan) for that individual.

On March 28, 2024, Senate Bill 220 of the 152nd General Assembly, An Act to Amend Title 18 Relating to Health Insurance for Children And Persons On Medicaid received enough votes to pass the both the Senate and House, moving the bill forward for Governor's signature. This bill updates the provisions of Title 18, § 4003 to make them consistent with federal law contained in the Consolidated Appropriations Act of 2022.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to comply with current law revise the Medicaid State Plan to align with the CAA, 2022 requirements and SB 220.

Summary of Proposed Changes

Effective April 1, 2024, the DHSS/DMMA proposes to amend Title XIX Medicaid State Plan regarding Third Party Liability, specifically, to comply with CAA, 2022 and SB 220.

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 May 31, 2024.

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

This change will result in a cost avoidance therefore there is no fiscal impact.

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

<https://regulations.delaware.gov/register/may2024/proposed/27 DE Reg 850RFA 05-01-24.pdf>

PROPOSED REGULATIONS

Supplement to Attachment 4.2.2

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE/TERRITORY: **DELAWARE**

1902(A)(25)(I)	The State has in effect laws that require third parties to comply with the provisions, including those which require third parties to provide the State with coverage, eligibility and claims data, of 1902(A)(25)(I) of the Social Security Act.
	<u>The Medicaid agency ensures that laws are in effect that bar liable third-party payers from refusing payment for an item or service solely on the basis that such item or service did not receive prior authorization under the third-party payer's rules. These laws comply with the provisions of section 202 of the Consolidated Appropriations Act, 2022.</u>

TN No. SPA # ~~08-002~~ 24-0010Approval Date ~~September 24, 2008~~

Supersedes

TN No. # ~~N/A~~ 08-002Effective Date ~~July 1, 2008~~ April 1, 2024

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)
16 **DE Admin. Code** 11000

PUBLIC NOTICE

Paying for Absent Days and Holidays in Child Care

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 amend paying for absent days and holidays in child care.

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 May 31, 2024. Please identify in the subject line: Paying for Absent Days and Holidays in Child Care

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) to amend paying for absent days and holidays in child care.

Statutory Authority

45 CFR 98.45(1)(2)(iii)

Background

DSSM 11006.4.1 Paying for Absent Days and Holidays explains provider payments for absent days and holidays during authorized child care.

The policy is being revised to increase the number of absents for which providers can be reimbursed from 5 to 10 days.

Summary of Proposal*Purpose*

The purpose of this proposed regulation is to amend paying for absent days and holidays in child care.

Summary of Proposed Changes

Effective for services provided on and after July 11, 2024, Delaware Health and Social Services (DHSS) /Division of Social Services (DSS) proposes to amend the Division of Social Services Manual (DSSM) to amend paying for absent days and holidays in child care.

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 May 31, 2024.

Fiscal Impact

	Federal Fiscal Year 2024	Federal Fiscal Year 2025
General (State) funds	\$2,100,000	\$2,100,000
Federal funds	\$900,000	\$900,000

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

[https://regulations.delaware.gov/register/may2024/proposed/27 DE Reg 852RFA 05-01-24.pdf](https://regulations.delaware.gov/register/may2024/proposed/27%20DE%20Reg%20852RFA%2005-01-24.pdf)

11000 Child Care Subsidy Program**11006.4.1 Paying for Absent Days and Holidays in Child Care**

45 CFR 98.45(1)(2)(iii)

This policy explains provider payments for absent days and holidays during authorized child care.

- ~~The number of paid absent days per month for a child is the same as the number of days authorized for care in one week, up to a maximum of five days per month. DSS will pay for a maximum of 10 absent days per month for an authorized child.~~
- DSS will pay for absent days for an authorized child after the family's copayment has been paid and there is a remaining balance due to the provider.
- DSS will pay for ~~up to five~~ a maximum of 10 absent days per month for an authorized child who does not have an assigned copayment.
- DSS may pay for more than ~~five~~ 10 absent days per month for a child who is authorized for Special Needs Child Care and is absent due to the eligible child's or the eligible parent's or caretaker's verified disability or serious health condition.

5. DSS will pay for the ~~six~~ **6** major holidays per year that the provider has chosen. The authorized child must be attending the provider's site prior to the date of the holiday for the provider to receive payment for the holiday.

45 CFR 98.45 (l)(2)(iii)

See 11006.4.1 Paying for Absent Days and Holidays in Child Care - History

DIVISION OF SOCIAL SERVICES

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

16 **DE Admin. Code** 11000

PUBLIC NOTICE

Determining Child Care Copayments

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 amend determining child care copayments.

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 May 31, 2024. Please identify in the subject line: Determining Child Care Copayments

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) to amend determining child care copayments.

Statutory Authority

45 CFR 98

Background

DSSM 11004.7 Determining Child Care Copayments explains how childcare copayments are determined for families who receive Purchase of Care. The policy is being amended in response to federal changes to the child care subsidy program which requires copayments to be capped at 7% of a family's gross income. The policy is also being amended to expand the list of criteria which can be used to waive copays. Through this amendment, families who fall at or below 150% of the FPL will have their copays waived.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to amend determining child care copayments.

Summary of Proposed Changes

Effective for services provided on and after July 11, 2024, Delaware Health and Social Services (DHSS) /Division of Social Services (DSS) proposes to amend the Division of Social Services Manual (DSSM) to amend determining child care copayments.

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 May 31, 2024.

Fiscal Impact

	Federal Fiscal Year 2024	Federal Fiscal Year 2025
General (State) funds	\$4,130,000	\$4,130,000
Federal funds	\$1,770,000	\$1,770,000

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

[https://regulations.delaware.gov/register/may2024/proposed/27 DE Reg 854RFA 05-01-24.pdf](https://regulations.delaware.gov/register/may2024/proposed/27%20DE%20Reg%20854RFA%2005-01-24.pdf)

11000 Child Care Subsidy Program

11004.7 Determining Child Care Copayments

45 CFR 98.45 (k)

DSS determines and assigns copayments for families who receive the Purchase of Care (POC) child care subsidy.

1. DSS determines copayments for the POC program according to:
 - A. The family's household size;
 - B. The family's gross monthly income;
 - C. The family's shelter and utility expense deductions; and
 - D. A percentage of the family's gross monthly income compared to the Federal Poverty Level (FPL) guidelines as listed in the current POC sliding fee scale that DSS publishes in the annual October Cost of Living Adjustments Administrative Notice.
2. DSS will waive the copayment if one of the following conditions applies to a family:
 - A. The family has net income below 40% of the FPL and is determined to have an excessive financial burden in accordance with DSSM 11004.7.1.
 - B. The family has gross income at or below ~~70%~~ 150% of the FPL.
 - C. The family is active with and referred by the Delaware Division of Family Services (DFS), including foster care families.
 - D. The family is participating in Delaware's Temporary Assistance for Needy Families (TANF) program.
 - E. The child receives TANF and is being cared for by a caretaker who is not the child's natural or adoptive parent.
 - F. The parent is age 18 or younger and is attending high school or a high school equivalent.
3. DSS may assign a copayment to a case with a caretaker if the eligible child receives income and does not meet one of the waiver conditions listed in section (2) of this policy.
4. DSS will calculate the family's assigned copayment as a monthly amount.
 - A. The monthly calculated copayment amount must not exceed 7% of the family's gross income.
 - A- B. The copayment will not increase beyond the initial copayment amount during the eligibility period if the family reports an increase in income.

B- C. The copayment will decrease during the eligibility period if the family reports a decrease in income.

Note: If a family's copayment decreased during the eligibility period, and then the family reports an increase in income during the same eligibility period, the copayment may increase up to the initial copayment amount assigned at application or redetermination.

DEPARTMENT OF INSURANCE
OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and 3915 (18 Del.C. §§311 & 3915)

PUBLIC NOTICE

611 Automobile Insurance Premium Refunds

A. Type of Regulatory Action Required

Re-proposal of a new Regulation 611.

B. Synopsis of Subject Matter of the Regulation

In the January 1, 2024 edition of the *Register of Regulations*, at 27 **DE Reg.** 488 (01/01/2024), the Commissioner of the Delaware Department of Insurance (Commissioner) published a proposal to adopt new Regulation 611 to require insurers to refund any unearned automobile insurance premium on a cancelled policy within 30 days of the date when the refund becomes due.

The Department received comments from three commenters, which are on file with the Department. Multiple comments, which have been accepted by the Department, propose substantive changes that require the proposed regulation be republished for further public comment.

C. Summary of the Comments Received

The Department received timely comments from the American Property Casualty Insurance Association, National Association of Mutual Insurance Companies, and State Farm Mutual Automobile Insurance Company (collectively referred to as "the commenters"). All commenters recommended that the language in the regulation be updated to clearly reflect the type of policies to which the regulation applies and requested that the implementation date of the regulation be extended.

The Department declines to amend the proposed language, citing the applicability of 18 **Del.C.** § 3915 to all automobile policies. Further, the Department agrees to extend the implementation date to 90 days following the date of publication of the notice of adoption in the *Register of Regulations* to allow additional time for insurers to revise their internal processes to ensure compliance with the regulation.

Two commenters emphasized that subsection 3.2, as originally drafted, overlooks situations that could impede the insurer from refunding payments in the same manner they were received, such as Automated Clearing House (ACH) payments or instances where the original payment method is closed or otherwise unavailable. To address this concern, one commenter proposed a minor amendment to subsection 3.2, suggesting the inclusion of "by check if the method the premium was paid is not available."

The Department accepts the commenters' comments by revising subsection 3.2 as suggested above.

Additionally, two commenters noted that there should be an exception in the regulation for instances where premiums were financed.

The Department has determined to include language pertaining to financed premiums in subsection 3.3.

Furthermore, one commenter remarked that the regulation does not specify whether the contemplated cancellation would be insured-initiated, insurer-initiated, or both.

The Department agrees to specify in subsection 3.1 that the regulation pertains to insured-initiated policy cancellation refunds.

Lastly, one commenter requested explicit language be added to subsection 3.1 to exclude cancellation due to nonpayment of premiums.

The Department has chosen not to include language regarding cancellations due to non-payment of premiums, deeming it unnecessary.

In response to the comments received, the Department is re-proposing the regulation with revisions that address the commenters' concerns as discussed above.

D. Notice and Public Comment

The Department does not plan to hold a public hearing on re-proposed Regulation 611. The re-proposed regulation appears below and may also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the re-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. EST, the 31st day of May 2024. Any such requests should be directed to:

Alisa Pritchard, Regulatory Specialist
Delaware Department of Insurance
1351 West North St., Ste. 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/may2024/proposed/27 DE Reg 856RFA 05-01-24.pdf>

611 Automobile Insurance Premium Refunds

1.0 Scope and Authority

- 1.1 This regulation is adopted by the Commissioner pursuant to the authority granted by 18 Del.C. §§311 and 3915 and promulgated in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Ch. 101.
- 1.2 This regulation applies to all automobile insurance policies.

2.0 Definitions

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

"Commissioner" means the Insurance Commissioner of Delaware.

"Insurance premium" means the amount of money paid by an insured for an insurance policy.

3.0 Issuance of Premium Refund Upon Policy Cancellation

- 3.1 When an automobile insurance policy is cancelled by the insured, any unearned premium shall be refunded within 30 days of the date the insured has provided the evidence required by 18 Del.C. § 3915.
- 3.2 Insurance premium refunds shall be paid in the same manner in which the premium was paid, by check if the original payment method is unavailable, or another manner of refund agreed to by the insured.
- 3.3 If a policy subject to this regulation is cancelled by an insurance premium finance company, the unearned premium shall be refunded to the insurance premium finance company in accordance with the terms of 18 Del.C. § 4809(f).

4.0 Violations; Penalties

Failure to comply with this regulation will subject the violator to the provisions of 18 Del.C. §§329 and 520.

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which address penalties for non-compliance of any regulation of the Commissioner.

5.0 Severability

If any section or portion of a section of this regulation or its applicability to any person or circumstance is held invalid by a court, the remainder of this regulation or the applicability of the provision to other persons or circumstances shall not be affected.

6.0 Effective Date

This regulation shall become effective 90 days after the date of publication of the notice of adoption in the Register of Regulations.

DEPARTMENT OF LABOR

DIVISION OF INDUSTRIAL AFFAIRS

Office of Workers' Compensation

Statutory Authority: 19 Delaware Code, Section 105 (19 Del.C. §105)

19 DE Admin. Code 1342

PUBLIC NOTICE

1342 Health Care Practice Guidelines

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 19 Del.C. §105, the Delaware Department of Labor, Office of Workers' Compensation ("Office"), proposes to repeal 19 DE Admin. Code 1342 regarding Health Care Practice Guidelines, specifically Parts A through G.

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

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

Comments may also be directed via electronic mail to tammy.boyd@Delaware.gov. Any written submission in response to this notice and relevant to the proposed changes must be received by the above contact at the Delaware Department of Labor no later than 4 p.m. EST, June 3, 2024.

The action concerning determination of whether to delete the regulation and guidelines from the Delaware Administrative Code will be based upon the Office's consideration of the written comments and any other written materials filed by the public.

Statutory Authority 19 Del.C. §105.

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

***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/may2024/proposed/27 DE Reg 858RFA 05-01-24.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/may2024/proposed/27 DE Reg 858 05-01-24.htm>

DEPARTMENT OF SAFETY AND HOMELAND SECURITY OFFICE OF THE MARIJUANA COMMISSIONER

Statutory Authority: 4 Delaware Code, Section 1331 (4 Del.C. §1331)

PUBLIC NOTICE

5001 Rules of the Office of the Marijuana Commissioner

Summary

In compliance with Delaware's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 4 of the Delaware Code, Chapter 13, Section 1331, the Office of the Marijuana Commissioner proposes to adopt regulations. This regulation establishes the standards for issuing marijuana establishment licenses, social equity businesses, and a retail sales tax. They also include a system for inspection, tracking, packaging, and testing marijuana to ensure the marijuana products are safe.

Comments

Copies of the proposed regulations will be published in the May 1, 2024 edition of the Delaware Register of Regulations, accessible online at <http://regulations.delaware.gov>. Copies are also posted on the Office of the Marijuana Commissioner's website at <https://omc.delaware.gov>. Any person who wishes to make any written suggestions, compilations of data, briefs or other written materials concerning the proposed new regulations must submit same to Taylor Shannon, Delaware Office of the Marijuana Commissioner, Thomas Collins Building, 3rd Floor, Suite 1-A, 540 S Dupont Hwy, Dover, DE 19901 or by email to OMC@delaware.gov. All submissions from the public will be posted on the Office of the Marijuana Commissioner's website at <https://omc.delaware.gov>.

Pursuant to 29 Del.C. §10118(a), the final date to receive written comments is June 3, 2024.

Adoption of Proposed Regulation

On or after June 4, following review of the public comment, the Office of the Marijuana Commissioner will determine whether to adopt the proposed rules as originally published or make additional changes because of the public comments received.

Effective Date of Amendments to Regulations

If adopted by the Office of the Marijuana Commissioner, the amendments shall take effect 10 days after being published as final in the Delaware Register of Regulations.

Robert Coupe, Marijuana Commissioner

*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/may2024/proposed/27 DE Reg 859RFA 05-01-24.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/may2024/proposed/27 DE Reg 859 05-01-24.htm>

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF AGRICULTURE
THOROUGHBRED RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 10103(c) (3 **Del.C.** §10103(c))
3 DE Admin. Code 1001

ORDER**1001 Thoroughbred Racing Rules and Regulations****I. NATURE OF THE PROCEEDINGS**

Pursuant to its authority under 3 Del. C. § 10103(c), the Thoroughbred Racing Commission proposed to amend its regulations regarding Entries, Subscriptions, Delegations (11.0) Claiming Races (13.0) and Definitions and Interpretations (1.0). The changes to 11.14.1.4 are necessary to comply with Horseracing Integrity and Safety Authority (HISA) rules regarding horse's place on Veterinarian's Lists. The changes to 11.14.1.5 are necessary to allow flexibility for trainers entering horses in multiple jurisdictions. The changes to 13.6 allow the stewards to allow claimed horses to race in handicap or nomination required races previously not included. The addition of the definition of "Call" in 1.0 to allow clear interpretation with regards to rule 7.3.7. This amendment also includes changes to correct spelling errors. Other regulations issued by the Thoroughbred Racing Commission are not affected by this proposal.

Notice of a public comment period of thirty (30) days on the Thoroughbred Racing Commission's proposed amended regulations was published in the Delaware *Register of Regulations* for March 1, 2024 in accordance with 29 Del. C. §10118(a). This is the Thoroughbred Racing Commission's Decision and Order adopting the proposed amended regulations.

II. FINDINGS AND CONCLUSIONS

1. The public was given the required notice of the Thoroughbred Racing Commission's intention to adopt the

proposed amended regulation and was given ample opportunity to provide the Thoroughbred Racing Commission with comments opposing the Thoroughbred Racing Commission's plan.

2. There were no public comments provided to the Thoroughbred Racing Commission during the written public comment period.

3. Pursuant to 3 Del. C. §10103(c) and 3 DE Admin. Code 1001, the Thoroughbred Racing Commission has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.

4. The changes to 11.14.1.4 are necessary to ensure compliance with Horseracing Integrity and Safety Authority (HISA) rules regarding horse's place on Veterinarian's Lists. The changes to 11.14.1.5 are necessary to allow flexibility for trainers entering horses in multiple jurisdictions. The changes to 13.6 allow the stewards to allow claimed horses to race in handicap or nomination required races previously not included. The addition of the definition of "Call" in 1.0 to allow clear interpretation with regards to rule 7.3.7.

5. Thus, the Thoroughbred Racing Commission concludes that its consideration of the proposed amended regulation was entirely within its statutory authority and, having received no comments opposed to adoption, is now free to adopt the proposed amended regulation.

6. The Executive Director of Thoroughbred Racing has reviewed the proposed regulation as required by 29 Del. C. § 10118(b)(3) and has determined that if promulgated, the regulation would have a *de minimis* impact on the State's resiliency to climate change because neither implementation nor compliance with the regulation would reasonably involve the increase in greenhouse gas emissions.

III. DECISION AND ORDER CONCERNING THE REGULATIONS

AND NOW on this 5th day of April 2024, it is hereby ordered that:

1. The proposed amendments to the Thoroughbred Racing Commission's regulations are adopted;
2. The text of the final regulations shall be in the form attached hereto as Exhibit A, which remain unchanged as initially published in the March 1, 2024 *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 Thoroughbred Racing Commission reserved to itself the authority to issue such other and further orders concerning its regulations as it deems appropriate.

Delaware Thoroughbred Racing Commission

Sarah A. Crane, Executive Director

***Please note that no changes were made to the regulation as originally proposed and published in the March 2024 issue of the *Register* at page 644 (27 DE Reg. 644). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/may2024/final/27 DE Reg 860 05-01-24.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 ("DIAA Board"), 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 amendment is to add an exception for team camps during the summer to subsection 8.3.2.8. The proposed amendment was reviewed by the Public Integrity Commission on November 21, 2023 and the Commission did not see an issue with the change.

Notice of the proposed regulation was published in the *Register of Regulations* on January 1, 2024. The DIAA Board did not receive any written submittals concerning the proposed regulation.

II. ASSESSMENT OF THE IMPACT ON ACHIEVEMENT OF THE STATE'S GREENHOUSE GAS EMISSIONS REDUCTION TARGETS AND RESILIENCY TO CLIMATE CHANGE

The Secretary of Education has reviewed the proposed regulation as required by 29 **Del.C.** §10118(b)(3) and has determined that any assessment of the impact of the proposed regulation is not practical.

III. FINDINGS OF FACTS

On February 22, 2024, the DIAA Board 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. The Department also finds that the Public Integrity Commission, which has purview over the State Code of Conduct (29 **Del.C.** Ch. §§5801-5810A), did not see an issue with the proposed change. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1040 Out-of-Season and Summer Athletic Activities and Contact.

IV. 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 March 21, 2024, 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.

V. 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.

VI. 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 21st day of March, 2024.

Department of Education

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

Approved this 21st day of March, 2024.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Harvey Kenton, Jr.

/s/ Deborah Stevens, Vice President

Provey Powell, Jr. (Voted No)

/s/ Candice Fifer

/s/ Wali W. Rushdan, II

/s/ Meredith L. Griffin, Jr.

***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 January 2024 issue of the *Register* at page 479 (27 DE Reg. 479). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/may2024/final/27 DE Reg 861 05-01-24.htm>

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Sections 122(3)(a) and 504 (16 Del.C. §§122(3)(a) and 504)

16 DE Admin. Code 4202

ORDER

4202 Control of Communicable and Other Disease Conditions

NATURE OF THE PROCEEDINGS:

The Delaware Department of Health and Social Services ("DHSS"), Division of Public Health (DPH) initiated proceedings to amend regulation 4202 Control of Communicable and Other Disease Conditions. These proceedings were initiated pursuant to 29 Del.C. Ch. 101 and the authority as prescribed by 16 Del.C. §§122(3)(a) and 504 (16 Del.C. §§122(3)(a) and 504).

On March 1, 2024 (27 DE Reg. 661 (03/01/24)), DHSS published in the *Delaware Register of Regulations* its notice of proposed regulatory amendments, pursuant to 29 Del.C. §10115. DPH requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by April 1, 2024, after which time DHSS would review information, factual evidence, and public comment to the said proposed regulations.

SUMMARY OF EVIDENCE:

No comments were received during the public comment period.

IMPACT ON THE STATE'S GREENHOUSE GAS EMISSIONS REDUCTION TARGETS AND RESILIENCY TO CLIMATE CHANGE:

NOTE: Please be aware of 29 Del.C. §10118 (b)(3), which requires that each agency address impact on the State's greenhouse gas emissions reduction targets and resiliency to climate change.

The DPH Division Director has reviewed the proposed regulation as required by 29 Del.C. §10118(b)(3) and has determined that if promulgated, the regulation would have a *de minimis* impact on the State's resiliency to climate change because neither implementation nor compliance with the regulation would reasonably involve the increase in greenhouse gas emissions.

FINDINGS OF FACT:

No changes were made to the regulations since publication as proposed. The Department finds that the proposed regulations, as set forth in the attached copy, should be adopted in the best interest of the public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed amendments to regulation 4202 Control of Communicable and Other Disease Conditions shall become effective May 11, 2024, 10 days after publication of the final regulation

in the *Delaware Register of Regulations*.

4/10/2024 | 7:26 PM EDT

Date

Josette D. Manning, Esq.

Cabinet Secretary

Delaware Department of Health and Social Services

***Please note that no changes were made to the regulation as originally proposed and published in the March 2024 issue of the *Register* at page 661 (27 DE Reg. 661). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/may2024/final/27 DE Reg 863 05-01-24.htm>

DIVISION OF PUBLIC HEALTH

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

ORDER

4459A Regulations Governing the Childhood Lead Poisoning Prevention Act

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS"), Division of Public Health ("DPH") initiated proceedings to publish 4459A Regulations Governing the Childhood Lead Poisoning Prevention Act. These proceedings were initiated pursuant to 29 **Del.C.** Ch. 101 and the authority as prescribed by 16 **Del.C.** §122(3)t.

DHSS initially published the proposed amendments to this regulation in the December 2023 issue of the *Delaware Register of Regulations* ("*Register*") (27 **DE Reg.** 409 (12/01/23)). Substantive changes were made to the regulation because of the public comment received (between December 1, 2023, and January 8, 2024). DHSS/DPH published the re-proposed regulation which included the additional revisions in the February 1, 2024, issue of the *Register* (27 **DE Reg.** 570). DHSS requested that written materials and suggestions from the public concerning the re-proposed regulation be delivered to DHSS by March 4, 2024, after which time DHSS would review information, factual evidence, and public comment to the said proposed regulations.

SUMMARY OF EVIDENCE:

No comments were received during the public comment period (of February 1, 2024, through March 4, 2024).

IMPACT ON THE STATE'S GREENHOUSE GAS EMISSIONS REDUCTION TARGETS AND RESILIENCY TO CLIMATE CHANGE:

The DPH Division Director has reviewed the proposed regulation as required by 29 *Del. C.* §10118(b)(3) and has determined that if promulgated, the regulation would have a de minimis impact on the State's resiliency to climate change because neither implementation nor compliance with the regulation would reasonably involve the increase in greenhouse gas emissions.

FINDINGS OF FACT:

No changes were made to the regulation since publication as re-proposed. The Department finds that the re-proposed regulations, as set forth in the attached copy should be adopted in the best interest of the public of the State of Delaware.

THEREFORE, IT IS ORDERED, that re-proposed 4459A Regulations Governing the Childhood Lead Poisoning Prevention Act is adopted and shall become effective May 11, 2024 (ten days), after publication of the final regulation in the *Delaware Register of Regulations*.

4/5/2024 | 4:47 PM EDT

Date

Josette D. Manning, Esq.

DHSS Cabinet Secretary

*Please note that no changes were made to the regulation as originally proposed and published in the February 2024 issue of the *Register* at page 570 (27 DE Reg. 570). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

<https://regulations.delaware.gov/register/may2024/final/27 DE Reg 864 05-01-24.htm>

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)
16 DE Admin. Code 11004

ORDER

Processing Applications for Child Care

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services (DSS) initiated proceedings to amend Division of Social Services Manual (DSSM) regarding Processing Applications for Child Care, specifically, to amend the Division of Social Services Manual (DSSM) regarding Processing Applications for Child Care. The Department's proceedings to amend its regulations were initiated pursuant to 29 Del.C. §10114 and its authority as prescribed by 31 Del.C. §512.

The Department published its notice of proposed regulation changes pursuant to 29 Del. C. §10115 in the February 2024 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 4, 2024, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after May 11, 2024, Delaware Health and Social Services (DHSS) /Division of Social Services (DSS) proposes to amend the Division of Social Services Manual (DSSM) regarding Processing Applications for Child Care.

Statutory Authority

45 CFR 98.20

Background

DSSM 11004.1 Processing Applications for Child Care explains the requirements for parents and caretakers to apply for childcare assistance, including application methods and verification requirements. Additional language is being added to the existing policy to explain when authorizations for childcare may begin along with examples. The revision also includes a detailed definition of required documentation for a special need and who is authorized to complete the documentation.

Purpose

The purpose of this proposed regulation is to amend Policy 11004.1 Processing Applications for Child Care.

Public Notice

In accordance with the *state* public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/ DSS gave public notice and provided an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on March 4, 2024.

Fiscal Impact Statement

This policy is currently in effect and the amendment will not cause any fiscal changes.

Summary of Comments Received with Agency Response and Explanation of Changes

Comment: We suggest adding language to DSSM § 11004.1(4)(B)(v) to clarify who can complete Form 611. Can any of the professionals listed in DSSM § 11004.1(4)(B)(vi) complete Form 611? We also suggest that the expanded list of professionals proposed in DSSM § 11004.1(4)(B)(vi) be permitted to complete Form 611 as well.

Agency Response: The Division of Social Services is pleased to provide the opportunity to receive public comments and greatly appreciates the thoughtful input. DSS will revise the policy and Form 611 to clarify who can complete it to include the expanded list of professionals.

IMPACT ON THE STATE'S GREENHOUSE GAS EMISSIONS REDUCTION TARGETS AND RESILIENCY TO CLIMATE CHANGE:

The DSS Division Director has reviewed the proposed regulation as required by 29 Del. C. §10118(b)(3) and has determined that such assessment is not practical for the regulation.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the February 2024 *Register of Regulations* should be adopted with additions. The Department finds that the proposed does not require further public notice or comment under the APA because the amendments are non-substantive pursuant to 29 Del.C. §10118(c).

THEREFORE, IT IS ORDERED, that the proposed regulation to amend DSSM 11004.1 regarding Processing Applications for Child Care, specifically, to clarify internal policy and procedures, is adopted and shall be final effective May 11, 2024.

4/12/2024 | 3:45 PM EDT

Date of Signature

Josette D. Manning Esq., Secretary, DHSS

11000 Child Care Subsidy Program**11004.1 Processing Applications for Child Care**

Statutory Authority

45 C.F.R 98.20

This policy applies to parents and caretakers who submit an application for child care assistance.

1. DSS will provide child care assistance for eligible children when a parent or caretaker:
 - Participates in a TANF or ~~Food-Benefit~~ SNAP Employment and Training (E&T) program;
 - Participates in the TANF Transitional Work Program (TWP);
 - Attends a DSS-approved educational program or job training program;
 - Is employed or accepts an offer of employment;
 - Receives protective services from the Division of Family Services (DFS); or
 - Verifies a special need.

2. A parent or caretaker may apply for child care:
 - In person at any DSS location;
 - Over the phone with a DSS case worker;
 - By mailing, faxing, or emailing a completed application to the local DSS office; or
 - Online through Delaware ASSIST or other online application methods.

3. ~~DSS will interview the applicant and process the signed child care application within two business days. The application filing date will be the effective begin date for assistance.~~

A parent or caretaker selects the date child care services begin.

A. The DSS authorization for child care will begin on the first day the child attends a child care setting. The authorization cannot begin prior to the child attending a child care setting.

B. The DSS authorization for child care may begin before the date of application, but no earlier than the first day of the application month if the child was attending the child care setting.

Example 1: A parent or caretaker applies for child care on March 18. The child was enrolled and started attending the child care setting on March 2. The authorization may start March 2, the day the child started attending the child care setting.

Example 2: A parent or caretaker applies for child care on March 18. The child was enrolled and started attending the child care setting on March 21. The authorization may start March 21, the day the child started attending the child care setting.

Note: The DSS eligibility system will allow authorizations for child care to begin the first day of the month of application

4. A parent or caretaker must verify household income and the need for child care during the application process.
 - A. A parent or caretaker must verify the last 30 days of earned and unearned income received prior to the date of application for DSS to determine financial eligibility.
 - i. Earned income may be verified by:
 - a. Wage stubs;
 - b. A signed employer statement on employer letterhead noting the employee's name, start date, work schedule, earnings, and frequency of pay;
 - c. Verification of Employment (Form 170); or
 - d. A data match confirming employment and income.
 - ii. Unearned income may be verified by:
 - a. Award letters;
 - b. Pension statements;
 - c. Court order documentation;
 - d. Other forms of documentation from sources verifying the gross unearned income amount; or
 - e. A data match confirming unearned income.
 - B. A parent or caretaker must verify their need for child care by providing:
 - i. Wage verification or an offer of employment that includes the amount of work hours;
 - ii. A schedule, proof of registration, or statement from an authorized education program verifying the start date, days and hours of attendance, and expected completion date;

- iii. A schedule, proof of registration, or statement from an authorized training program verifying the start date, days and hours of attendance, and expected completion date;
 - iv. A DFS referral for protective care; or
 - v. Child Care Medical Certification Form ~~(Form 614)~~ (Form 611) **[which can be completed by a physician, licensed psychologist, licensed social worker, school based licensed special education staff, or a specialist who has experience with the child and knowledge in the area of the child's disability];** or
 - vi. ~~written~~ Written documentation completed by a physician ~~or medical professional that verifies a special need and the required care,~~ licensed psychologist, licensed social worker, school based licensed special education staff, or a specialist who has experience with the child and knowledge in the area of the child's disability.
- C. Presumptive child care may open when a parent or caretaker reports income and a need for child care but has not provided all mandatory verifications in accordance with DSSM 11004.8.
5. A parent or caretaker must provide all mandatory verifications, complete an intake interview, and make a provider selection within 30 days from the application date for child care to become effective on the application filing date.
 - A. If information is returned after 30 days of the application date, but before 60 days, child care will begin on the date verifications are received.
 - B. If information is not returned before 60 days from the application date, the parent or caretaker must reapply for child care.
 6. DSS must inform parents and caretakers of their:
 - Eligibility determination;
 - Monthly parent copayment amount; and
 - Rights and responsibilities for the Child Care Subsidy Program.
 7. DSS must give parents and caretakers a Subsidized Child Care Client Agreement (Form 626) when child care approval cannot be generated from the eligibility system.
-

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 2002 (7 Del.C. §2002)
7 DE Admin. Code 3801

Secretary's Order No: 2024-F-0014

RE: Approving Final Amendments to 7 DE Admin. Code 3801 - *Shellfish Aquaculture*

Date of Issuance: April 11, 2024

Effective Date: May 11, 2024

3801 Shellfish Aquaculture

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 3801 - *Shellfish Aquaculture* ("Regulation"). The Department proposes amendments to the Regulation to incorporate current aquaculture practices, simplify compliance with the regulation for Inland Bays shellfish growers, and enhance the efficiency of DNREC's administrative oversight of shellfish aquaculture leasing.

Pursuant to 7 Del. C. Chapter 20, the Department promulgated the Regulation in 2014 to lease subaqueous land for the development of shellfish aquaculture in Delaware's Inland Bays. Commencing in 2017, the Department initiated the leasing of subaqueous land for shellfish aquaculture within the Shellfish Aquaculture Development Area ("SADA") that includes Indian River, Rehoboth, and Little Assawoman Bays. After two years of implementation of the Regulation, the Department's Division of Fish and Wildlife ("DFW") conducted public outreach in 2019 to gather feedback on the leasing of subaqueous land for shellfish aquaculture.

Based on the outreach, the Department is proposing Amendments to definitions, lease issuance, application procedures, aquaculture gear, lease area marking requirements, shellfish aquaculture species, shellfish cultivation, planting and harvesting requirements and timelines, reporting requirements, lease transfer, and prohibited activities. More specifically, the Department proposes Amendments to the following sections of the Regulation:

Definitions -

- Added new definitions for language within the proposed Amendments, revised existing definitions for clarity of the regulation and adjusted the defined SADA boundaries to reflect the new boundaries delineated in 7 Del. C. §2002.

Land Lease-

- Adjusted the prerequisites for SADA and Non-SADA leases to reflect that a signed lease remains invalid until an Army Corps permit is issued.
- Removed section 3.4 to conform shellfish leases with other permits and contracts signed by the Department.

Shellfish Nursery Permits and Nursery Structures -

- Revised language to state that an upweller, downweller, or raceway within a valid lease will not need a separate nursery permit.

Shellfish Aquaculture Gear-

- Added language so that lessees may use an abbreviated lease identifier approved by DNREC's DFW to label equipment.
- Revising language regarding bottom gear by removing the mandate for the bottom gear to hold oysters no closer than four inches from the bottom of the bay and instead mandating that the bottom gear must be designed to hold oysters at least four-inch from the bottom of the bay.

- Changed the requirement for gear marking buoys from three inches by three inches by three inches to three inches in diameter and visible at the water surface.
- Added language so that buoys marking containers may be marked with an approved abbreviated lease identification.
- Added language so that support structures identified on an approved operations plan as semi-permanent can remain on the lease for up to six months without live shellfish attached.
- Revised language to state that electric and hydraulic power should not be used to clean any submerged portion of gear rather than stating "fully or partially submerged in water."

Importation of Shellfish for Shellfish Aquaculture -

- Added language to include that a permit is required for shellfish procured from other than a lease or permitted Inland Bays shellfish nursery, prior to import and planting.

Shellfish Aquaculture Species -

- Added a requirement to obtain written permission from the Director of DFW, regarding producing and culturing shellfish species, other than the Eastern oyster - *Crassostrea virginica*, in Rehoboth Bay, Indian River, and Indian River Bay.
- Added language to mean it is unlawful to produce or culture any shellfish other than the hard clam in Little Assawoman Bay, as specified in Delaware Code.

Lease Marking -

- Revised language to indicate that prior to the placement of any shellfish or gear on a leased acre, the acre must be surveyed and marked.
- Revised corner marking requirements to reflect 7 *Del. C.* §2002, which prohibits corner marking in Little Assawoman Bay with six-inch PVC poles and placards.
- Added language to specify that leases in Little Assawoman Bay shall be marked in accordance with Delaware Code.
- Added language to allow the use of abbreviated lease identifier approved by the DNREC's DFW to mark placards and corners.
- Added language to indicate that corner markers must be maintained while gear or shellfish are in a leased acre, but the leaseholder may choose to not have shellfish and gear on the acre and in that case not maintain the markings. If the leaseholder re-establishes growing shellfish on that acre, the lessee must accurately replace the corner markings and sign an affidavit.

Harvesting a Shellfish Aquaculture Subaqueous Land Lease -

- Revised language to add the use of automated systems that are designed to raise, lower, turn, or rotate cages and containers of shellfish.

Active Use of Shellfish Aquaculture Subaqueous Land Lease Sites -

- Added language to confirm that scientific leases, as in Delaware Code, Chapter 20, Section 5B, do not need to meet active use requirements.
- Revised the planting minimum requirement to be measured within the calendar year that the lease reaches 36 months.
- Revised the harvests minimum requirement to be measured within the calendar year that the lease reaches 48 months.
- Revised the planting minimum from bushels to individual oysters.
- Added language to confirm that planting activities will be credited towards the first lease recording shellfish moved into the Inland Bays and harvest will be credited to the final lease harvesting and selling shellfish outside of the Inland Bays.
- Removed the current section 16.4, as the information is already covered.
- Revised the current section 16.5, proposed as the new 16.4, to state the Department may, at its discretion, grant written exemption from the planting, harvest, or sale requirements.

Reporting Requirements for Shellfish Aquaculture Subaqueous Land Leases and Shellfish Aquaculture Nursery Structures -

- Revised to state that monthly reports are due on shellfish rather than specifically clam or oyster planting or harvest.
- Revised to state that the Department issued yearly survey will be due prior to February 1st of the following year, rather than 45 days from the date of receipt.

Shellfish Aquaculture Subaqueous Land Lease Transfers -

- Revised to state that a boundary survey on a transferred lease will not be required if the transferring party retains some portion of lease ownership.

Shellfish Aquaculture Subaqueous Land Lease Expiration, Surrender, Termination and Sale -

- Revised language to clarify that leaseholder may contest the Department's decision to terminate a lease by appealing the decision to the Environmental Appeals Board.
- Added language to implement an exception for lease transfers, as outlined in Section 19.0, into the existing language that prohibits the subleasing, renting, or selling of a shellfish aquaculture land lease.

Prohibited Activities -

- Revised language to specify hard clams, rather than using the term bivalve shellfish.
- Added language to state that is unlawful to fix, set, or erect shellfish aquaculture gear outside the boundaries of a lawful shellfish aquaculture subaqueous land lease.
- Added language to state that it is unlawful to conduct shellfish gardening activities without the written authorization from DNREC's Division of Watershed Stewardship Shellfish and Recreational Water Program.

Lastly, within the Regulation, the Department included language to enhance the effectiveness of the Department's administrative oversight of shellfish aquaculture leasing, updated the names of DNREC programs, and corrected grammar to improve clarity to members of the regulated community. Additionally, in alignment with Delaware's regulatory style manual, written numbers were converted to numerical digits.

The Department published its initial proposed regulation Amendments in the September 1, 2023, *Delaware Register of Regulations*. Thereafter, the public hearing regarding this matter was held on September 27, 2023. There were thirteen (13) members of the public in attendance. The Department presented the proposed Amendments at its public hearing that was held on September 27, 2023.

Pursuant to 29 *Del. C.* §10118(a), the hearing record ("Record") remained open for receipt of written comment for 15 days following the public hearing. The Record formally closed for comment in this matter at close of business on October 12, 2023, with a total of sixteen (16) comments received by the Department for the formal promulgation. 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 Smith, the Department's DFW staff prepared a Technical Response Memorandum ("TRM"). The Department's TRM acknowledges the comments from the public concerning the proposed Amendments and provides a thorough and balanced response to the same, accurately reflecting the Record generated in this matter. The comments expressed support for the proposed Amendments; however, concerns were raised regarding the financial barriers to entering the shellfish aquaculture industry. Specifically, concerns were voiced about the costs associated with necessary equipment such as poles, lines, anchors, and cages, which may hinder individuals from entering aquaculture farming and meeting the minimum annual planting requirement of 100,000 shellfish per acre by the third year (36 months) of the lease.

The Department recognizes the multiple comments stating that lessees need more time to learn, develop markets, and build their aquaculture leases. Therefore, the Department proposes revised Amendments to 7 DE Admin. 3801 §16.3.1 to extend the initial proposed timeframe of 36 months. Leaseholders must provide evidence that they annually plant at least 100,000 shellfish per acre leased, extending this requirement to 60 months from the date of lease issuance or transfer date. The proposed change means that lessees will have until the fifth year of the lease before the minimum planting requirement is in effect. The first five years of a lease is one-third of a lease term, and the Department believes five years is an adequate amount of time to gain experience needed to be able to meet the minimum planting requirement.

Additionally, to remain consistent with the timeline currently set between the planting and harvest minimums coming into effect on a lease, the Department also proposes a modification to 7 DE Admin. C. 3801 §16.3.2 to state that the harvest minimum will begin in the calendar year that the lease reaches 72 months. Given these prospective changes to §16.3.1 and §16.3.2, the Department also proposes a modification to clarify criteria for planting and harvest minimum exemption in 7 DE Admin. C. 3801 §16.5.

The Department has the statutory basis and legal authority to act with regard to the formal promulgation of these *revised* proposed Amendments, pursuant to 7 *Del. C.* § 2002, 2005(a) & 2006(d) & (e). The Department's *revised* proposed Amendments support the harvesting of shellfish aquaculture, while protecting public health,

environmental preservation, and safeguarding of the State's natural resources. These revisions are not substantive in nature, and no further noticing or additional hearing is necessary in this matter. All notification and noticing requirements concerning this matter were met by the Department and proper notice of the hearing was provided as required by law.

Hearing Officer Theresa Smith prepared her report dated February 14, 2024 ("Report"), which expressly incorporated into the Record the *revised* proposed Amendment and the above-referenced TRM and TRM, attached thereto as Appendix "A" and Appendix "B," respectively. Mrs. Smith's Report set forth the procedural history, summarized and established the record of information ("Record") relied on in the Report and provided findings of fact, reasons, and conclusions that recommend the approval of the *revised* proposed Amendments pending before the Department.

Reasons and Conclusions

Currently pending before the Department are the revised proposed regulatory amendments to 7 DE Admin. Code 3801 - *Shellfish Aquaculture*. In reviewing the applicable statutes and regulations, as well as weighing the public benefits of the *revised* proposed Amendments against potential detriments, the Department's experts in the DFW have concluded that the *revised* proposed Amendments comply with all applicable federal and state laws and regulations. Further, the proposed Amendments as published in the September 1, 2023, *Delaware Register of Regulations*, subsequently revised, are reflective of the Department's authority under 7 *Del. C.* § 2002, 2005(a) & 2006(d) & (e), to improve the aquaculture industry in Delaware's Inland Bays by proposing changes to the conditions for leasing of subaqueous bottom within Delaware's Inland Bays for the culture of shellfish. The Department's TRM, attached and incorporated into Mrs. Smith's Report as Appendix "B," acknowledges the comments received from the public concerning the proposed Amendments, and provides a thorough and balanced response to the same, accurately reflecting the Record generated in this matter.

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 revised proposed amendments to 7 DE Admin. 3801 - *Shellfish Aquaculture*, are well supported. I further find that the Department's experts fully developed the record to support adoption of these *revised* proposed Amendments. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the *revised* 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.* § 2002, 2005(a) & 2006(d) & (e);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Chapter 60, to issue an Order adopting these *revised* proposed Amendments as final;
3. The Department provided adequate public notice of the initial proposed Amendments, and subsequently the *revised* proposed Amendments, 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 September 27, 2023, and during the 15 days subsequent to the hearing (through October 12, 2023), before making any final decision;
4. Promulgation of the *revised* proposed Amendments to 7 DE Admin. 3801 - *Shellfish Aquaculture* will enable the Department to update the Regulation to incorporate current aquaculture practices, simplify compliance with the regulation for Inland Bays shellfish growers, and increase the efficiency of DNREC's administrative oversight of shellfish aquaculture leasing;
5. The Department has reviewed the *revised* 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. The Department does not anticipate additional costs to the aquaculture industry through the *revised* proposed Amendments,
6. The Department has reviewed this *revised* proposed regulatory promulgation in the light of 7 *Del.C.* §10003 and 29 *Del.C.* §10118(b)(3), and has determined that conducting such an assessment regarding the impact of this regulation on the achievement of the State of Delaware's greenhouse gas emissions reduction targets is not practical;
7. The Department's proposed regulatory Amendments, as initially published in the September 1, 2023, *Delaware Register of Regulations*, and subsequently *revised*, as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and

regulations. Consequently, they 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

8. The Department shall submit the proposed revised 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.

Shawn M. Garvin
Secretary

3801 Shellfish Aquaculture
(Break in Continuity of Sections)

16.0 Active Use of Shellfish Aquaculture Subaqueous Land Lease Sites

- 16.1 The Department shall conduct an annual review of each shellfish aquaculture lease in order to determine active use of the lease in the previous year, except for scientific leases, as in 7 Del.C. §2005(b).
- 16.2 In the event that an aquaculture lease is determined by the Department not to be active for a period of ~~one (1)~~ 1 year (12 months), the lease shall be terminated and the lease site may revert to the inventory of available lease sites, except for scientific leases, as in 7 Del.C. §2005(b).
- 16.3 An active lease in Delaware's Inland Bays, except for scientific leases, as in 7 Del.C. §2005(b), must meet the following conditions:
 - 16.3.1 ~~After two (2) years (24 months)~~ By December 31st of the calendar year in which the lease reaches [36 60] months from the date of lease issuance or transfer, leaseholders must provide evidence to the Department's satisfaction that they annually plant at least 100,000 shellfish per acre leased.
 - 16.3.2 ~~After the first three years of the lease, each leaseholder~~ By December 31st of the calendar year in which the lease reaches [48 72] months from lease issuance or transfer, leaseholders shall annually harvest and produce proof of sale for an average of at least ~~40 bushels of 2,000~~ oysters per acre or 5,000 clams per acre, or an equivalent combination.
 - 16.3.3 Shellfish transplanted between leases in the Inland Bays shall be credited as a planting or harvest effort on a single lease. The planting shall be credited to the first lessee planting the seed on an Inland Bays lease, and the harvest shall be credited to the lessee harvesting and selling the shellfish outside of the Inland Bays.
- 16.4 ~~Notwithstanding subsection 16.3, the minimum planting requirement shall not apply to the initial two (2) years (24 months) of a lease, but lessees must plant sufficient shellfish to ensure that the production requirement can be met by the end of the third year (36 months), and annually thereafter.~~
- 16.5 The Department may, at its discretion, grant written exemptions from the ~~[planting, harvest or sale requirement]~~ **[planting, harvest or sale requirement]** due to catastrophic loss or low shellfish stock availability **[minimum planting or harvest requirement based on acreage, seed availability, market volatility, natural disasters, or any other event the Department deems qualifying].**

***Please note that no additional changes were made to the regulation as originally proposed and published in the September 2023 issue of the *Register* at page 151 (27 DE Reg. 151). 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/may2024/final/27 DE Reg 869 05-01-24.htm>

FINAL REGULATIONS

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 102, 103, 758, and 801 (7 Del.C. §§102, 103, 758 & 801)

7 DE Admin. Code 3900

Secretary's Order No.: 2024-F-0015

RE: Approving Final Amendments to 7 DE Admin. Code 3900: *Wildlife*

Date of Issuance: April 15, 2024

Effective Date of the Amendment: May 11, 2024

3900 Wildlife

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), and pursuant to 7 Del C. §§102(a), 103(a) and (b), 758, and 801, the general authority as provided under 7 Del.C. Chapter 60, and all other relevant statutory authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced promulgation.

Background, Procedural History and Findings of Fact

This Order relates to the Department's proposed regulatory amendments to 7 DE Admin. Code 3900: *Wildlife* ("Amendments"). The Department's Division of Fish and Wildlife ("DFW") is proposing to amend nineteen (19) sections of Delaware's existing *Wildlife* regulation that pertains to the management and conservation of wildlife, including activities involving hunting, trapping, fishing, nuisance wildlife control work and activities authorized on Division-owned lands. Specifically, changes are proposed within the following Sections: 1.0 *Definitions*, 2.0 *Method of Take*, 3.0 *Federal Laws and Regulations Adopted*, 4.0 *Seasons*, 5.0 *Wild Turkeys*, 7.0 *Deer*, 8.0 *General Rules and Regulations Governing Land and Waters Administered by the Division*, 9.0 *Wildlife Theft Prevention Fund*, 10.0 *Nuisance Wildlife*, 14.0 *Falconry*, 15.0 *Collection or Sale of Native Wildlife*, 16.0 *Endangered Species*, 17.0 *Species of Special Concern*, 19.0 (*Reserved*), 20.0 *Game Bird Releases*, and 23.0 *Non-native/Invasive Wildlife*. Additionally, a new section within the existing *Wildlife* regulation is being proposed with the creation of Section 24.0 *Wildlife Management Zone Boundaries*.

While expansive, most of the Amendments being proposed by the Department serve to provide additional hunting and trapping opportunities in Delaware, such as the establishment of new seasons, the expansion of current seasons, the provision of additional methods of take, and the development of new and improved reporting criteria for harvesting game. Additionally, some of the proposed Amendments are needed to minimize negative impacts to some species, as well as to minimize damage to infrastructure and habitats on lands and waters administered by the DFW. Other proposed Amendments are minor administrative updates to correct grammar and misspellings, and to bring the existing regulations into current formatting style.

The following section of this Order provides a brief description of the Amendments proposed by the DFW, as published in the State of Delaware *Register of Regulations* on November 1, 2023:

Section 1.0: Definitions

The proposed Amendments to Section 1.0 are needed to clarify certain phrases or words within the existing *Wildlife* regulation, or have been dictated by recently passed legislation. The Department notes that none of the proposed definition changes will incur any additional expenses to the affected entities. Specifically, the proposed Amendments will (1) update the total number of regulations found within 7 DE Admin. Code 3900, *Wildlife*; (2) establish a definition for the following: "auxiliary marker," "direct supervision," "furbearers," and "pen-raised released quail"; (3) clarify the definition of "baited field"; and (4) add "chukar partridge" and "Hungarian partridge" to the list of species categorized as "Liberated Game."

Section 2.0: Method of Take

The proposed Amendments within Section 2.0 are intended to provide additional methods of take, but several of the Amendments are also needed to better manage harvest or to comply with existing statutes. The Department notes that none of the proposed changes will incur any additional expenses to the affected entities. Specifically, the proposed Amendments to Section 2.0 will (1) add crossbows to the list of approved methods of take while hunting wildlife; (2) allow additional methods of take for raccoons and opossums; (3) clarify that both bullfrogs and green frogs can be harvested by hand; (4) clarify the types of ammunitions that are approved for use in Sharps files while hunting deer; (5) remove the reference that the Division Director can issue a permit to hunt waterfowl on Division lands along the Little River; (6) clarify the types and features of foothold traps that can be used; (7) clarify which firearms may be used to hunt gray squirrels, in accordance with 11 *Del.C.* §1445; and (8) require trappers that obtain a permit to trap snapping turtles to obtain and complete an annual report of their take.

Section 3.0: Federal Laws and Regulations Adopted

The proposed Amendments within Section 3.0 are needed in order for Delaware to come into compliance with federal laws. The Department notes that none of the proposed changes will incur any additional expenses to the affected entities. Specifically, the proposed Amendments to Section 3.0 will (1) revise the common name of the "old squaw duck" species to the "long-tailed duck" species; and (2) clarify that only youth hunters are allowed to hunt waterfowl during the special youth waterfowl seasons, and that the same does not also include non-ambulatory hunters using a wheelchair for mobility.

Section 4.0: Seasons

Numerous changes are being proposed to Section 4.0 to adjust existing seasons or to create new seasons for game species. Almost all of the proposed changes would provide hunters and trappers with more opportunities; however, season closures are proposed for both wild bobwhite quail and diamondback terrapins, as both species have experienced population declines and can no longer support harvest. In terms of the diamondback terrapin, this species was once plentiful in the Delaware Bay, but due to numerous environmental factors, their population has declined, and thus this species is now listed as a Species of Greatest Conservation Need. The DFW sought input from trappers and Natural Resource Police Officers to determine how prevalent trapping was for this species. Of the people contacted, none were aware of anyone currently or recently trapping this species, so while this closure could result in lost revenue by some individuals, it is not expected to affect many.

Specifically, the proposed Amendments to Section 4.0 will (1) eliminate the annual bag limit for beavers (an overabundant species); (2) allow green frogs to be hunted at the same time bullfrogs can be hunted, and clarify that the daily bag limit for both species is in aggregate (and not per species). Green and bullfrogs look similar, and neither are a species of concern; (3) clarify which species of crow may be hunted and the procedures for landowners to control crows that are causing damage; (4) extend the Gray Squirrel Season one week and eliminate unnecessary text related to when the season opens; (5) close the Wild Bobwhite Quail Season, but allow landowners who have sufficient habitat and are implementing management practices to support quail to obtain a permit from the Division to hunt on their lands. Also, establish a season for which pen-raised quail may be harvested. The Division will reevaluate the Wild Bobwhite Quail Season closure every three years; (6) eliminate unnecessary text related to when Rabbit Season closes; and (7) adjust the trapping season dates for raccoons and opossums in Kent and Sussex Counties to coincide with season dates in New Castle County (season will open earlier and remain open longer).

In addition to the above, the proposed Amendments to Section 4.0 will also allow raccoon hunters to chase raccoons (no harvest) one month earlier (now beginning on August 1) to allow for additional training opportunities. There is also a reduction being made in the number of firearm deer seasons in which raccoon hunters are not allowed to hunt at night with the aid of a dog. Hunting hours are being clarified as well. Further, the Amendments eliminate unnecessary text related to when the Red Fox Hunting Season opens, and the trapping season will now open one month earlier (on November 1 instead of December 1), consistent with the hunting season. Additionally, the Diamond Terrapin Season is being fully closed, now making it unlawful to hunt or trap for this species during any period of the year. The Department is also adjusting the weather criteria (i.e., temperature and the amount of snowfall) used to justify the Muskrat Trapping Season extension to account for large snow events. Lastly, the proposed Amendments establish trapping seasons for mink and otter (to coincide with the Muskrat Trapping Season), and establish a Chukar Season (to coincide with the Pheasant Season).

Section 5.0: Wild Turkeys

Numerous changes are being proposed to Section 5.0. The Department notes that none of the proposed changes will incur any additional expenses to the affected entities. Specifically, the proposed Amendments to

Section 5.0 will (1) clarify under what circumstances a person can possess a wild turkey, establish procedures for when turkeys escape from captivity, and prohibit the taking of live turkeys or their eggs from the wild; (2) clarify the types of courses accepted for fulfillment of turkey specific hunter education requirements; (3) clarify the size shot allowed for turkey hunting (nothing larger than size 4 shot) to promote the technical advancement of shot shells while maintaining human safety considerations; (4) clarify the prohibition of hunting turkeys using the aid of either bait or dogs; (5) eliminate the requirement to wear camouflage while turkey hunting and clarify that the prohibition on wearing the colors of white, red, or blue while turkey hunting only pertains to external garments; and (6) formally establish season dates for wild turkey hunting and establish registration procedures for hunters to report their harvests via an automated registration system like our existing deer registration system once the turkey system has been developed.

Section 7.0: Deer

Numerous changes are being proposed to Section 7.0 to revise the existing regulations pertaining to deer. The Department notes that none of the proposed changes will incur any additional expenses to the affected entities.

Specifically, the proposed Amendments to Section 7.0 will (1) clarify the type of deer tag nonresident hunters receive if they are exempt from purchasing a license; (2) clarify the procedure for completing a Deer Harvest Report Card after a deer is harvested, and clarify the manner in which deer registration numbers shall be retained; (3) remove the restriction on hunting game, other than deer, with the aid of a dog during the Muzzleloader Season and Shotgun Deer Season; (4) simplify the firearm Deer Seasons by combining the "Either Sex," "Antlerless," and the "Special Season for Young and Disabled Hunters" under a single Deer Season category titled, "Shotgun Seasons"; (5) allow legal straight-walled pistol caliber rifles and handguns to be used to harvest a deer during all seasons when it is legal to harvest a deer with a shotgun; (6) clarify that antlered deer may be harvested with longbows or crossbows throughout the Archery and Crossbow Seasons, including during the Antlerless Only Seasons, and clarify when the Archery and Crossbow Seasons open (September 1) and close (January 31 or the last day of the January Muzzleloader Season, whichever is later); (7) clarify that Sunday deer hunting is permitted, in accordance with 7 *Del.C.* §712; (8) restore the October Antlerless Deer Season to only three (3) days per week by eliminating Mondays, thereby providing more of an "opening day effect" to maximize harvest; (9) establish a second weekend within the Special Shotgun Season for Young and Disabled Hunters to occur the last Saturday and Sunday in September; and (10) to minimize the risk of Chronic Wasting Disease occurring in Delaware, restrict the import of selected deer parts of deer harvested within high-fenced, captive facilities.

Section 8.0: General Rules and Regulations Governing Land and Waters Administered by the Division

Expansive changes are being proposed to regulate activities on lands and waters administered by the DFW to minimize habitat destruction, improve safety, and to restrict activities that are not compatible with the intended use of these lands (i.e., hunting, fishing, trapping, and other wildlife-dependent activities). Several changes are being proposed to clarify where motorized vehicles, horseback riding and bicycles are allowed to protect against habitat degradation and disturbing wildlife, as well as to minimize conflicts with other users. Additional rules being proposed include the adoption of the statutes set forth in Title 21, *Motor Vehicles*, of the Delaware Code pertaining to speeding, careless, inattentive, and reckless driving on lands administered by the DFW. At the present time, the DFW does not have the authority to regulate such unsafe practices on Division lands, so the proposed changes would improve safety and guard against habitat and infrastructure destruction. The DFW is also expanding the hours of entry on lands administered by the Division for non-hunters from sunrise to sunset to ½ hour before sunrise to ½ hour after sunset to increase wildlife watching opportunities.

The Department notes that none of the proposed changes will incur any additional expenses to the affected entities. Specifically, the proposed Amendments to Section 8.0 will (1) clarify that, on lands administered by the DFW, motorized vehicles may only be used on established and maintained roads; (2) establish regulations prohibiting speeding, careless, inattentive, and reckless driving on lands administered by the DFW; (3) prohibit the use of radio-controlled drones, boats, and other vehicles, or to launch model rockets on lands and waters administered by the DFW without a permit from the Division Director; (4) for purposes other than hunting, trapping or fishing, expand the hours of entry on lands administered by the DFW to be between ½ hour before and after sunset (instead of sunrise through sunset) to promote additional wildlife watching opportunities; (5) prohibit the release of domestic or wild animals onto lands administered by the DFW unless they are lawfully permitted during dog training activities; (6) prohibit the use of metal detectors on lands administered by the DFW without a permit from the Division Director; (7) clarify when fishing is permitted on state wildlife areas to avoid conflicts with hunting seasons; (8) clarify that all users of state wildlife areas must follow area map rules, not just those hunting or trapping these areas; (9) clarify where and when firearms are permitted on lands administered by the DFW; (10)

prohibit crabbing and fishing on any dike, water control structure, or within any impoundment found on lands administered by the DFW; (11) clarify that non-resident hunters are allowed to participate in deer drives conducted on lands administered by the DFW; and (12) clarify that horses and bikes may only be used on roads and trails that have been designated by the DFW.

Section 9.0: Wildlife Theft Prevention Fund

Numerous changes are being proposed to Delaware's existing regulations concerning the Wildlife Theft Prevention Fund. The proposed Amendments include additional violations for which informants are eligible for a reward if their tip leads to the arrest and conviction of any person found guilty of the violations described in the regulation. None of the proposed changes will incur any additional expenses to the affected entities, as the same would provide money in the form of a reward to those who assist with the conviction of a violator.

Section 10.0: Nuisance Wildlife

Significant changes are being proposed as they relate to commercial Nuisance Wildlife Control Operators ("NWCOs") and how they are permitted by the DFW and do business in Delaware. Rabbits are being proposed to be added to the list of wildlife species that homeowners can address themselves if they are having nuisance wildlife problems within the limits of incorporated cities and towns without having to obtain a permit.

The types of traps allowed to control these species in incorporated areas by landowners is being clarified to limit the type to a box or cage trap. The use of any other traps would have to be approved by the DFW. In terms of NWCOs, currently only the owner/proprietor of the business is required to complete a training program approved by the DFW; however, to better train the staff that are actually in the field conducting nuisance wildlife control work, the proposed change would require all employees actually conducting work in the field to become trained or to be accompanied by someone in the field that has been trained.

The proposed format for training and permitting NWCOs follows the model currently in place and implemented by the Delaware Department of Agriculture as it pertains to certifying people to use restricted use pesticides. If implemented, the proposed change concerning the training and permitting procedures for NWCOs would cause additional expenses to be incurred on the affected entities, as the cost per individual to complete the training program is two hundred dollars (\$200). However, when NWCOs are hired to control wildlife control they charge for their services, so the increased training fees will likely be accounted for in their cost estimates to conduct wildlife control. The DFW believes that having properly trained individuals in the field outweighs the financial burden on the companies, as this approach should result in improved animal welfare and implementation of control methods that are better suited for the problems being resolved.

Specifically, the proposed Amendments to Section 10.0 will (1) include rabbits in the list of wildlife that may be controlled without a permit when causing damage within the limits of residential or commercial areas of incorporated cities or towns, or within residential or commercial structures, using box/cage live traps; (2) clarify who needs a NWCO permit, under what conditions a company needs to register for a permit, and under what conditions an individual needs to be trained and certified; and (3) requires NWCOs to abide by conditions of their permit.

Section 14.0: Falconry

Two changes pertaining to falconry are being proposed by the DFW at this time. First, to permit falconers to hunt during the month of March for resident game (rabbits, squirrels, etc.) so that they will be allowed to collect and stockpile more food to care for their bird(s) outside of the hunting season. Secondly, to remove an outdated regulation previously implemented to transition Delaware's falconry regulations to comply with new federal falconry regulations.

None of the proposed Amendments will incur any additional expenses to the affected entities, but instead will help save falconers money by allowing them to hunt longer and stockpile more food, as noted above. Specifically, the proposed Amendments to Section 14.0 will (1) extend the hunting season by one month for falconers and clarify the types of game species that may be taken by the aid of a falcon; and (2) remove outdated text that describes when previously updated regulations would go into effect.

Section 15.0: Collection or Sale of Native Wildlife

The existing regulation concerning the collection and sale of native wildlife is not clear as to what can and cannot be possessed, collected, bought, and sold. The proposed changes are intended to rectify that problem by only allowing the possession of live animals if the practice is allowed under existing statute or regulation, such as wildlife rehabilitation and scientific collection, but not for the sake of having wildlife as a pet. The proposed Amendments to this Section will also clarify that pelts from legally harvested furbearers may be bought and sold. Furthermore, at the request of the Delaware Department of Agriculture, the Division of Public Health, and DNREC's Rabies Task Force, live rabies vector species may not be imported, possessed, or sold. Additionally, the collection

and possession of one amphibian egg mass cluster or ten or fewer amphibian eggs would be allowed so that individuals can raise these individuals from eggs to adults before releasing them into the wild.

The Department notes that none of the proposed changes will incur any additional expenses to the affected entities. Specifically, the proposed Amendments to Section 15.0 will (1) clarify which species of wildlife may be possessed, bought, and sold, and under which circumstances each is permissible; (2) reorganize, alphabetically, the list of reptiles and amphibians that are allowed to be collected and possessed, and update several species for which the common or scientific names have changed; and (3) remove outdated text on grandfathered reptile and amphibian collections.

Section 16.0: Endangered Species

Several species on Delaware's State Endangered Species List have had their common or scientific names changed. Additionally, the Saltmarsh Sparrow (*Ammospiza caudacuta*) is being proposed to be added to the State Endangered Species List, as its listing is warranted under the following criteria: (1) Saltmarsh Sparrows are ranked as globally imperiled (G2); (2) they are declining in Delaware, as well as throughout their range; and (3) under current conditions, it is expected that they are unlikely to persist beyond 2050.

Additionally, the Carpenter Frog (*Lithobates virgatipes*) is being proposed to be added to Delaware's State Endangered Species List, as the species is rare and declining in Delaware. The DFW has only four (4) known site records for the Carpenter Frog in Delaware, and it is one of, if not the most, rare amphibians in Delaware. Recent surveys at one of those sites have not yielded any detections, so this site may have been extirpated, leaving only three sites where this species is known to occur. Furthermore, one of these three sites is located at the Prime Hook National Wildlife Refuge, and its location on the Refuge is vulnerable to being negatively impacted by sea-level rise. If conditions at the Refuge deteriorate because of changes due to sea-level rise, then it is likely that this species will not be able to survive there, resulting in only two known locations where this species may continue to survive.

Lastly, the Tri-Colored Bat (*Perimyotis subflavus*) is also being proposed to be added to Delaware's State Endangered Species List. This species is being reviewed under the federal Endangered Species Act by the United States Fish and Wildlife Service ("USFWS"), as it is rare and declining in Delaware, the region, and globally. Its decline is a result of White-nose Syndrome, a wildlife disease that has caused severe and sudden declines of multiple bat species, including the tri-colored bat, the northern long-eared bat, and the little brown bat, with the latter two species already included on Delaware's State Endangered Species List. None of the proposed changes will incur any additional expenses to the affected entities.

Section 17.0: Species of Special Concern

The proposed changes to Section 17.0 are to delete the existing regulation concerning "Species of Special Concern," as this regulation was developed in 2002 in response to potential federal funding becoming available that would have mandated states to have a list of "Species of Special Concern." This funding has since become available without the required species listing. This title is being proposed to be replaced with a new regulation concerning the process for transferring harvested game between individuals. The proposed new title of this section will be "Section 17.0: *Transferring Harvested Game*." Currently, under federal law, deer or migratory birds are the only species for which a transferring process is defined. The proposed Amendments would define how other harvested game (e.g., gray squirrels, rabbits, quail, etc.) could be transferred by hunters by placing a tag on each animal being transferred that is signed by the hunter and states their name, address, and the total number of each species harvested. This new regulation will help DNREC's Natural Resource Police Officers determine who harvested the game animals. The Department notes that none of the proposed changes will incur any additional expenses to the affected entities, other than the nominal cost of having to produce and tag each game animal being transferred from the hunter to another individual.

Section 19.0: (Reserved)

Section 19.0 is currently "Reserved" and does not contain any regulations. That void is being filled with a new regulation pertaining to compliance of conditions set forth in permits issued by either the DFW or the Department, pursuant to Title 7 of the Delaware Code. Currently, unless a permit condition is the result of an existing regulation or statute restricting an activity, the DFW lacks the authority to enforce that permit condition (other than revoking the permit). For example, if a condition of a permit is to carry a copy of the permit in one's possession, or to provide a report of the permit activities, and the regulation or statute does not exist mandating such, then the only penalty the DFW can impose is to revoke the permit. Further, the new regulation to be housed under Section 19.0 would give the DFW increased regulatory authority over permits being issued, which would improve compliance with permit conditions. The proposed changes will not incur any additional expenses to the affected entities unless they

violate conditions of a permit and could now be fined under Penalty Section 7 *Del.C.*§103(d).

Section 20.0: Game Bird Releases

The Department's proposed Amendments to Section 20.0 pertain to under what circumstance someone needs a permit to release game birds (including quail, Chukar Partridge, Hungarian Partridge, and pheasant), as well as what information they need to provide to the DFW prior to the release being approved. Currently, anyone releasing game birds is required to place a "Division approved" leg band on each bird, but the DFW has never formally defined what constitutes an approved band. Thus, the proposed changes would define which marking devices are approved by the DFW. Additionally, the proposed Amendments will incur minimal additional expenses to the affected entities, i.e., none other than the cost of having to acquire marking devices that would meet approval in terms of color and retention thresholds. If people are currently using bands that do not meet the types being proposed with this proposed Amendment, then they would have to purchase new bands, which can be purchased for less than \$0.03 each.

Section 21.0: Guide License

The proposed Amendments to Section 21.0, as they relate to guide licenses, clarify that annual reports to the DFW are due by July 1 annually, rather than the current requirement of "within seven days after the close of the season." The Department notes that the current regulatory language can be ambiguous, as there are many different season dates.

Additionally, nonresidents that are exempt from purchasing a guide license for the purposes of snow goose hunting would be required to not have been convicted for violations of any wildlife or fisheries statutes or regulations within the last three years. The Department notes that none of the proposed changes in this section will incur any additional expenses to the affected entities.

Section 22.0: Hunter and Trapper License Exempt Number

The proposed Amendments to Section 22.0 are to clarify the rules for obtaining a License Exempt Number ("LEN"), which is needed as part of the DFW's new licensing system. The first change is to clarify that a separate LEN is needed for the purposes of hunting or trapping, as that allows the DFW to document which LEN holders are hunters, trappers, or both. Additionally, the proposed Amendments also formally establish that LENs are valid annually from July 1 through June 30, and that it shall be unlawful to obtain a LEN for the same reason for which a license was purchased, thereby duplicating their hunting privileges. The LENs are free to hunters and trappers that meet the eligibility criteria, so none of the proposed Amendments to Section 22.0 will incur any additional expenses to the affected entities.

Section 23.0: Non-Native/Invasive Wildlife

There are several proposed Amendments to Section 23.0 regarding the take of non-native/invasive wildlife, specifically, pertaining to the take of coyotes, nutria, and swine. The changes pertaining to coyotes include allowing cage traps to be a method of take, and to open the trapping season a month earlier to November 1 (which is the same date being proposed for red fox trapping). In terms of the proposed changes to the take of nutria, a single change is proposed that would clarify it shall be unlawful to release captured nutria alive, as this species is non-native and highly destructive to wetlands. Changes pertaining to swine involve changing the name of this species from "feral swine" to "free-roaming swine," which is a better characterization of the animals the DFW encounters. An additional proposed change would be to make it unlawful for someone to harbor free-roaming swine on their property. Free-roaming swine are extremely destructive and pose a human and livestock health and safety risk, thus the proposed Amendments are intended to not allow free-roaming swine populations to become established in Delaware. The Department notes that none of the proposed changes will incur any additional expenses to the affected entities.

Section 24.0: Wildlife Management Zone Boundaries

Lastly, the Department is proposing a new Section to the existing Wildlife Regulations, to be titled, "Wildlife Management Zone Boundaries." The DFW has eighteen (18) wildlife management zones for which harvest and population status of game species (deer and turkeys, in particular) is monitored, but these boundary descriptions are not currently described in existing law or regulation. To formally adopt these boundaries, the proposed new Section 24.0 would include such defining boundary descriptions in regulations, so as to better assist the Department with harvest reporting compliance and potential season adjustments for species in specific locations (rather than statewide). The Department notes that none of the proposed changes will incur any additional expenses to the affected entities.

The Department published the above initial proposed Amendments in the November 1, 2023, *Delaware Register of Regulations* ("*Register*"). Subsequent to that publication, DFW staff discovered numerous clerical

errors in the proposed Amendments as published on November 1, 2023. Those errors were corrected by the State Registrar's Office as of November 3, 2023, and the corrected version of the Department's proposed Amendments was made available for the public to review from that date forward. Additionally, this correction was memorialized by the DFW in Department Exhibit No. 10, which was formally entered into the Hearing Record ("Record") by Hearing Officer Lisa A. Vest at the public hearing held in this matter on December 13, 2023, and thoroughly vetted to the public at that time.

Department staff, as well as members of the public, attended the aforementioned public hearing. Comments regarding the proposed Amendments were received from the public by the Department at the time of the public hearing, as well as during both the pre- and post-hearing phases of this promulgation. Pursuant to 29 *Del.C.* §10118(a), the Record remained open subsequent to the date of the public hearing for receipt of public comment. The Record formally closed with regard to public comment on January 12, 2024.

At the request of Hearing Officer Vest, the Department's subject matter experts in the DFW provided a Technical Response Memorandum ("TRM") for the benefit of the Record generated in this matter. The Department's TRM provided not only responses to the comments received from the public in this matter, but also noted additional revisions being made to the initial proposed Amendments subsequent to the public hearing, and provided the Department's reasoning for such revisions. The Department believes the revised proposed Amendments provide further understanding and clarity to the regulated community, and are non-substantive in nature. Thus, no additional noticing or hearing is necessary in this matter.

The Department's TRM, dated February 9, 2024, is discussed in greater detail below. 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.

Following receipt of the Department's TRM, Hearing Officer Vest prepared her Hearing Officer's Report ("Report") dated March 28, 2024. The Report expressly incorporated the following documents into the Record generated in this matter, and attached the same to the Report as Appendices "A" through "E," respectively:

- **Appendix "A"**: The Department's initially proposed Amendments, as published in the November 1, 2023, edition of the *Register of Regulations*;
- **Appendix "B"**: Corrected initial proposed Amendments, made to remove clerical errors discovered subsequent to the November 1, 2023, publication in the *Register of Regulations*, but prior to the public hearing held in this matter;
- **Appendix "C"**: List of Post-Hearing *Revisions* to the proposed Amendments, made by the Department during the post-hearing phase of this regulatory promulgation to remove further clerical errors and provide clarity and understanding to the regulated community;
- **Appendix "D"**: TRM dated February 9, 2024; and
- **Appendix "E"**: The finalized *revised Amendments to be submitted for publication in the May 1, 2024 edition of the Register of Regulations*.

The Report documents the proper completion of the required regulatory amendment process, establishes the Record, and recommends the adoption of the *revised* proposed Amendments as final.

Reasons and Conclusions

Currently pending before the Department is the adoption of the revised proposed Amendments to 7 DE Admin. Code 3900, *Wildlife*. The following section of this Report addresses the specific areas of concern mentioned in the public comments received by the Department in this matter, and provides the DFW's responses to the same. Where applicable, the DFW's additional *revisions* to the initially proposed Amendments, based on the public comment received, are also highlighted below.

Section 1.0: Definitions

The DFW received comments related to the definition of "deer," specifically, how white-tailed deer and sika deer are managed in Delaware. Additional comments were received on the proposed definition of "direct supervision" and the existing definition of "possession." In response, the TRM notes that the Department has carefully considered these definitions and believes that no changes are warranted to what the DFW has proposed at this time. In support of this decision, the TRM further notes that the comments related to the definition of deer are rooted in the request to have separate hunting seasons, bag limits, tags, and harvest reporting requirements for white-tailed deer and sika deer. Currently, the term "deer" is inclusive of both species, so any time the word "deer" is used, it is understood that it references both species, which means that both can be harvested during each of the

deer seasons, the same applicable tags can be used on each species, the same harvest limits apply in aggregate, etc.

Section 2.0: Method of Take

There are several additional revisions that the DFW is making to Section 2.0 at this time. First, the TRM notes that comments were received from three individuals related to "method of take." The first two comments did not relate to the specific Amendments that the Division was considering during this present promulgation, but since the DFW believes the feedback has merit, the following additional revisions are being made: (1) a reduction of the minimum bow draw weight from 35 pounds to 30 pounds; and (2) removal of the requirement that all crossbows have a manufacture date after 1980.

With regard to the first revision noted above, the TRM notes that Delaware's current 35- pound minimum draw weight regulations are based on decades-old technology and have not been updated to reflect technological advancements made over the last several decades. Industry experts have shown that modern-day, 30-pound draw weight compound bows deliver comparable energy to bows that were in use when minimum bow standard regulations were first adopted. Additionally, technological advancements in broadhead/arrow efficiencies contribute greatly to the effectiveness of modern-day archery hunters. Thus, the DFW is recommending the reduction in the minimum bow draw weight from 35 pounds to 30 pounds at this time. As it relates to the crossbow manufacture date noted above, Delaware is the only state in the nation that maintains a manufacture date regulatory standard for the allowance of legal crossbow hunting. The DFW believes this language is unnecessary and should be removed.

In addition to the above revisions, the DFW received two comments related to allowing pellet rifles for gray squirrel hunting (which are currently allowed). Within the proposed Amendments, the DFW inadvertently excluded pellet firearms from being allowed to hunt this species. The additional *revisions* to Section 2.0 now correct that error by reinstating pellet firearms and adjusting the calibers allowed, in compliance with what is authorized in 11 *Del.C.* §1445(1), and precluding the use of calibers larger than .177 in size.

The Department's TRM further notes that, upon review of the proposed Amendments subsequent to the close of the public comment period, the DFW identified the need to correct additional clerical errors as it relates to foothold traps and when they may be used. The use of foothold traps is currently restricted, except from December 1 through March 20, but changes were proposed to allow trapping of some furbearers to start on November 1. Foothold traps should be allowed starting November 1 for these species, so the Division is making an additional revision to adjust the date range for the allowed use of foothold traps to be from November 1 through March 20.

Lastly, the TRM notes that the DFW received two comments on a clerical error related to the proposed definition of an unloaded muzzleloader. Accordingly, the DFW is *revising* the proposed Amendment to correct the error and properly define the same.

Section 3.0: Federal Laws and Regulations Adopted

The Department's TRM notes that a comment was received relating to the phrase, "...young hunters must be of sufficient size, physical strength and emotional maturity to safely handle a shotgun..." if participating in the Special Shotgun Season for Young Hunters. This same phrase is also used in Sections 5.0 and 7.0 when referencing similar hunting opportunities for young hunters involving turkeys and deer, respectively. The commenter believed this language to be vague and open to interpretation; however, the DFW believes a change is not necessary as it provides guidance, rather than defined legal context, to adults that would be taking a young hunter afield. With regard to the "old squaw duck" being recently renamed the "long-tailed duck," the Department's TRM notes that a correction is needed to the species name, due to a transcription error from the DFW's initially proposed Amendments to what was displayed within the *Register of Regulations*. The word "old" should have been deleted and the word "duck" should not have been deleted. Thus, the DFW is *revising* this language within Section 3.0 to correct this error at this time.

Section 4.0: Seasons

The DFW received comments regarding seasons for certain small game, specifically, Gray Squirrel Season, Pheasant Season, and Pen-Raised Released Quail Season. The comments included requests that those seasons close on the last day of February (the same day that Rabbit Season currently ends). The DFW had initially proposed to extend the seasons for each of these species through the second Saturday in February, but after consideration of the comments received, the DFW believes that running the seasons through the last day of February is appropriate, as it will be sustainable to the resources and will provide additional opportunities to hunters. Thus, additional *revisions* are being made to extend those seasons accordingly. In addition to the requested season extensions, one commenter also requested that Hungarian Partridge have the same season

framework as Chukar Partridge. The Department's TRM notes that not having a season for Hungarian Partridge was an oversight by the DFW, and thus an additional revision is being made at this time to allow the Hungarian Partridge season to coincide with the season for Chukar Partridge.

In addition to requesting season extensions, commenters also provided feedback as to the Division's proposal to close the season for Wild Quail, specifically, that a management plan should be developed for the species that included parameters for when the season will reopen, and that the management plan should be reviewed by the DFW annually. In response, the DFW does believe that a management plan for this species is needed, and plans to develop the same in future promulgations; however, closing the season now is needed to protect the remaining birds. Furthermore, the DFW believes its proposal to review the season closure every three years is the most responsible and efficient timeframe for management of Wild Quail and, as such, will provide sufficient data for the DFW to consider future regulatory action. Since this species typically experiences natural fluctuations in population size due to weather events, etc., the Department believes that an examination of this season closure on an annual basis is not appropriate.

Section 5.0: Wild Turkey

The DFW received feedback from several commenters on Section 5.0, with four commenters specifically requesting that the Department expand the shotgun gauges allowable to turkey hunting to include .28 and .410 gauges, as well as allow the use of ammunition consisting of Tungsten Super Shot ("TSS"). In consideration of the requests to allow smaller gauge shotguns, the DFW has examined regulations in surrounding states and has concluded that they do not oppose the same. Further, the TRM notes that, while adjusting the shotgun gauges allowed for turkey hunting was not one of the initially proposed Amendments, the DFW believes that such adjustment is appropriate, and thus the DFW is *revising* their initial proposals at this time.

With regard to the use of TSS shot, the TRM notes that the *revised* proposed Amendments will allow this metal alloy to be used. One commenter also suggested restrictions to the maximum shot size for ammunition using this metal alloy (due to safety concerns), but the DFW believes the revised proposed Amendments are appropriate from the standpoint of being easily understood by hunters, easily enforceable by DNREC's Natural Resource Police Officers, and consistent with other State Fish and Wildlife agency regulations. Comments received at the time of the public hearing requested that the use of lead shot be restricted while turkey hunting to minimize the chance of ingestion and poisoning by other avian species through inadvertent consumption of lead pellets found on the ground surface. In response, the DFW recognizes concerns with the use of lead in the environment, specifically, to waterfowl hunting and hunting in managed dove fields where much shooting takes place in a small area creating greater shot deposition. In comparison, turkey hunting is a far more dispersed activity, with a hunter typically only firing one round.

In light of the above, the TRM concludes that the risk of lead exposure in the environment due to turkey hunting is very low, and thus such restriction is not necessary. Furthermore, the TRM notes that prior to hunting turkeys in Delaware, all hunters are required to complete a mandatory turkey hunting education course. Among the instructional guidance that students receive in that course are recommendations concerning ammunition selection, and the DFW will continue to educate students on the preferred ammunition choices for turkey hunting.

Section 7.0: Deer

Multiple comments were received by the Department that provided feedback on various aspects related to deer hunting. The TRM acknowledges receipt of such comments, and notes that the majority of such feedback did not require any additional revisions to the Amendments already being proposed to Section 7.0 at this time. That being said, during post-hearing review, the DFW identified several clerical errors that require correction. Thus, the following additional *revisions* to Section 7.0 are being made by the DFW at this time:

1. The DFW is striking the word "persons" to now include the new, more specific text of "residents and nonresidents."
2. An inaccuracy was discovered related to the price of antlerless deer tags available for hunters to purchase. The price of these tags is set within 7 *Del.C.* §504. The incorrect fee reference is being removed from within Section 7.0 of the existing regulations, so that the accurate price will always be what is set forth in Delaware Code.
3. The DFW is updating language relating to a reference to the "primitive weapons season," as there is no longer such a season by this name; however, such reference does relate to the current Muzzleloader Seasons, so the regulatory language will be updated to refer to that new season within this Section at this time.
4. Lastly, additional *revisions* are being made at this time to correct various clerical errors discovered

within this Section, including the removal of erroneous text related to shotgun season and the correction of regulation numbering for the Crossbow Season.

Section 8.0: General Rules and Regulations Governing Land and Waters Administered by the Division

The DFW received no comments specifically related to this section; however, there are several minor, typographical errors that the Department discovered during its post-hearing review which require correction. Thus, the DFW is revising this section to correct all such error at this time.

Section 16.0: Endangered Species

As with the immediately preceding section, while there were no comments received from the public related to this specific section, the DFW discovered several formatting and clerical errors in this Section during its post-hearing review which require correction. Thus, the DFW is *revising* this section to correct all such error at this time.

Section 20.0: Game Bird Releases

Section 20.0 received the largest number of comments from the public, with seven people providing comment specifically on this subject area. After reviewing the comments, the DFW believes that many, if not all of these commenters, may not have been aware of the existing regulations regarding this activity, and the impact of the proposed Amendments regarding the same. Existing regulations require anyone releasing upland gamebirds to have them leg banded, and to notify the DFW of such release date and location. These requirements have been in place for over a decade.

The DFW is attempting to make the marking procedures easier by providing additional options other than being limited to leg bands and standardizing what these markers will look like for consistency purposes. In consideration of the comments received, the DFW examined which aspects of the above requirements are needed. As a result, the DFW is now *revising* this Section to remove the requirement to notify the DFW when gamebirds are released, with the exception of quail. The Department will still require hunters to notify the DFW as to where the releases of all upland gamebird are taking place. The DFW believes the additional *revisions* will simplify current restrictions on releasing gamebirds for the purposes of hunting, and that other existing requirements should not be changed.

Section 23.0: Non-native/Invasive Species

Three comments were received by the DFW related to coyotes, with two of the three comments requesting that straight-walled pistol-caliber rifles be an allowable method of harvest. Additionally, one commenter requested that the season restriction be lifted, presumably to allow harvest year-round, and yet another person inquired about coyotes being destructive to wetlands. In response to those comments, the TRM notes that the use of straight-walled pistol-caliber rifles is defined within 7 *Del.C.* §704 and is specific to these firearms only being allowable for hunting deer. The DFW does not have the authority to allow them for other species, so the DFW cannot make the requested change.

With regard to the comments concerning the season on coyotes, the TRM notes that much public feedback was received and considered when the Department established Delaware's coyote regulations in 2014. As such, the DFW is not considering any amendments to coyote season at this time. Lastly, a question was raised about coyotes being detrimental to wetlands. In response, the TRM notes that, while coyotes do have impact to the environment around them, they are not typically known to be damaging to wetlands (at least not to any large spatial scale). Nutria, which are included within this same section, are known to significantly damage wetlands, so presumably the reference to wetland damage was meant to refer to nutria and not coyotes. In any event, the DFW is not proposing any further revisions to the proposed Amendments within this section at this time.

Section 24.0: Wildlife Management Zone Boundaries

The DFW received no comments specifically related to Section 24.0; however, during the post-hearing review performed by the DFW, a clerical error related to the boundary description for Wildlife Management Zone 7. Thus, the DFW is *revising* this section to correct this error, so that Zone 7 will read as follows: "Zone 7: Land bordered north by Route 12, south by Route 16, east by Route 13, and west by the Maryland State Line."

As noted previously, the Department believes the additional *revisions* made to the proposed Amendments during the post-hearing phase of this promulgation provide further understanding and clarity to the regulated community in this matter, and are non-substantive in nature. Thus, no additional publication or public hearing is necessary in this matter.

Based on the Record developed in this matter, I find and conclude that the Department has provided appropriate reasoning regarding the need for the revised proposed Amendments. Accordingly, I recommend promulgation of the *revised* proposed Amendments to 7 DE Admin. Code 3900: *Wildlife*, in the customary manner provided by law.

Further, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the revised proposed Amendments to 7 DE Admin. Code 3900: *Wildlife*, pursuant to 7 *Del. C.* §§102(a), 103(a) and (b), 758, and 801;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del. C.* Ch. 60, to issue an Order adopting the revised proposed Amendments as final;
3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the subsequently *corrected* proposed Amendments, including at the time of the virtual public hearing held on December 13, 2023, and during the days subsequent to the public hearing (through January 12, 2024), in order to consider all public comment on the same before making any final decision;
4. Promulgation of the *revised* proposed Amendments will enable DNREC to provide additional hunting and trapping opportunities in Delaware with the establishment of new seasons, the expansion of current seasons, the provision of additional methods of take, and the development of new and improved reporting criteria for harvesting game. Additionally, the *revised* proposed Amendments are needed to minimize negative impacts to some species, as well as to minimize damage to infrastructure and habitats on lands and waters administered by the Department. Lastly, the *revised* proposed Amendment further serve to provide minor administrative updates to correct grammar and misspellings, and to bring the existing *Wildlife* regulations into current formatting style.
5. The Department has reviewed the revised proposed Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del. C.* Ch. 104, and believes the same to be lawful, feasible, and desirable, that it will not establish substantive additional costs for individuals or small businesses, and that the recommendations as proposed should be applicable to all Delaware individuals or small businesses equally;
6. Further, the Department has reviewed this *revised* proposed regulatory promulgation in the light of 7 *Del. C.* §10003 and 29 *Del. C.* §10118(b)(3), and has determined that conducting such an assessment regarding the impact of this regulation on the achievement of the State of Delaware's greenhouse gas emissions reduction targets is not practical;
7. The Department's proposed Amendments, as published in the November 1, 2023, *Delaware Register of Regulations*, then corrected to remove clerical error subsequent to that publication, then fully vetted to the public at the aforementioned public hearing held on December 13, 2023, and then *revised* non-substantively to remove further clerical error and to provide additional clarity and understanding to the regulated community, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, the revised proposed Amendments should be approved as final Amendments, which shall go into effect ten days after publication in the next available issue of the *Delaware Register of Regulations*;
8. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary;
9. The Department shall submit this Order approving the *revised* proposed Amendments as final Amendments to the *Delaware Register of Regulations* for publication in its next available issue, and shall provide such other notice as the law and regulation require, as the Department determines is appropriate; and
10. The Department shall serve and publish its Order on its internet site.

Shawn M. Garvin
Secretary

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

<https://regulations.delaware.gov/register/may2024/final/27 DE Reg 874 05-01-24.htm>

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
Board of Electrical Examiners

Statutory Authority: 24 Delaware Code, Section 1406(a)(1) (24 **Del.C.** §1406(a)(1))
24 **DE Admin. Code** 1400

ORDER

1400 Board of Electrical Examiners

After due notice in the *Delaware Register of Regulations* and two Delaware newspapers, a public hearing was held on March 6, 2024 at a scheduled meeting of the Delaware Board of Electrical Examiners ("Board") to receive comments regarding proposed amendments to the Board's rules and regulations.

Amendments are proposed to Regulation 3.4 because the current Regulation contains inaccurate statutory references and because upon the creation of the journeyman and apprentice license categories, the pertinent regulations were not also updated. The proposed amendment corrects the statutory reference and clarifies how and from whom journeyman and apprentice electricians may accumulate the qualifying experience required to obtain more senior licenses under 24 **Del.C.** §1408(a).

Amendments are proposed to Regulation 7.2 to provide definition of what it means for an apprentice electrician to be enrolled in an apprentice program approved by the Board as provided in 24 **Del.C.** §1408(a)(7). The Board seeks to ensure that apprentice electricians are making appropriate and regular strides toward the next stage of their professional development.

Amendments are proposed to Regulation 11.0 to provide definition of what it means for a license to be "current" and what factors the Board will consider in deciding whether a state's licensing requirements are "substantially similar" to those of Delaware in the context of applications for license by reciprocity under 24 **Del.C.** §1409. The amendments provide clarity for the Board and applicants regarding the process and requirements for reciprocal admission.

Amendments are proposed to Regulations 1.3, 6.1, 8.4 and 12.1 to include licensed residential electricians among the excepted license categories for requirements pertaining to vehicle lettering, insurance, continuing education, and inspection requests. When the residential electrician license category was created by statute, the corresponding regulations were not updated. It has come to the attention of the Board that certain residential electricians have sought inspection by licensed inspection agencies. The amendment clarifies that doing so is outside the scope of a residential electrician's license defined by 24 **Del.C.** §1422A.

Additional revisions are technical and style changes consistent with the *Delaware Administrative Code Drafting and Style Manual*.

The proposed changes to the rules and regulations were published in the *Delaware Register of Regulations*, Volume 27, Issue 6 on December 1, 2023, giving notice of a January 3, 2024 public hearing at 8:30 a.m. That hearing was cancelled. Thereafter, Notice of the March 6, 2024 hearing was published in the *Delaware Register of Regulations*, Volume 27, Issue 8 on February 1, 2024. Notice was also published in the *News Journal* (Board Exhibit 1) and the *Delaware State News* (Board Exhibit 2). Pursuant to 29 **Del.C.** § 10118(a), the date to receive final written comments was March 21, 2024, 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on April 3, 2024.

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.

At the public hearing on March 6, 2024, no public comment was received.

No written comments were submitted by the public. The Division of Professional Regulation (the "Division") submitted revisions meant to conform the regulations to existing practices and to clarify aspects of the proposed amendments. Specifically, the Division suggested to revise: existing subsection 2.1 to reflect that the Division no longer provides physical copies of applications; newly proposed subsection 7.2.3.2 to correct a scrivener's error regarding the consequence of a licensee no longer satisfying a condition of licensing; and newly proposed subsections 11.3.2 and 11.3.3 to remove potential ambiguity from the Board's intention with the amendment.

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 comments provided to the Board in writing.

The Board President has accepted the comments submitted by the Division pursuant to 29 **Del.C.** §10118(c) as non-substantive changes to the amendments proposed which clarify the intended purpose of the amendments proposed or otherwise reflect the current practices of the Division and they are shown in the attached version of the proposed amendment, filed herewith.

Pursuant to 24 **Del.C.** § 1406(a)(1), the Board has the statutory authority to promulgate rules and regulations in accordance with the procedures specified in the Administrative Procedures Act. The Board finds reason to amend the regulations as proposed and hereby takes action to do so.

The Board has reviewed the proposed regulation as required by 29 **Del.C.** § 10118(b)(3) and has determined that any assessment of the impact of the proposed regulation on the achievement of the State's greenhouse gas emission reduction targets or on the State's resiliency to climate change is not practical in view of the nature of the proposed amendments.

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.

IT IS SO ORDERED this 3rd day of April, 2024.

Board of Electrical Examiners

/s/ James Murphy, President, Professional Patricia Ennis, Public Member (ABSENT)
Member

/s/ Karl Segner, Vice President, Victor Kyler, Public Member (ABSENT)
Professional Member

/s/ David Smagala, Secretary, Professional VACANT, Public Member
Member

/s/ Donald King, Compliance Officer, VACANT, Public Member
Professional Member
/s/ Jacob Good, Education Officer,
Professional Member

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

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

<https://regulations.delaware.gov/register/may2024/final/27 DE Reg 885 05-01-24.htm>

DIVISION OF PROFESSIONAL REGULATION

BOARD OF FUNERAL SERVICES

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

ORDER

3100 Board of Funeral Services

After due notice in the Delaware Register of Regulations and two Delaware newspapers, a public hearing was held on January 23, 2024 at a scheduled meeting of the Delaware Board of Funeral Services ("Board") to receive comments regarding proposed amendments to the Board's rules and regulations. The proposed amendments would clarify subsections that relate to the Board's inspection program created pursuant to 24 **Del.C.** §3105(a)(15) and provide discretion for the Board to allow additional extensions for the time allowed to complete internships. The other proposed amendments reflect technical and style changes consistent with the *Delaware Administrative Code Drafting and Style Manual*.

The proposed changes to the rules and regulations were published in the *Delaware Register of Regulations*, Volume 27, Issue 7 on January 1, 2024, giving notice of a January 23, 2024 public hearing at 10:00 a.m. Notice of the January 23, 2024 hearing was also published in the *News Journal* (Board Exhibit 1) and the *Delaware State News* (Board Exhibit 2). Pursuant to 29 **Del.C.** § 10118(a), the date to receive final written comments was February 7, 2024, 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on March 26, 2024.

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.

At the public hearing on January 23, 2024, no public comment was received.

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 comments provided to the Board in writing or during the public hearing.

FINAL REGULATIONS

Pursuant to 24 **Del.C.** § 3105(a)(1), the Board has the statutory authority to promulgate rules and regulations in accordance with the procedures specified in the Administrative Procedures Act. The Board finds reason to amend the regulations as proposed and hereby takes action to do so.

The Board has reviewed the proposed regulation as required by 29 **Del.C.** § 10118(b)(3) and has determined that any assessment of the impact of the proposed regulation on the achievement of the State's greenhouse gas emission reduction targets or on the State's resiliency to climate change is not practical in view of the nature of the proposed amendments.

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.

IT IS SO ORDERED this 26th day of March, 2024.

Board of Funeral Services

/s/ Andrew Parsell, President, Professional Member
Evan W. Smith, Professional Member (ABSENT)

/s/ Nicholas Picollelli, Secretary, Professional Member
William Torbert, Professional Member (ABSENT)

/s/ Vance Daniels, Public Member
Alisha Flethcer, Public Member (ABSENT)

/s/ Laura Willey, Public Member

***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 January 2024 issue of the *Register* at page 501 (27 DE Reg. 501). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/may2024/final/27 DE Reg 887 05-01-24.htm>

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 January 29, 2024 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 a temporary instructor permit through a provisional pathway. This new method for obtaining licensure is designed to address the current shortage of instructors in schools training individuals for licensure under Chapter 51 of Title 24 of the Delaware Code.

The proposed changes to the rules and regulations were published in the *Delaware Register of Regulations*, Volume 27, Issue 6, on December 1, 2023. Notice of the January 29, 2024 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 February 13, 2024, 15 days following the public hearing. The Board deliberated on the

proposed revisions at its regularly scheduled meeting on March 25, 2024.

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 January 29, 2024. 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 has reviewed the proposed regulation as required by 29 **Del.C.** §10118(b)(3) and has determined that any assessment of the impact of the proposed regulation on the State's resiliency to climate change is not practical. The Board further finds that the rules and regulations shall be adopted as final in the form proposed. These changes will become effective ten days following publication of this Final Order in the *Delaware Register of Regulations*.

IT IS SO ORDERED this 25th day of March 2024.

Delaware Board of Cosmetology and Barbering

John Cook, President (ABSENT)

/s/ Lucy Deo

/s/ Selina Davis, Vice President

/s/ Jeffrey Benson

/s/ Tammy Parris, Secretary

/s/ Gwendolyn Fulwood

/s/ Victor David

/s/ Valarie Lacey

/s/ Ashley Catlett

/s/ Kevin Marinelli

/s/ Rebecca Barry

/s/ Kim Epolito

***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 December 2023 issue of the *Register* at page 415 (27 DE Reg. 415). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/may2024/final/27 DE Reg 888 05-01-24.htm>

FINAL REGULATIONS

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Sections 209(a)(1) and 10113(b) (26 **Del.C.** §§209(a)(1) and 10113(b))

26 **DE Admin. Code** 1002

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

IN THE MATTER OF THE REGULATION
ESTABLISHING THE MINIMUM FILING
REQUIREMENTS FOR ALL COMPANIES
SUBJECT TO THE JURISDICTION OF THE
PUBLIC SERVICE COMMISSION
(RE-OPENED MARCH 27, 2024)

PSC REGULATION DOCKET NO. 4

ORDER NO. 10408

AND NOW, this 27th day of March 2024, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, under the provisions of 26 *Del. C.* § 209(a)(1) and 29 *Del. C.* § 10113(b), the Commission is authorized to amend existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations; and

WHEREAS, the Commission has previously adopted the *Minimum Filing Requirements for All Regulated Companies Subject to the Jurisdiction of the Public Service Commission*, codified at 26 *Del. Admin. C.* § 1002 et seq. (the "Minimum Filing Requirements"), which were adopted on September 18, 1979, by PSC Order No. 1981 and revised on July 14, 2023, by PSC Order No. 10275; and

WHEREAS, minor revisions to the Minimum Filing Requirements are necessary to update certain noticing requirements to conform with 26 *Del. C.* § 102A; and

WHEREAS, under 29 *Del. C.* § 10113(b)(5), an agency's amendment of existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations is exempt from the requirements of 29 *Del. C.* Ch. 101 relating to notice and public comment and may instead be informally adopted or amended; and

WHEREAS, the Commission finds that amendments are exempt from the requirement of public notice and comment because they include "amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations," pursuant to 29 *Del. C.* § 10113(b)(5);

**NOW, THEREFORE, IT IS ORDERED BY THE AFFIRMATIVE VOTE
OF NOT FEWER THAN THREE COMMISSIONERS:**

1. That, pursuant to 26 *Del. C.* § 209(a) and 29 *Del. C.* § 10113(b)(5), the Commission hereby adopts the *Minimum Filing Requirements for All Regulated Companies Subject to the Jurisdiction of the Public Service Commission* as amended herein as its official regulation as defined by 29 *Del. C.* § 1132(3). A marked-up version of the Minimum Filing Requirements reflecting only the amended sections is attached as **Exhibit "A"**.

2. That, pursuant to 26 *Del. C.* §§ 10113 and 10118, the Secretary of the Commission shall transmit a copy of this Order, including the exhibits, to the Registrar of Regulations for publication in the May 1, 2024 edition of the *Delaware Register of Regulations*. An exact copy of the Minimum Filing Requirements, as amended, shall be published as the current official regulations in the *Delaware Register of Regulations*.

3. That, as mandated by the *Delaware Register of Regulations* formatting requirements, Commission Staff is authorized to perform any necessary nonsubstantive edits to conform **Exhibit "A"** to the *Delaware Register of*

Regulations Style Manual for May 1, 2024 submission.

4. That, pursuant to 29 *Del. C.* § 10118(g), the effective date of the amendments shall be the later of May 11, 2024, or ten (10) days after publication in the *Delaware Register of Regulations*.

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

BY ORDER OF THE COMMISSION:

/s/ Dallas Winslow, Chairman (Voted via Tele- Manubhai "Mike" Karia, Commissioner
conference pursuant to 29 Del.C.

§10006(A)(d))

Joann Conaway, Commissioner

Kim F. Drexler, Commissioner

Harold Gray, Commissioner

ATTEST: Crystal Beenick, Commission
Secretary

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

<https://regulations.delaware.gov/register/may2024/final/27 DE Reg 890 05-01-24.htm>

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Sections 209(a)(1) and 10113(b) (26 **Del.C.** §§209(a)(1)
and 10113(b))

26 **DE Admin. Code** 1004

ORDER

1004 Regulations Governing Tariffs Which Set Forth Rates, Terms, and Conditions for the Attachment to Any Pole, Duct, Conduit, Right-of-Way, or Other Similar Facilities of Any Public Utility

IN THE MATTER OF THE REGULATION
ESTABLISHING TARIFFS WHICH SET
FORTH RATES, TERMS, AND
CONDITIONS FOR THE ATTACHMENT
TO ANY POLE, DUCT, CONDUIT, RIGHT-
OF-WAY, OR OTHER SIMILAR
FACILITIES OF ANY PUBLIC UTILITY
(RE-OPENED MARCH 27, 2024)

PSC REGULATION DOCKET NO. 16

ORDER NO. 10410

AND NOW, this 27th day of March 2024, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, under the provisions of 26 *Del. C.* § 209(a)(1) and 29 *Del. C.* § 10113(b), the Commission is authorized to amend existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations; and

WHEREAS, the Commission has previously adopted the *Tariffs Which Set Forth Rates, Terms, and Conditions*

for the Attachment to Any Pole, Duct, Conduit, Right-of-Way, or Other Similar Facilities of Any Public Utility, codified at 26 Del. Admin. C. § 1004 et seq. (the "Attachment Regulation"), which were adopted on January 26, 1988, by PSC Order No. 2917, revised on September 26, 1989, by PSC Order No. 3092; revised on March 19, 1991, by PSC Order No. 3247; revised on April 11, 2006, by PSC Order No. 6891; and revised on November 11, 2003, by PSC Order No. 7069; and

WHEREAS, minor revisions to the tariffs which set forth rates, terms, and conditions for the attachment to any pole, duct, Conduit, right-of-way, or other similar facilities of any public utility are necessary to update certain noticing requirements to conform with 26 Del. C. § 102A; and

WHEREAS, under 29 Del. C. § 10113(b)(5), an agency's amendment of existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations is exempt from the requirements of 29 Del. C. Ch. 101 relating to notice and public comment and may instead be informally adopted or amended; and

WHEREAS, the Commission finds that the amendments are exempt from the requirement of public notice and comment because they include "amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations," pursuant to 29 Del. C. § 10113(b)(5);

**NOW, THEREFORE, IT IS ORDERED BY THE AFFIRMATIVE
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. That, pursuant to 26 Del. C. § 209(a) and 29 Del. C. § 10113(b)(5), the Commission hereby adopts the *Tariffs Which Set Forth Rates, Terms, and Conditions for the Attachment to Any Pole, Duct, Conduit, Right-of-Way, or Other Similar Facilities of Any Public Utility* as amended herein as its official regulation as defined by 29 Del. C. § 1132(3). A marked-up version of the Attachment Regulation reflecting only the amended sections is attached as Exhibit "A".

2. That, pursuant to 26 Del. C. §§ 10113 and 10118, the Secretary of the Commission shall transmit a copy of this Order, including the exhibits, to the Registrar of Regulations for publication in the May 1, 2024 edition of the *Delaware Register of Regulations*. An exact copy of the Attachment Regulation, as amended, shall be published as the current official regulations in the *Delaware Register of Regulations*.

3. That, as mandated by the *Delaware Register of Regulations* formatting requirements, Commission Staff is authorized to perform any necessary nonsubstantive edits to conform Exhibit "A" to the *Delaware Register of Regulations* Style Manual for May 1, 2024 submission.

4. That, pursuant to 29 Del. C. § 10118(g), the effective date of the amendments shall be the later of May 11, 2024, or ten (10) days after publication in the *Delaware Register of Regulations*.

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

BY ORDER OF THE COMMISSION:

/s/ Dallas Winslow, Chairman (Voted via Teleconference pursuant to 29 Del.C. §10006(A)(d))

Joann Conaway, Commissioner

Harold B. Gray, Commissioner

Manubhai Karia, Commissioner

K. F. Drexler, Commissioner

ATTEST: Crystal Beenik, Secretary

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

**1004 Regulations Governing Tariffs Which Set Forth Rates, Terms, and Conditions for the Attachment to
Any Pole, Duct, Conduit, Right-of-Way, or Other Similar Facilities of Any Public Utility
(Break in Continuity of Sections)**

6.0 Commission Approval Of Attachment Agreements

6.1 Notice of Filing

6.1.1 Existing Agreements

6.1.1.1 Each public utility filing an existing agreement under §5.1 shall provide written notice of such filing to each attaching entity which is a party to such agreement. Such notice shall contain a brief explanation of such attaching entity's rights under §§6.2 and 6.3 and shall include a copy of these regulations. Proof of the sending of such notices shall be filed with the Commission within forty-five (45) days of the effective date of these regulations.

6.1.1.2 Within forty-five (45) days of the effective date of these regulations, the Commission shall cause a notice of the filing of all such existing agreements to be published ~~in one edition of two (2) newspapers of general circulation in the State of Delaware~~ in accordance with 26 Del.C. §102A. Such notice shall contain a brief explanation of the purpose of such filing and the rights of any interested person to file written comments or seek formal proceedings before the Commission.

6.1.2 Future Agreements

6.1.2.1 Each public utility filing a future attachment agreement under §5.2 shall submit therewith a written statement from the attaching entity(ies) party thereto acknowledging receipt of a copy of these regulations and knowledge of such attaching entity's rights under §§6.2 and 6.3 hereof.

6.1.2.2 In addition to the written acknowledgement requirement under §6.1.2.1 above, each public utility filing a future agreement under §5.2 shall cause notice of such filing to be published ~~in one (1) edition of two (2) newspapers of general circulation in the State of Delaware~~ in accordance with 26 Del.C. §102A. Such notice shall contain a brief explanation of the purpose of such filing and the right of any interested person to file written comments or seek formal proceedings before the Commission. Proof of the publication of such notice shall be filed with the Commission within fifteen (15) days of such future agreements under §5.2.

6.2 Presumption of Regularity; Complaints; Burden of Proof

6.2.1 Presumption of Regularity

In recognition of the fact that attachment agreements are the result of arms-length negotiations conducted within regulatorily-established perimeters and subject to administrative review, all such agreements filed with the Commission shall be presumed to comply with the standards set out in §7 of these regulations.

6.2.2 Complaints, Investigations, Filing Deadlines

6.2.2.1 Upon written complaint of: the Public Advocate; any interested member of the public who is determined to have sufficient standing; any public utility or attaching entity which is a party to such agreement; or upon its own initiative, the Commission may conduct an investigation into the terms of any attachment agreement filed with it for conformance with the standards set out in §7.

6.2.2.2 Any complaint filed under this section shall specify with particularity those aspects of the agreement(s) complained of and the reasons therefor.

6.2.2.3 Complaints regarding future agreements shall be filed within ninety (90) days of the filing of such agreements with the Commission under §5.2.

6.2.3 Complaint Proceedings; Burden of Proof

Any proceeding under this section shall be conducted in accordance with the Delaware Administrative Procedures Act, the Commission's "Rules of Practice" and these Regulations [to the extent each may be applicable. However, to the extent the matters at issue involve the Commission's legislative ratemaking authority, the Commission may proceed accordingly, and the utility shall have the burden of proof to establish that its proposed terms, conditions, and rates for the proposed attachment are just and reasonable.]

6.3 Commission Approval

6.3.1 Any attachment agreement filed with the Commission shall be deemed to have final Commission approval if no written complaint has been filed within the time limits established by §6.2.2.3 above;

provided, however, that the Commission may, upon its own initiative, commence an investigation into the terms of an attachment agreement at any time, modifying such agreement prospectively, by final Order, upon the conclusion of such investigation.

- 6.3.2 In the event a written complaint is timely filed under §6.2.2.3, such attachment agreement shall remain subject to modification, retroactively, by the Commission until finally approved at the conclusion of such proceedings as the Commission deems appropriate.

***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/may2024/final/27 DE Reg 891 05-01-24.htm>

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Sections 209(a)(1) and 10113(b) (26 **Del.C.** §§209(a)(1) and 10113(b))

26 **DE Admin. Code 2002**

ORDER

2002 Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities

IN THE MATTER OF THE ADOPTION OF
RULES CONCERNING THE
IMPLEMENTATION OF 72 DEL. LAWS
CH. 402 (2000) GRANTING THE PSC
REGULATION COMMISSION THE
JURISDICTION TO GRANT AND REVOKE
THE CERTIFICATES OF PUBLIC
CONVENIENCE AND NECESSITY FOR
PUBLIC UTILITY WATER UTILITIES
(OPENED NOVEMBER 12, 2000; REOPENED
MARCH 20, 2007)

PSC REGULATION DOCKET
NO. 51

ORDER NO. 10411

AND NOW, this 27th day of March 2024, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, under the provisions of 26 *Del. C.* § 209(a)(1) and 29 *Del. C.* § 10113(b), the Commission is authorized to amend existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations; and

WHEREAS, the Commission has previously adopted the *Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities*, codified at 26 *Del. Admin. C.* § 2002 et seq. (the "Water CPCN Rules"), which were adopted on June 5, 2001, by PSC Order No. 5730 and revised on July 22, 2010, by PSC Order No. 7813; and

WHEREAS, minor revisions to the Minimum Filing Requirements are necessary to update certain noticing requirements to conform with 26 *Del. C.* § 102A; and

WHEREAS, under 29 *Del. C.* § 10113(b)(5), an agency's amendment of existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations is exempt from the requirements of 29 *Del. C.* Ch. 101 relating to notice and public comment and may instead be informally adopted or amended; and

WHEREAS, the Commission finds that the amendments are exempt from the requirement of public notice and comment because they include "amendments to existing regulations to make them consistent with changes in

basic law but which do not otherwise alter the substance of the regulations," pursuant to 29 *Del. C.* § 10113(b)(5);

**NOW, THEREFORE, IT IS ORDERED BY THE AFFIRMATIVE
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. That, pursuant to 26 *Del. C.* § 209(a) and 29 *Del. C.* § 10113(b)(5), the Commission hereby adopts the *Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities* as amended herein as its official regulation as defined by 29 *Del. C.* § 1132(3). A marked-up version of the Water CPCN Rules reflecting only the amended sections is attached as **Exhibit "A"**.

2. That, pursuant to 26 *Del. C.* §§ 10113 and 10118, the Secretary of the Commission shall transmit a copy of this Order, including the exhibits, to the Registrar of Regulations for publication in the May 1, 2024 edition of the *Delaware Register of Regulations*. An exact copy of the Water CPCN Rules, as amended, shall be published as the current official regulations in the *Delaware Register of Regulations*.

3. That, as mandated by the *Delaware Register of Regulations* formatting requirements, Commission Staff is authorized to perform any necessary nonsubstantive edits to conform **Exhibit "A"** to the *Delaware Register of Regulations* Style Manual for May 1, 2024 submission.

4. That, pursuant to 29 *Del. C.* § 10118(g), the effective date of the amendments shall be the later of May 11, 2024, or ten (10) days after publication in the *Delaware Register of Regulations*.

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

BY ORDER OF THE COMMISSION:

/s/ Dallas Winslow, Chairman (Voted via Tele- Manubhai Karia, Commissioner
conference pursuant to 29 *Del. C.*

§10006(A)(d))

Joann Conaway, Commissioner

K. F. Drexler, Commissioner

Harold B. Gray, Commissioner

ATTEST: Crystal Beenick, Secretary

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

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

<https://regulations.delaware.gov/register/may2024/final/27 DE Reg 894 05-01-24.htm>

FINAL REGULATIONS

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Sections 209(a)(1) and 10113(b) (26 **Del.C.** §§209(a)(1) and 10113(b))
26 **DE Admin. Code** 3011

ORDER

3011 Rules for Certification of Electric Transmission Suppliers

IN THE MATTER OF THE DELAWARE
PUBLIC SERVICE COMMISSION STAFF
TO ESTABLISH REGULATIONS FOR
CERTIFYING NEW ELECTRONIC
TRANSMISSION UTILITIES IN
THE STATE OF DELAWARE (OPENED MARCH 6,
2018)

PSC DOCKET 18-0148

ORDER NO. 10414

AND NOW, this 27th day of March 2024, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, under the provisions of 26 *Del. C.* § 209(a)(1) and 29 *Del. C.* § 10113(b), the Commission is authorized to amend existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations; and

WHEREAS, the Commission has previously adopted the *Rules for Certification of Electric Transmission Suppliers*, codified at 26 *Del. Admin. C.* § 3011 et seq. (the "ETS Rules"), which were adopted by PSC Order 9223 and effective on July 12, 2020; and

WHEREAS, minor revisions to the ETS Rules are necessary to update certain noticing requirements to conform with 26 *Del. C.* § 102A; and

WHEREAS, under 29 *Del. C.* § 10113(b)(5), an agency's amendment of existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations is exempt from the requirements of 29 *Del. C.* Ch. 101 relating to notice and public comment and may instead be informally adopted or amended; and

WHEREAS, the Commission finds that the amendments are exempt from the requirement of public notice and comment because they include "amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations," pursuant to 29 *Del. C.* § 10113(b)(5);

NOW, THEREFORE, IT IS ORDERED BY THE AFFIRMATIVE VOTE OF NOT FEWER THAN THREE COMMISSIONERS:

1. That, pursuant to 26 *Del. C.* § 209(a) and 29 *Del. C.* § 10113(b)(5), the Commission hereby adopts the *Rules for Certification of Electric Transmission Suppliers* as amended herein as its official regulation as defined by 29 *Del. C.* § 1132(3). A marked-up version of the ETS Rules reflecting only the amended sections is attached as **Exhibit "A"**.

2. That, pursuant to 26 *Del. C.* §§ 10113 and 10118, the Secretary of the Commission shall transmit a copy of this Order, including the exhibits, to the Registrar of Regulations for publication in the May 1, 2024 edition of the *Delaware Register of Regulations*. An exact copy of the Telecom Rules, as amended, shall be published as the current official regulations in the *Delaware Register of Regulations*.

3. That, as mandated by the *Delaware Register of Regulations* formatting requirements, Commission Staff is authorized to perform any necessary nonsubstantive edits to conform **Exhibit "A"** to the *Delaware Register of Regulations* Style Manual for May 1, 2024 submission.

4. That, pursuant to 29 *Del. C.* § 10118(g), the effective date of the amendments shall be the later of May 11, 2024, or ten (10) days after publication in the *Delaware Register of Regulations*.

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

BY ORDER OF THE COMMISSION:

/s/ Dallas Winslow, Chairman (**Voted via** Manubhai Karia, Commissioner
Teleconference pursuant to 29 Del.C.
§10006(A)(d))

Joann Conaway, Commissioner

K. F. Drexler, Commissioner

Harold B. Gray, Commissioner

ATTEST: Crystal Beenick, Secretary

3011 Rules for Certification of Electric Transmission Suppliers

1.0 Definitions

The following words and terms, when used in this Regulation, have the following meanings unless the context clearly indicates otherwise:

"Applicant" means a person or entity seeking to obtain an Electric Transmission Supplier Certificate.

"Commission" means the Delaware Public Service Commission.

"Delmarva" or **"DPL"** means Delmarva Power & Light Company or its successor(s).

"DPA" means the Delaware Division of the Public Advocate.

"Electric Transmission Facility" or **"Transmission facility"** means electric facilities that are located in Delaware, including those in offshore waters and integrated with onshore electric facilities, and owned by a public utility that operate at voltages above 34,500 volts, and used to transmit and deliver electricity to customers, including any customers taking electric service under interruptible rate schedules as of December 31, 1998, up through and including the point of physical connection with electric facilities owned by DPL.

"Electric Transmission Supplier Certificate" means a certificate of public convenience and necessity under 26 *Del.C.* §203E granted by the Commission to an Applicant which fulfilled the Commission's certification requirements and which authorizes the Applicant to construct, operate, own and maintain transmission facilities. The Commission Order approving an Applicant's application for certification as an Electric Transmission Utility shall serve as the Electric Transmission Supplier Certificate.

"Electric Transmission Utility" means a person or entity granted an Electric Transmission Supplier Certificate by the Commission, or otherwise exempt under 26 *Del.C.* §203A(a)(3), which owns and/or physically operates an Electric Transmission Facility in Delaware.

"Person" means a natural person, a corporation, partnership, association, public trust, joint stock company, joint venture, or other group of persons, whether incorporated or not; a trustee or receiver of the foregoing; a municipality or other political subdivision of the State of Delaware; and any other governmental agency or any officer, agent, or employee of such agency.

"PJM Interconnection, L.L.C." or **"PJM"** means the Regional Transmission Organization ("RTO") with functional control over Electric Transmission Facilities throughout a multi-state area including Delaware, or its successor(s).

"Public Utility" means every individual, partnership, association, corporation, joint stock company, agency or department of the State or any association of individuals engaged in the prosecution in common of a productive enterprise (commonly called a "cooperative"), their lessees, trustees or receivers appointed by any court whatsoever, that now operates or hereafter may operate for public use within this state, (however, electric cooperatives shall not be permitted directly or through an affiliate to engage in the production, sale, or distribution of propane gas or heating oil), any natural gas, electric (excluding electric suppliers as defined in §1001 of this title), water, wastewater (which shall

include sanitary sewer charge), telecommunications, (excluding telephone services provided by cellular technology or by domestic public land mobile radio service) service, system, plant or equipment.

"**Regional Transmission Expansion Plan**" or "**RTEP**" means the process by which PJM approves new transmission projects.

"**Regulations**" means the Commission's Regulations for Certification of an Electric Transmission Utility. (26 **DE Admin. Code** 3011, *et seq.*)

"**Secretary**" means the Secretary of the Commission, or any employee of the Commission designated as such by the Secretary and authorized by the Executive Director.

"**Staff**" means full-time professional employees of, and outside counsel and consultants retained by, the Commission who render advice to the Commission.

"**State**" means the State of Delaware.

2.0 Certification of Electric Transmission Suppliers

- 2.1 Before an Applicant may begin the business of providing Electric Transmission Facilities, such Applicant must obtain an Electric Transmission Supplier Certificate from the Commission.
- 2.2 Certification Requirement. All Applicants shall file with the Commission an original and ~~five (5)~~ 5 copies of an application for an Electric Transmission Supplier Certificate or comply with the electronic filing requirements of 26 **DE Admin. Code** 1001. Such application shall contain all the information and exhibits hereinafter required and may contain such additional information as the Applicant deems appropriate to demonstrate to the Commission that it possesses the technical, financial, managerial, and operational ability to adequately serve the public consistent with applicable State laws. Applications shall contain at least the following information:
 - 2.2.1 Identifying Information. The legal name and, if applicable, tax identification number or employer identification number of the Applicant, as well as the trade name(s) under which the Applicant proposes to do business in Delaware. List any other names under which the Applicant or its Affiliated Interests have previously done business in Delaware;
 - 2.2.2 Certifications. Certification(s) issued by the state of formation or incorporation certifying that the Applicant is in good standing and qualified to do business in that state;
 - 2.2.3 Authorization. Documentation from the Delaware Secretary of State and the Delaware Division of Revenue, issued within ~~ninety (90)~~ 90 days of filing, that the Applicant is legally authorized and qualified to do business in the State;
 - 2.2.4 Registered Agent. The name and post office address of a Registered Agent, pursuant to 26 **Del.C.** §401, within the State upon whom service of any notice, order or process may be made;
 - 2.2.5 Leadership. The names, titles, addresses, and telephone numbers of the Applicants' principal officers, directors, partners, or other similar officials;
 - 2.2.6 Corporate Structure. A description of the Applicant's corporate structure, including all parent, affiliated, and subsidiary companies. Include a graphical depiction of such structure;
 - 2.2.7 Contact Information. The name, title, e-mail address (if applicable), mailing address and telephone number of the Applicants and the regulatory contact person responsible for the Applicant's Delaware operations;
 - 2.2.8 Attorney. The name, address, telephone number, and e-mail address of the Applicant's attorney. If the Applicant is not using an attorney, explicitly state so;
 - 2.2.9 Consent to Jurisdiction. A statement consenting to the jurisdiction of the Delaware courts for acts or omissions arising from the Applicant's and its Agent's activities in the State;
 - 2.2.10 Criminal Activities. A statement detailing any criminal activities, except for misdemeanors or lesser violations, of which the Applicant or any of its Affiliated Interests, officers, and directors (and prior officers and directors who left the Applicant's employ less than three months before the filing of the application) have been convicted. Any criminal activity disclosure shall include a copy of any order of conviction and restitution.

- 2.2.11 Project Description. A complete description of any projects that the Applicant intends to develop in Delaware to include:
 - 2.2.11.1 A detailed description of the Electric Transmission Facilities for which the applicant seeks a Certificate
 - 2.2.11.2 One-line diagrams showing all Electric Transmission Facilities to be constructed
 - 2.2.11.3 A description of the construction design to include a pictorial representation of design type;
 - 2.2.11.4 An aerial map showing the proposed location and route of planned Electric Transmission Facilities;
 - 2.2.11.5 A cost estimate for the project;
 - 2.2.11.6 Copies of any analysis undertaken by the Applicant or of which Applicant is aware that demonstrates the reliability-based or economics-based need for the Electric Transmission Facilities and any impacts on electricity costs, including transmission, energy, capacity, and ancillary services charges within Delaware.
- 2.2.12 Entity Designation. A copy of documentation certifying the Applicant as the PJM entity designated to construct new Electric Transmission Facilities. If the Applicant is not a PJM designated entity, the Applicant must submit additional information under subsections 2.2.13, 2.2.14 and 2.2.15.
- 2.2.13 Financial Information. If the Applicant is not a PJM Designated Entity, evidence of long-term financial viability of the Applicant to provide service in the State, including:
 - 2.2.13.1 If publicly traded, the Applicant's: (1) certified financial statements current within ~~twelve~~ 12 months of the filing, and (2) its most recent annual report to shareholders and SEC Form 10-K (or a link to the report on the SEC website);
 - 2.2.13.2 If not publicly traded, the Applicant's accounting statements, including balance sheet and income statements, audited financial statements, bank account statements, tax returns or other indicia of financial capability, or, if applicable, the certified financial statements of a publicly traded parent;
 - 2.2.13.3 Applicants submitting European-style financial statements shall include a statement of similarity;
 - 2.2.13.4 Staff may request other indicia of financial capability.
- 2.2.14 Bankruptcy. If the Applicant is not a PJM Designated Entity, the Applicant shall disclose whether it, or any of its Affiliated Interests, or any current or previous officer, director, or manager, has filed for bankruptcy in the past 24 months;
- 2.2.15 Operational Experience. If the Applicant is not a PJM Designated Entity, evidence of technical and operational fitness to construct and operate Electric Transmission Facilities, including:
 - 2.2.15.1 A description of the entity's experience:
 - 2.2.15.1.1 A description of the entity's experience in constructing and operating electric transmission facilities in other states and an assessment of its long-term viability as an Electric Transmission Utility; and
 - 2.2.15.1.2 A description of the entity's experience with any transmission project in the PJM region.
 - 2.2.15.2 Documentation on the need for and the impact of the proposed transmission facility on the safe, adequate and reliable operation or delivery of electric supply services; and
 - 2.2.15.3 Detailed information on the engineering and technical design of the proposed transmission facility.
 - 2.2.15.4 Staff may request other indicia of technical or operational fitness.
- 2.2.16 Economic Impact. The Applicant's assessment of the impact of granting the Electric Transmission Supplier Certificate on the State's economy and the benefits to the State's ratepayers.
- 2.2.17 The Applicant's assessment of the impact of granting the Certificate of Public Convenience and Necessity on the health, safety and welfare of the general public.
- 2.2.18 Other Proceedings.

- 2.2.18.1 A list of states or federal jurisdictions in which the Applicant or any of its Affiliated Interests has:
- 2.2.18.1.1 Been denied approval to construct or operate electric transmission;
 - 2.2.18.1.2 Been found to be in violation of a state's laws, rules, or regulations related to the provision of electric transmission service;
 - 2.2.18.1.3 Had its electric transmission authority revoked, modified, or suspended; or
 - 2.2.18.1.4 Had any other adverse judicial or regulatory action pertaining to the provision of electric transmission, including any formal docketed complaints filed against (i) the Applicant; (ii) any of the Applicant's Affiliated Interests; (iii) any officer, principal or director of the Applicant; or (iv) any prior officer, principal or director serving in that capacity at the time of the judicial or regulatory action; and
 - 2.2.18.1.5 Entered into a stipulation or consent decree in a formal docketed proceeding in the past ~~five~~ 5 years concerning its electric transmission construction or operation in which the entity agreed to pay a civil penalty, provide any restitution, or make changes to operations;
- 2.2.19 The Applicant shall provide a copy of any document, order, or decree identified in response to subsection 2.2.18;
- 2.2.20 A copy of any settlement, adjudication, or court order with respect to an action filed by a state Attorney General, the Federal Trade Commission, or U.S. Department of Justice concerning the Applicant's participation in electric transmission projects;
- 2.2.21 Other Information. The Commission or its Staff may consider any other information submitted by the Applicant if it can show the financial, operational, managerial, and technical abilities of an Applicant.
- 2.2.22 Verification of Application. The application must be accompanied by a signed, notarized verification of a principal or officer of the Applicant stating that all information in the application is true and correct as filed to the best of the principal's or officer's belief. Where the Applicant is a corporation or an association, the verification shall be signed by an officer thereof and notarized.
- 2.2.23 Notice. Each Applicant shall publish notice of the filing of its application in ~~two (2) newspapers of general circulation throughout the State in a Commission-approved form, which will be provided to the Applicant after receipt of the application~~ accordance with 26 **Del.C.** §102A.
- 2.2.24 Application Fee. An Applicant for a Certificate of Public Convenience and Necessity to operate as a Public Utility shall submit a non-refundable application fee of \$750 with the application.
- 2.2.25 Incomplete or Abandoned Applications. The Commission may reject an application that is not complete or that does not contain subsequent information requested by the Staff within four months of a failure by the Applicant to respond to such requests.
- 2.2.26 Waiver of Certification Requirements. Upon the request of any Applicant, the Commission, upon notice and opportunity for comment, may, for good cause, waive any of the requirements of these Regulations that are not required by statute. The waiver may not be inconsistent with the purpose of these Regulations or 26 **Del.C.** §1001 et seq.
- 2.2.27 Review of the Application. After the close of the comment period, Staff shall make a recommendation to the Commission to approve, conditionally approve or deny the application. The Commission may choose to approve, approve with conditions, modify, or deny a Certificate of Public Convenience and Necessity to an Applicant where it finds that doing so is in the public interest. The application may be denied if the Commission finds the applicant is unwilling or unable to provide safe, adequate and reliable services.
- 2.2.28 Timing of Application Decision. The Commission shall act on an application within ~~ninety (90)~~ 90 days of the submission of a completed application as defined by PSC Staff. At Commission discretion, the application time period may be extended an additional ~~ninety (90)~~ 90 days.
- 2.2.29 Material Change in Application Information. Applicants shall inform Staff of any material changes in any information submitted in the application that occur from the time the application is submitted

to the time the Commission considers the application. The failure to provide such notice within ~~ten~~ (10) 10 Business Days after the change may be grounds for rejection of the application.

- 2.2.30 Accuracy of Information. Failure to provide accurate and factual information, or the submission of false or misleading information, or the omission of material information in any communication with Staff or the Commission, may be grounds for rejection of the application. Nothing in this section shall preclude the Commission or the State of Delaware from undertaking any action to address the provision of false information in an application.
- 2.2.31 Terms of Electric Transmission Supplier Certificate are valid until revoked by the Commission or relinquished by the Applicant after the requisite notice to the Commission.
- 2.2.31.1 The transfer of an Electric Transmission Supplier Certificate to other than a Delaware approved Public Utility is prohibited. Any requested transfer to a Delaware approved Public Utility requires application, notice and approval of the Commission.
- 2.2.31.2 No Electric Transmission entity shall cease operation of its facilities within the State without providing at least ~~sixty (60)~~ 60 days Written Notice to the Commission.
- 2.2.32 Revocation or Suspension. The Commission may, for good cause, undertake to suspend or revoke an Electric Transmission Supplier Certificate held by an Electric Transmission Utility. Good cause includes:
- 2.2.32.1 Material noncompliance by the holder of the Certificate with any conditions imposed by the Commission or any Commission order or rule; or
- 2.2.32.2 A finding by the Commission that the holder of the Certificate failed in a material manner to provide safe, adequate and reliable transmission service; or

3.0 Reports to be Provided to the Commission and DPA

If an Applicant is granted an Electric Transmission Supplier Certificate, the Applicant shall provide semi-annual reports to the Commission and the DPA regarding the status of construction of the Applicant's projects in the State of Delaware until such projects are placed in service. Such updates shall include budgeted vs. actual costs and the expected in-service date of the project.

4.0 Other General Rules

These regulations shall not be construed to require any public utility to secure an Electric Transmission Supplier Certificate for any construction, modifications, upgrades, or extensions within the perimeter of any territory already served by it.

FINAL REGULATIONS

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Sections 209(a)(1) and 10113(b) (26 **Del.C.** §§209(a)(1) and 10113(b))
26 **DE Admin. Code** 4001

ORDER**4001 Rules for the Provision of Telecommunications Services (Dockets 10 and 45)**

IN THE MATTER OF THE RULES FOR THE
PROVISION OF TELECOMMUNICATIONS
SERVICES

(REG. DKT 10 OPENED MAY 1, 1984; REG. DKT
45 OPENED NOVEMBER 21, 1995; JOINTLY
REOPENED NOVEMBER 17, 1998; JULY 24,
2001; AUGUST 9, 2004; NOVEMBER 5, 2013;
MAY 13, 2014; AUGUST 19, 2014 AND
DECEMBER 5, 2019

PSC REGULATION DOCKET
NOS. 10 AND 45

ORDER NO. 10412

AND NOW, this 27th day of March 2024, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, under the provisions of 26 *Del. C.* § 209(a)(1) and 29 *Del. C.* § 10113(b), the Commission is authorized to amend existing regulations to make them consistent with changes in basic law but do not otherwise alter the substance of the regulations; and

WHEREAS, the Commission has previously adopted the *Rules for the Provision of Telecommunications Services (Dockets 10 and 45)*, codified at 26 *Del. Admin. C.* § 4001 et seq. (the "Telecom Rules"), which were adopted on May 1, 1984 (Regulation Docket 10) and November 21, 1995 (Regulation Docket 45), and last revised on April 22, 2020; and

WHEREAS, minor revisions to the Telecom Rules are necessary to update certain noticing requirements to conform with 26 *Del. C.* § 102A; and

WHEREAS, under 29 *Del. C.* § 10113(b)(5), an agency's amendment of existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations is exempt from the requirements of 29 *Del. C.* Ch. 101 relating to notice and public comment and may instead be informally adopted or amended; and

WHEREAS, the Commission finds that the amendments are exempt from the requirement of public notice and comment because they include "amendments to existing regulations to make them consistent with changes in basic law but ... do not otherwise alter the substance of the regulations," pursuant to 29 *Del. C.* § 10113(b)(5);

**NOW, THEREFORE, IT IS ORDERED BY THE AFFIRMATIVE
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. That, pursuant to 26 *Del. C.* § 209(a) and 29 *Del. C.* § 10113(b)(5), the Commission hereby adopts the *Rules for the Provision of Telecommunications Services (Dockets 10 and 45)* as amended herein as its official regulation as defined by 29 *Del. C.* § 1132(3). A marked-up version of the Telecom Rules reflecting only the amended sections is attached as **Exhibit "A"**.

2. That, pursuant to 26 *Del. C.* §§ 10113 and 10118, the Secretary of the Commission shall transmit a copy of this Order, including the exhibits, to the Registrar of Regulations for publication in the May 1, 2024 edition of the *Delaware Register of Regulations*. An exact copy of the Telecom Rules, as amended, shall be published as the current official regulations in the *Delaware Register of Regulations*.

3. That, as mandated by the Delaware Register of Regulations formatting requirements, Commission Staff is authorized to perform any necessary nonsubstantive edits to conform **Exhibit "A"** to the *Delaware Register of Regulations Style Manual* for May 1, 2024 submission.

4. That, pursuant to 29 *Del. C.* § 10118(g), the effective date of the amendments shall be the later of May 11, 2024, or ten (10) days after publication in the *Delaware Register of Regulations*.

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

BY ORDER OF THE COMMISSION:

/s/ Dallas Winslow, Chairman (**Voted via** Manubhai Karia, Commissioner
Teleconference pursuant to 29 Del.C.
§10006(A)(d))

Joann Conaway, Commissioner
Harold B. Gray, Commissioner

K. F. Drexler, Commissioner

ATTEST: Crystal Beenick, Secretary

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

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

<https://regulations.delaware.gov/register/may2024/final/27 DE Reg 902 05-01-24.htm>

OFFICE OF THE STATE TREASURER
DELAWARE EARNS PROGRAM BOARD

Statutory Authority: 19 Delaware Code, Section 3803 (19 **Del.C.** 3803)

ORDER

Regulations Governing the Expanding Access for Retirement and Necessary Saving Program

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 19 **Del.C.** §3803(e)(3), the Delaware EARNS Program Board (the "Board"), with administrative assistance from the Office of the State Treasurer ("OST"), developed and proposed a regulation to govern the implementation and operation of the Delaware Expanding Access for Retirement and Necessary Saving Program (the "Program"). The Board is responsible for implementing and overseeing the operation of the Program and promulgating and enforcing Program regulations.

Notice of the proposed regulation was published in the *Register of Regulations* on March 1, 2024. The Board received written submissions from the National Association of Professional Employer Organizations ("NAPEO") and the American Benefits Council ("ABC"). NAPEO suggested a change to proposed subsection 3.6.1 to clarify that a covered employer that utilizes work-site employees is treated as the employer of any such eligible employee for purposes of the Program if the employer pays unemployment insurance premiums for the employees. ABC has suggested three changes to the regulation. First, ABC asks that subsection 3.1 be modified to require the Program to refrain from sending registration notices to employers for whom the Program is able to locate a Form 5500, which, according to ABC, is "indicative" that any such employer is exempt by virtue of offering a specified tax-favored retirement plan. Second, ABC asks that subsection 3.2.1 be modified to clarify that "[a]n employer that maintains a specified tax-favored retirement plan and that does not receive a registration notice is not required to take any action with respect to the [P]rogram." Finally, ABC asks that subsection 3.2.4 (providing that employers that previously received confirmation of an exemption may be required to recertify exempt status not more frequently than once per year) be eliminated as imposing unnecessary burdens on exempt employers and

increasing the Program's risk of being preempted by the federal Employee Retirement Income Security Act of 1974.

II. FINDINGS OF FACT AND DETERMINATIONS

The Board, at a public meeting on April 17, 2024, upon recommendation of the Board's Program and Investment Committee and after consideration of the submissions of NAPEO and ABC determined, by unanimous vote of all members present, that certain clarifications and revisions are appropriate. The Board, for the reasons discussed in detail at, and reflected in the minutes of, the Board meetings convened on February 2 and April 17, 2024, finds that the regulation, as revised, is necessary and appropriate to ensure the swift and effective implementation and appropriate operation of the Program. A copy of the Program regulation, with revisions, is attached hereto as Exhibit A.

The Board, by majority vote at the same meeting, determined that the proposed revisions are not substantive within the meaning of 29 **Del.C.**, Ch. 101.

The Board has reviewed the proposed regulation, as revised, as required by 29 **Del.C.** §10118(b)(3) and has determined that any assessment of the impact of the proposed regulation on the State's resiliency to climate change is not practical.

III. EFFECTIVE DATE

The effective date of this Order shall be ten (10) days after the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 17th day of April, 2024.

Delaware EARNs Program Board

/s/ Fayettea Blake, Chair

/s/ Colleen Davis, State Treasurer

/s/ Richard Geisenberger, Secretary of Finance

/s/ Ethel Belfon, Deputy Director of Labor, on behalf of Karryl Hubbard, Secretary of Labor

/s/ Stuart Snyder, Chief of Staff, on behalf of Trinidad Navarro, Insurance Commissioner

/s/ Robert Herrera, Member

Members not voting: Donna Vieira, Chair, Delaware Plans Management Board (absent)

Regulations Governing the Expanding Access for Retirement and Necessary Saving Program ***(Break in Continuity of Sections)***

3.0 Employer Provisions

3.1 Notice of Registration and Exemption Process

3.1.1 As directed by OST, the program administrator shall send registration notices to employers. [The program administrator shall use available Form 5500 data to identify exempt employers and make reasonable efforts to limit the number of registration notices that are sent to such employers.]

3.1.2 The registration notices shall direct employers to either register with the Program or submit an employer certification by the registration date.

3.1.3 The registration notice shall include instructions acceptable to OST.

3.1.4 The registration date shall be no earlier than 30 days following the date of the registration notice.

3.2 Process for Employers to Certify Exempt Status

3.2.1 If an employer receives a registration notice and believes that it is not a covered employer, an authorized representative of the employer may complete and submit an employer certification

attesting that the employer is exempt. [An employer that maintains a specified tax-favored retirement plan and that does not receive a registration notice is not required to take any action with respect to the program.]

3.2.2 After an employer submits an employer certification, the program administrator shall promptly provide the employer with a confirmation of employer certification. A confirmation of employer certification will remain in effect until the employer meets the criteria of a covered employer.

3.2.3 If an employer certification is found to be inaccurate or incomplete, the program administrator shall, if directed by OST, notify the employer of any necessary corrective action and the deadline by which the corrective action must be taken.

~~3.2.4 Employers that previously received a confirmation of employer certification may be required to recertify exempt status no more frequently than once per calendar year.~~

3.3 Registration

3.3.1 A covered employer shall register with the Program by submitting all necessary registration information, including both employer information and employee information, via an acceptable submission method by no later than the registration date.

3.3.2 Employer information shall include:

3.3.2.1 Employer name and assumed business name, if any.

3.3.2.2 FEIN.

3.3.2.3 Employer mailing address.

3.3.2.4 Name, telephone number and email address of an individual designated by the employer to serve as the point of contact.

3.3.2.5 Any additional information identified by the program administrator that is necessary to complete registration.

3.3.3 Employee information shall include:

3.3.3.1 Full legal name.

3.3.3.2 Social security number or individual taxpayer identification number.

3.3.3.3 Date of birth.

3.3.3.4 Street address.

3.3.3.5 Email address, if available.

3.3.3.6 Phone number, if available.

3.3.3.7 Any additional information identified by the program administrator that is necessary to complete registration.

3.3.4 A covered employer shall submit employee information for all covered employees who have been employed for at least 120 days.

3.3.5 After initial registration, a covered employer shall have a continuing obligation to:

3.3.5.1 Promptly provide the program administrator with any new or updated employer information.

3.3.5.2 Promptly register new or otherwise unregistered covered employees who have been employed for at least 120 days.

3.3.5.3 Promptly provide the program administrator with new or updated employee information.

3.3.5.4 Provide the program administrator with any additional information as may be needed to administer the Program.

3.3.6 Upon the submission of all necessary employee information, the program administrator shall send confirmation to the covered employer and send the program information to each covered employee.

3.4 Additional Employer Provisions

3.4.1 Business entities that offer a specified tax-favored retirement plan may not register with the Program.

3.4.2 Covered employers shall not:

- 3.4.2.1 Prohibit, restrict, or discourage employee participation in the Program.
- 3.4.2.2 Provide account holders or beneficiaries financial advice or direction regarding investment choices, contribution rates, automatic escalation, or any other decision concerning the Program.
- 3.4.2.3 Remit any payroll deduction contributions for any covered employee who opted out of the Program, unless and until the covered employee subsequently affirmatively elects to enroll in the Program.
- 3.4.2.4 Exercise any authority, control or responsibility regarding the Program, other than those duties prescribed in the Act or regulations promulgated thereunder.
- 3.4.2.5 Make a contribution to a participant's account.
- 3.4.3 Covered Employers may contact the program administrator for technical assistance in completing registration or other Program requirements.
- 3.4.4 Covered Employers may apply for a grant under any grant program approved by majority vote of the Board, subject to funding and applicable eligibility and other requirements, terms and conditions. OST shall administer all grant programs.
- 3.5 Withholding and Remitting Payroll Deduction Contributions by Participating Employer
 - 3.5.1 Participating employers shall be responsible for withholding and remitting payroll deduction contributions for covered employees who participate in the Program.
 - 3.5.2 Participating employers shall not remit payroll deduction contributions until the end of the opt-out period, or the time at which a covered employee affirmatively enrolls in the Program, whichever is earlier.
 - 3.5.3 Participating employers shall remit all payroll deduction contributions withheld from wages to the program administrator as soon as administratively practicable, and in no event later than 14 days from the close of the payroll period in which the wages were earned.
 - 3.5.4 Amounts withheld by the participating employer for payroll deduction contributions shall not exceed the amount of the covered employee's wages remaining after any payroll deductions required by law or other deductions that have higher precedence, including a court or administrative order.
- 3.6 Multi-Party Employment Relationships
 - 3.6.1 If a business utilizes an employee leasing company, the entity that pays unemployment insurance premiums for covered employees, as indicated by the FEIN that appears in the Delaware Department of Labor's records, shall be the entity that is **[treated as the employer of a work-site employee for purposes of the program and shall be]** responsible for either certifying exempt status or registration in accordance with this regulation.
 - 3.6.2 Any wages paid to a work-site employee by an employee leasing company shall be treated as wages received from the work-site employer.
 - 3.6.3 Nothing in this regulation prohibits a party in a relationship between a business and an employee leasing company from assisting another party in the relationship with the performance of responsibilities under this regulation.

*Please note that no additional changes were made to the regulation as originally proposed and published in the March 2024 issue of the *Register* at page 667 (27 DE Reg. 667). 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/may2024/final/27 DE Reg 903 05-01-24.htm>

DELAWARE RIVER BASIN COMMISSION
PUBLIC NOTICE

The Delaware River Basin Commission will hold a public hearing on **Wednesday, May 8, 2024**, commencing at **1:30 p.m.** The public hearing will be conducted remotely. The draft docket decisions and draft resolutions that will be subjects of the public hearing, along with details about the remote platform and how to attend, will be posted on the Commission's website, www.drbc.gov, at least ten (10) days prior to the meeting date.

The Commission's quarterly business meeting will be held on **Wednesday, June 5, 2024**, commencing at **10:30 a.m.** at the Tusten Theatre, 210 Bridge Street, Narrowsburg, NY 12764. 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 links to live streams of these events, please visit the DRBC website at www.drbc.gov or contact Patricia Hausler at patricia.hausler@drbc.gov.

Pamela M. Bush, J.D., M.R.P.
Commission Secretary and Assistant General Counsel

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 HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
PUBLIC NOTICE**Continuous Eligibility and Removal of Premiums for CHIP**

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 Division of Social Services Manual (DSSM) 15300.4, 18300, 18600, 18700, 18800.1, 18800.2, and Title XXI CHIP State Plan Sections 1, 4, 8 and 9, specifically, to provide 12 months of continuous eligibility for children under age 19 in CHIP (with limited exceptions) and to remove the premium requirement for the CHIP program.

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 May 31, 2024. Please identify in the subject line: Continuous Eligibility and Removal of Premiums for CHIP

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 MEDICAID AND MEDICAL ASSISTANCE**PUBLIC NOTICE****Medicaid Workers with Disabilities (MWD) Premiums**

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 Division of Social Services Manual (DSSM) 17800, 17908, 17911, 17912, 17913, Title XIX Medicaid State Plan Attachment 2.6-A pages n-o and Attachment 2.6-A Supplement 8A page 1 regarding Medicaid Workers with Disabilities Premiums, specifically, to remove the requirement of premiums for participation in the MWD Program.

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 May 31, 2024. Please identify in the subject line: Medicaid Workers with Disabilities Premiums

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 MEDICAID AND MEDICAL ASSISTANCE**PUBLIC NOTICE****Third Party Liability**

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 Attachment 4.11-A - Attachment 7.7.C Supplement to Attachment 4.22, specifically, to comply with the Consolidated Appropriations Act of 2022 and Senate Bill 220 of the 152nd Delaware General Assembly.

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 May 31, 2024. Please identify in the subject line: Third Party Liability

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****Paying for Absent Days and Holidays in Child Care**

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 amend paying for absent days and holidays in child care.

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 May 31, 2024. Please identify in the subject line: Paying for Absent Days and Holidays in Child Care

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****Determining Child Care Copayments**

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 amend determining child care copayments.

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 May 31, 2024. Please identify in the subject line: Determining Child Care Copayments

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

DEPARTMENT OF INSURANCE**OFFICE OF THE COMMISSIONER****PUBLIC NOTICE****611 Automobile Insurance Premium Refunds****A. Type of Regulatory Action Required**

Re-proposal of a new Regulation 611.

B. Synopsis of Subject Matter of the Regulation

In the January 1, 2024 edition of the *Register of Regulations*, at 27 **DE Reg.** 488 (01/01/2024), the Commissioner of the Delaware Department of Insurance (Commissioner) published a proposal to adopt new Regulation 611 to require insurers to refund any unearned automobile insurance premium on a cancelled policy within 30 days of the date when the refund becomes due.

The Department received comments from three commenters, which are on file with the Department. Multiple comments, which have been accepted by the Department, propose substantive changes that require the proposed regulation be republished for further public comment.

C. Summary of the Comments Received

The Department received timely comments from the American Property Casualty Insurance Association, National Association of Mutual Insurance Companies, and State Farm Mutual Automobile Insurance Company (collectively referred to as "the commenters"). All commenters recommended that the language in the regulation be updated to clearly reflect the type of policies to which the regulation applies and requested that the implementation date of the regulation be extended.

The Department declines to amend the proposed language, citing the applicability of 18 **Del.C.** § 3915 to all automobile policies. Further, the Department agrees to extend the implementation date to 90 days following the date of publication of the notice of adoption in the *Register of Regulations* to allow additional time for insurers to revise their internal processes to ensure compliance with the regulation.

Two commenters emphasized that subsection 3.2, as originally drafted, overlooks situations that could impede the insurer from refunding payments in the same manner they were received, such as Automated Clearing House (ACH) payments or instances where the original payment method is closed or otherwise unavailable. To address this concern, one commenter proposed a minor amendment to subsection 3.2, suggesting the inclusion of "by

check if the method the premium was paid is not available."

The Department accepts the commenters' comments by revising subsection 3.2 as suggested above.

Additionally, two commenters noted that there should be an exception in the regulation for instances where premiums were financed.

The Department has determined to include language pertaining to financed premiums in subsection 3.1.

Furthermore, one commenter remarked that the regulation does not specify whether the contemplated cancellation would be insured-initiated, insurer-initiated, or both.

The Department agrees to specify in subsection 3.1 that the regulation pertains to insured-initiated policy cancellation refunds.

Lastly, one commenter requested explicit language be added to subsection 3.1 to exclude cancellation due to nonpayment of premiums.

The Department has chosen not to include language regarding cancellations due to non-payment of premiums, deeming it unnecessary.

In response to the comments received, the Department is re-proposing the regulation with revisions that address the commenters' concerns as discussed above.

D. Notice and Public Comment

The Department does not plan to hold a public hearing on re-proposed Regulation 611. The re-proposed regulation appears below and may also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the re-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. EST, the 31st day of May 2024. Any such requests should be directed to:

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

DEPARTMENT OF LABOR
DIVISION OF INDUSTRIAL AFFAIRS
Office of Workers' Compensation
PUBLIC NOTICE
1342 Health Care Practice Guidelines

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 19 **Del.C.** §105, the Delaware Department of Labor, Office of Workers' Compensation ("Office"), proposes to repeal 19 **DE Admin. Code** 1342 regarding Health Care Practice Guidelines, specifically Parts A through G.

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

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

Comments may also be directed via electronic mail to tammy.boyd@Delaware.gov. Any written submission in response to this notice and relevant to the proposed changes must be received by the above contact at the Delaware Department of Labor no later than 4 p.m. EST, June 3, 2024.

The action concerning determination of whether to delete the regulation and guidelines from the Delaware Administrative Code will be based upon the Office's consideration of the written comments and any other written materials filed by the public.

Statutory Authority 19 Del.C. §105.

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

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

OFFICE OF THE MARIJUANA COMMISSIONER

PUBLIC NOTICE

5001 Rules of the Office of the Marijuana Commissioner

Summary

In compliance with Delaware's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 4 of the Delaware Code, Chapter 13, Section 1331, the Office of the Marijuana Commissioner proposes to adopt regulations. This regulation establishes the standards for issuing marijuana establishment licenses, social equity businesses, and a retail sales tax. They also include a system for inspection, tracking, packaging, and testing marijuana to ensure the marijuana products are safe.

Comments

Copies of the proposed regulations will be published in the May 1, 2024 edition of the Delaware Register of Regulations, accessible online at <http://regulations.delaware.gov>. Copies are also posted on the Office of the Marijuana Commissioner's website at <https://omc.delaware.gov>. Any person who wishes to make any written suggestions, compilations of data, briefs or other written materials concerning the proposed new regulations must submit same to Taylor Shannon, Delaware Office of the Marijuana Commissioner, Thomas Collins Building, 3rd Floor, Suite 1-A, 540 S Dupont Hwy, Dover, DE 19901 or by email to OMC@delaware.gov. All submissions from the public will be posted on the Office of the Marijuana Commissioner's website at <https://omc.delaware.gov>.

Pursuant to 29 Del.C. §10118(a), the final date to receive written comments is June 3, 2024.

Adoption of Proposed Regulation

On or after June 4, following review of the public comment, the Office of the Marijuana Commissioner will determine whether to adopt the proposed rules as originally published or make additional changes because of the public comments received.

Effective Date of Amendments to Regulations

If adopted by the Office of the Marijuana Commissioner, the amendments shall take effect 10 days after being published as final in the Delaware Register of Regulations.

Robert Coupe, Marijuana Commissioner