
Delaware Register of Regulations

Issue Date: November 1, 2023

Volume 27 - Issue 5, Pages 279-360



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Errata
Regulations:
 Emergency
 Proposed
 Final

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Calendar of Events &
Hearing Notices



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

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INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
December 1	November 15	4:30 p.m.
January 1	December 15	4:30 p.m.
February 1	January 15	4:30 p.m.
March 1	February 15	4:30 p.m.
April 1	March 15	4:30 p.m.
May 1	April 15	4:30 p.m.

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DEPARTMENT OF LABOR DIVISION OF PAID LEAVE

Statutory Authority: 19 Delaware Code, Sections 105 and 3720 (19 Del.C. §§105 and 3720)
19 DE Admin. Code 1401

ERRATA

1401 Rules Defining and Regulating the Healthy Delaware Families Act, Family and Medical Leave Insurance Program and the Division of Paid Leave

* **Please Note:** The Department of Labor, Division of Paid Leave, regulation 19 DE Admin. Code 1401 Rules Defining and Regulating the Healthy Delaware Families Act, Family and Medical Leave Insurance Program and the Division of Paid Leave, was published as final in the *Delaware Register of Regulations*, 27 DE Reg. 51 (07/01/23). Subsections 4.3.7.3, 6.15.1, and 19.2 were inadvertently published incorrectly.

Subsection 4.3.7.3 was published as:

4.3.7.3 The party to whom **[benefit payment]** the instrument was forwarded;

Subsection 4.3.7.3 should have read:

4.3.7.3 The party to whom the **[benefit payment]** instrument was forwarded;

Subsection 6.15.1 was published as:

~~[6.18.16.15.1]~~ The purpose of this reclassification provision is to either:

~~[6.18.1.1]~~ 16.15.1.1 Continue to provide coverage for those Delaware-based employees who are temporarily assigned to an out-of-state location; or

~~[6.18.1.2]~~ 16.15.1.2 To make eligible for coverage those employees who are telecommuting or who work on a continuing basis out-of-state when they would normally be located in the State of Delaware.

Subsection 6.15.1 should have read:

~~[6.18.16.15.1]~~ The purpose of this reclassification provision is to either:

~~[6.18.1.1]~~ 6.15.1.1 Continue to provide coverage for those Delaware-based employees who are temporarily assigned to an out-of-state location; or

~~[6.18.1.2]~~ 6.15.1.2 To make eligible for coverage those employees who are telecommuting or who work on a continuing basis out-of-state when they would normally be located in the State of Delaware.

Subsection 19.2 was published as:

19.2 Audit. In addition to those powers stated in the Act, the Division may audit employers for compliance with the Act, as the Division determines. The Division reserves the right to examine any adjudicated claims application, whether they have been approved or denied, on a random basis. Admitted private insurers with **[certified approved]** PFML coverage plans shall provide the Division access to their records systems, along with the training and assistance necessary to understand the materials therein, so that the Division may audit claims adjudicated by those **[carriers insurers]**. The records and systems of self-insured private plans shall likewise be made available to and intelligible by the Division for auditing purposes.

Subsection 19.2 should have read:

19.2 Audit. In addition to those powers stated in the Act, the Division may audit employers for compliance with the Act, as the Division determines. The Division reserves the right to examine any adjudicated

claims application, whether they have been approved or denied, on a random basis. Admitted private insurers with ~~certified~~ approved PFML coverage plans shall provide the Division access to their records systems, along with the training and assistance necessary to understand the materials therein, so that the Division may audit claims adjudicated by those ~~carriers~~ insurers]. The records and systems of self-insured private plans shall likewise be made available to and intelligible by the Division for auditing purposes.

Symbol Key

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

Emergency Regulations

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

§ 10119. Emergency regulations.

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

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

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

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

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

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

DEPARTMENT OF STATE**DIVISION OF PROFESSIONAL REGULATION****CONTROLLED SUBSTANCE ADVISORY COMMITTEE**

Statutory Authority: 16 Delaware Code, Section 4731 and 29 Delaware Code, Section 10119(3)
(16 **Del.C.** §4731 & 29 **Del.C.** §10119(3))

ORDER**Uniform Controlled Substances Act Regulations**

**In Re: EMERGENCY RULE
PLACING ILLICIT XYLAZINE
IN SCHEDULE III**

Pursuant to 29 **Del.C.** §10119(3), the Secretary of State ("Secretary") is renewing emergency amendments to the Uniform Controlled Substance Act rules and regulations. Emergency regulations may be promulgated pursuant to the Administrative Procedures Act, so long as an agency determines there exists "an imminent peril to the public health, safety or welfare." 29 **Del.C.** §10119. Such regulation will only be effective for a maximum of 120 days but may be renewed once for an additional period of 60 days. 29 **Del.C.** §10119(3).

Evidence reviewed by the Secretary demonstrated that xylazine is a non-opioid with increasing presence as an adulterant, often in conjunction with opioids, in the illicit drug supply. Adulterants are often added to illicit drugs to (1) increase or decrease a drug's effects or (2) increase a drug's resale value. Both isolated and in conjunction with other drugs, xylazine is implicated as a cause or contributing cause of death in the United States. The low cost of xylazine contributes, in part, to xylazine's increased presence in the nation's illegal drug supply. Heroin and xylazine have some similar pharmacological effects including bradycardia, hypotension, central nervous system depression and respiratory depression. When used in conjunction with an opioid, such as heroin or fentanyl, xylazine may worsen respiratory depression in the event of a drug overdose. Because xylazine is not an opioid,

naloxone is not known to be effective at reversing overdoses caused by xylazine and there is no known antidote or reversal agent for xylazine overdose in humans. Xylazine may be accompanied by skin ulcers with wounds that secrete pus, decaying tissue and bacterial infections which can lead to amputations at higher rates than other injectable drugs.

The Secretary has been charged by the General Assembly with placing a substance in Schedule III if the Secretary finds that: "(1) The substance has a potential for abuse less than the substances listed in Schedules I and II; (2) The substance has currently accepted medical use in treatment in the United States; and (3) Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence." 16 **Del.C.** §4717.

By Emergency Order effective June 2, 2023, the Secretary found that adoption of a regulation placing xylazine temporarily in Schedule III in Delaware must occur on an emergency basis in order to properly protect the public until such time as the legislature may adopt a statutory amendment to 16 **Del.C.** §4718. The Emergency Order was published in the July 1, 2023 issue of the *Register*. SB No. 189 as amended by SA No. 1, placing xylazine in Schedule III, was signed on August 17, 2023 and will be effective the earlier of November 23, 2023 or the expiration of the Secretary's Emergency Order.

The Emergency Order took effect June 2, 2023 and was effective 120 days. The public threat posed by xylazine continues. Therefore, the renewal of the Secretary's Order is required to ensure continuity of xylazine's status as a Schedule III controlled substance. This renewal shall take effect September 30, 2023 and shall remain in effect for 60 days as authorized by 29 **Del.C.** §10119(3).

The Secretary will accept, consider and respond to petitions by any interested person for the reconsideration or revision of this regulation by addressing the same to the attention of the Office of Controlled Substances, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. A copy of this Emergency Order will be submitted to the Registrar of Regulations for publication in the next Delaware *Register of Regulations*;

NOW, THEREFORE, IT IS ORDERED this __23__ day of September 2023:

The above referenced amendment to the Uniform Controlled Substance Act Regulations, a copy of which is attached as Exhibit A, is renewed, pursuant to 29 **Del.C.** §10119(3), as supported by the evidence contained herein.

DELAWARE DEPARTMENT OF STATE
SECRETARY OF STATE
 Jeffrey W. Bullock

Uniform Controlled Substances Act Regulations
(Break in Continuity of Sections)

10.0 Procedures for Adoption of Regulations

- 10.1 Notice. Prior to the adoption, amendment or repeal of any of these controlled substances regulations, the Secretary of State/Committee will give at least twenty (20) days notice of the intended action.
 - 10.1.1 The notice will include a statement of either the terms of substance of the intended action or a description of the subjects and issues involved, or the time when, and the place where to present their views thereon.
 - 10.1.2 The notice will be mailed to persons who have made timely request of the Office of Controlled Substances for advance notice of such rule-making proceedings and shall be published in two newspapers of general circulation in this State.
- 10.2 Hearing. The Secretary of State shall designate the Committee to preside over hearings. The Committee will afford all interested persons a reasonable opportunity to submit data, views or arguments, orally or in writing.

- 10.3 Emergency Regulations. If the Secretary of State, upon the recommendation of the Committee, finds that an imminent peril to the public health, safety or welfare requires adoption of a regulation upon fewer than twenty (20) days notice and states in writing the reasons for that finding, the Secretary of State may proceed without prior notice or hearing or upon any abbreviated notice and hearing the Secretary finds practicable, to adopt an emergency regulation. Such rules will be effective for a period not longer than 120 days, but the adoption of an identical rule under the procedures discussed above is not precluded.
- 10.3.1 Pursuant to 16 **Del.C.** §4713 the Secretary of State finds that the synthetic opioid, 3, 4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide (also known as U-47700) and its isomers, esters, ethers, salts and salts of isomers, esters and ethers, has high potential for abuse; has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision, and therefore:
- 10.3.1.1 The Secretary of State, as authorized by 16 **Del.C.** §4713, does hereby add by rule 3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide (also known as U-47700) and its isomers, esters, ethers, salts and salts of isomers, esters and ethers, in Schedule I of the Uniform Controlled Substances Act, 16 **Del.C.** Ch. 47.
- 10.3.2 Pursuant to 16 **Del.C.** §4717, the Secretary of State has the authority to place a substance in Schedule III where the Secretary finds that the substance has a potential for abuse less than the substances listed in Schedules I and II; has currently accepted medical use in treatment in the United States; and abuse of the substance may lead to moderate or low physical dependence or high psychological dependence, and therefore:
- 10.3.2.1 The Secretary of State, as authorized by 16 **Del.C.** §4717, does hereby add by regulation illicit xylazine and its isomers, esters, ethers, salts and salts of isomers, esters and ethers, in Schedule III of the Uniform Controlled Substances Act, 16 **Del.C.** Ch. 47.
- 10.3.2.1.1 Testing strips to determine the presence of xylazine or xylazine-related substances are exempt from subsection 10.3.2.1.
- 10.3.2.2 For the purpose of this subsection:
- 10.3.2.2.1 "Illicit" use of xylazine means any use in the human species or any use that is not licit use.
- 10.3.2.2.2 "Licit" use of xylazine means:
- 10.3.2.2.2.1 Any administration to nonhuman species a drug containing xylazine that has been approved by the Secretary of Health and Human Services under section 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b); or that is permissible under section 512(a)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(a)(4)).
- 10.3.2.2.2.2 The manufacturing, importation, or use of xylazine as an active pharmaceutical ingredient for manufacturing an animal drug approved under section 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b) or issued an investigation use exemption under subsection (j) of such section 512.
- 10.3.2.2.2.3 The manufacturing, importation, or use of a xylazine bulk chemical for pharmaceutical compounding by licensed pharmacists or veterinarians.
- 10.3.2.2.2.4 Another use approved or permissible under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).
- 10.4 Finding and Availability. The Secretary of State will maintain on file any adoption, amendment or repeal of these regulations. In addition, copies of these regulations will be available for public inspection at the Office of Controlled Substances.

***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/november2023/emergency/27 DE Reg 289 11-01-23.htm](https://regulations.delaware.gov/register/november2023/emergency/27%20DE%20Reg%20289%2011-01-23.htm)

Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(a) (14 **Del.C.** §122(a))
14 **DE Admin. Code** 415

PUBLIC NOTICE

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

415 Voluntary School Assessments

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 **Del.C.** §122(a), the Secretary of Education intends to amend 14 **DE Admin. Code** 415 Voluntary School Assessments. This amendment is needed to include the collection of Voluntary School Assessments (VSA) in Sussex County as authorized by Senate Bill 186 of the 152nd General Assembly. Additional amendments to alter the style or form of the regulation are also included.

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/governance/regulations-code/post-a-comment/> by the close of business (4:30 p.m. EST) on or before December 1, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation does not specifically address the improvement of student achievement as

measured against state achievement standards.

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

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

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

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

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

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

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

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

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

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

<https://regulations.delaware.gov/register/november2023/proposed/27 DE Reg 292RFA 11-01-23.pdf>

415 Voluntary School Assessments

1.0 General Provisions

Pursuant to 14 Del.C. §103(c), this regulation shall apply to Voluntary School Assessments that are required in lieu of Certifications of Adequate Capacity for proposed residential developments in New Castle County and Sussex County.

2.0 Definitions

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

"**Building Valuation Data**" or "**BVD**" means the average construction costs as published biannually by the International Code Council, which can be used for determining permit fees for a jurisdiction.

"**Certification of Adequate Capacity**" means a certification that the school district in which a proposed development is located has 85% or less capacity for the elementary, middle, and high schools in the proposed development's feeder pattern. Such certification is issued by the Secretary based on information provided to the Department by the school ~~district~~ and district, New Castle County Department of Land Use ~~Use~~, or Sussex County.

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

"**Gross Area**" means the calculated square footage of a residential unit.

"**Secretary**" means the Secretary of the Delaware Department of Education or ~~his or her~~ the Secretary's designee.

"**Voluntary School Assessment**" means the assessment amount calculated by the Secretary pursuant to 14 Del.C. §103(c).

3.0 Certification of Adequate Capacity

3.1 The Secretary shall issue a Certification of Adequate Capacity for a proposed development if the school district in which the proposed development is located has adequate capacity for the increased demand that will result from the proposed development.

3.2 Determining Adequate Capacity

~~3.1.1~~ 3.2.1A school district has adequate capacity for a proposed development if the elementary, middle, and high schools in the proposed development's feeder pattern each do not exceed 85 percent of the maximum number of students the schools can contain based on each school's physical space and class size for each grade level.

~~3.1.2~~ 3.2.2Capacity shall include students who are enrolled in the proposed development's feeder pattern schools based on their residence, as provided in 14 **Del.C.** §202(c), and through the Delaware's School District Enrollment Choice Program as provided in 14 **Del.C.** Ch. 4.

~~3.1.3~~ 3.2.3Capacity is determined by the district at the time a developer submits a completed request for a Certification of Adequate Capacity.

4.0 Determining Total Cost of a Residential Unit

4.1 Pursuant to 14 **Del.C.** §103(c)(3), a Voluntary School Assessment shall not exceed 5 percent of the total cost of a residential unit.

4.2 Determining Total Cost of a Residential Unit

4.1.1 4.2.1For the purpose of this regulation, the total cost of a residential unit shall mean the total cost to construct the unit.

4.1.1.1 4.2.1.1The total cost shall equal the Gross Area of the unit multiplied by the square footage construction cost that is derived from the Building Valuation Data table that is first issued for the current calendar year.

4.1.1.2 4.2.1.2The total cost shall not include the cost of land and site work.

4.1.2 4.2.2The developer shall contact the Department to identify residential units subject to the 5 percent limitation.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(a) and (b)(6) (14 **Del.C.** §122(a) & (b)(6))
14 **DE Admin. Code** 501

PUBLIC NOTICE

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

501 State Content Standards

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 **Del.C.** §122(a) and (b)(6), the Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 501 State Content Standards. This regulation is being amended to add language related to the new Media Literacy Content Standards and Driver Education Content Standards.

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/governance/regulations-code/post-a-comment/](#) by the close of business (4:30 p.m. EST) on or before December 1, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

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

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

<https://regulations.delaware.gov/register/november2023/proposed/27 DE Reg 294RFA 11-01-23.pdf>

501 State Content Standards

1.0 Instructional Programs

- 1.1 Instructional programs offered in the public schools of Delaware shall be in alignment with the appropriate content standards documents. These documents are: English Language Arts Content Standards, Mathematics Content Standards, Science Content Standards, Social Studies Content Standards, Health Education ~~and Assessment~~ Content Standards, Physical Education Content Standards, Visual and Performing Arts Content Standards, Agriscience Content Standards, Business Finance and Marketing Education Content Standards, World Language Content Standards, ~~Technology Education Content Standards, Skilled and Technical Sciences Content Standards, Family and Consumer Sciences Content Standards,~~ State-approved CTE Programs of Study Content Standards, Computer Science Content ~~Standards and Standards~~, Financial Literacy Content Standards, ~~Media Literacy Content Standards,~~ and Driver Education Content Standards.
 - 1.1.1 The content standards documents may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education. For purposes of this regulation, "adopted" shall

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mean to accept a set of standards as the basis for curriculum and assessment alignment across the state according to a timeline established and disseminated by the Department of Education.

- 1.1.1.1 Effective with the 2010-2011 school year, Delaware Content Standards in English language arts and mathematics shall be comprised of the Common Core Standards developed in partnership with the National Governors Association and the Council of Chief State School Officers.
- 1.1.1.2 Effective with the 2013-2014 school year, the Next Generation Science Standards (NGSS) developed in partnership with ~~twenty-six (26)~~ 26 states, including Delaware, shall be adopted as the Delaware Content Standards in science. ~~For purposes of this subsection, "adopted" shall mean to accept a set of standards as the basis for curriculum and assessment alignment across the state according to a timeline established and disseminated by the Department of Education.~~
- 1.1.1.3 Effective with the 2018-19 school year, the Financial Literacy Content Standards shall be adopted. ~~For purposes of this subsection, "adopted" means to accept a set of standards as the basis for curriculum across the state according to a timeline established and disseminated by the Department of Education.~~
- 1.1.1.4 Effective with the 2018-19 school year, the Computer Science Content Standards shall be adopted. ~~For purposes of this subsection, "adopted" means to accept a set of standards as the basis for curriculum across the state according to a timeline established and disseminated by the Department of Education.~~
- 1.1.1.5 Effective with the 2023-2024 school year, the Media Literacy Content Standards shall be adopted.
- 1.1.1.6 Effective with the 2023-2024 school year, the Driver Education Content Standards shall be adopted.
- 1.1.2 Integration of the content standards shall be provided for within and across ~~the~~ academic and technical curricula.
- 1.1.3 Instructional materials and curricula content shall be kept current and consistent with provisions of 14 **DE Admin. Code** 502 Alignment of ~~Local~~ School District Curricula to the State Content Standards and 14 **DE Admin. Code** 503 Instructional Program Requirements.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(6) (14 **Del.C.** §122(b)(6))
14 **DE Admin. Code** 502

PUBLIC NOTICE

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

502 Alignment of Local School District Curricula to the State Content Standards

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 **Del.C.** §122(b)(6), the Secretary of Education intends to amend 14 **DE Admin. Code** 502 Alignment of Local School District Curricula to the State Content Standards. This regulation needs to be amended to align with modifications in State Content Standards and Department of Education reporting expectations of school districts and to clarify the title of the regulation.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover,

Delaware 19901 or through the Department's online submission form at the website: <https://education.delaware.gov/community/governance/regulations-code/post-a-comment/> by the close of business (4:30 p.m. EST) on or before December 1, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the regulation help improve student achievement as measured against state achievement standards? The amended regulation does not directly address student achievement as measured against state achievement standards.

2. Will the regulation help ensure that all students receive an equitable education? The amended regulation is intended to help ensure all students receive an equitable education by ensuring uniform curricula for all Delaware public schools.

3. Will the regulation help to ensure that all students' health and safety are adequately protected? The amended regulation does not directly impact student's health and safety.

4. Will the 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 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 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 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 decision-making authority and accountability for addressing the subject to be regulated does not change because of the amended regulation.

8. Will the 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, specifically the desire to monitor uniformity of curricula across districts.

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? School districts should not incur any 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/november2023/proposed/27 DE Reg 296RFA 11-01-23.pdf>

502 Alignment of Local School District Curricula to the State Content Standards

1.0 Purpose

The purpose of this regulation is to provide a process through which all Delaware school districts demonstrate the alignment of their local curricula with the State Content Standards in the content areas specified in the 14 DE Admin. Code 501 as required by 14 Del.C. §122(b)(6).

2.0 Definitions

~~“Adoption” means to accept a set of standards as the basis for curriculum and assessment alignment across the state according to a timeline established and disseminated by the Department of Education.~~

“Alignment” means meeting the expectations or outcomes outlined in each of the content area standards in 14 DE Admin. Code 501.

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"Curricula" means a coherent set of high-quality instructional materials, academic lessons, and content implemented for a particular subject and designed for teachers to facilitate learning that leads to students' mastery of standards.

"Department" means the Delaware Department of Education.

"Equitable access" means every student has the opportunity to engage with grade-level and course-level materials regardless of any subgroup designation.

"Evidence" means ~~certification~~ the documents maintained by the district that its curriculum is aligned to the state content standards, which is supported by documentation maintained by the district State Content Standards.

"Grade Level Expectations" means the documents created and officially released by the Delaware Department of Education which detail student learning objectives in each content area for kindergarten through grade twelve.

"Recommended Statewide Uniform Curricula" means one or more of the following documents: Academic Content Standards, Clarifications, and Grade Level Expectations posted to the Delaware Department of Education website. The Department may update the document(s) based on changes to the State Content Standards in 14 **DE Admin. Code** 501.

"High quality instructional materials" means comprehensive materials that are aligned with the adopted Delaware content standards. The materials are written with clear purpose, effective lesson structure, and pacing to provide equitable access to the grade-level or course-level content, when used in accordance with their intended design and align to the Department's definition of high quality.

"Implemented" means using aligned materials according to their intended design and with processes in place for continuous improvement, including initial and sustained professional learning to support the educators who are using or leading the use of the instructional materials.

"Supports" means professional learning and feedback required to successfully implement high quality instructional materials and curricula.

3.0 Alignment Requirement

All ~~Each~~ school districts district shall provide evidence to the Department that their ~~school-district~~ curricula are aligned with the State Content Standards. State Content Standards exist in English Language Arts, Mathematics, Social Studies, Science, World Languages, Visual and Performing Arts, Health, Physical Education, ~~Agriscience, Business Finance and Marketing Education, Technology Education, Skilled and Technical Sciences, and Family and Consumer Sciences~~ Computer Science, Career and Technical Education Programs of Study, Financial Literacy, Media Literacy, and Driver's Education. Content standards adopted by the Department in the future shall also be included under this ~~section~~ section.

4.0 Documentation of Curriculum Alignment

- 4.1 Alignment of school district curricula to the State Content Standards shall be certified annually by the district through an assurance in the consolidated grant application.
- 4.2 ~~Documentation of~~ Upon the request of the Department, documentation demonstrating alignment of school district curricula shall be given to the Department and include: curriculum maps or scope and sequence of instructional topics, unit plans, lesson plans, and assessments ~~and may be subject to Department review~~. Included in the documentation shall also be the names of the implemented instructional resources including high quality instructional materials when applicable, a description of the ~~method~~ alignment process, and level of involvement ~~in the alignment process~~ by building administrators, ~~teachers~~ teachers, and specialists.
- 4.3 Documentation for ~~Agriscience, Business Finance and Marketing Education, Technology Education, Skilled and Technical Sciences, and Family and Consumer Sciences~~ Career and Technical Education programs of study shall follow requirements in 14 **DE Admin. Code** 525 Requirements for Career and Technical Education Programs of Study.

5.0 Documentation for Specific Student Populations

~~As part of its documentation, the district shall explain modifications or enhancements to curricula for specific subgroups such as students with disabilities, gifted students, English learners or any other special population of students and certify alignment to the State Content Standards. Each school district shall also certify annually through an assurance in the consolidated grant application that alignment and equitable access to the grade-level or course-level State Content Standards is provided to subgroups such as students with disabilities, gifted students, and Multilingual Learners. Upon the request of the Department, the school district shall explain the supports provided in its curricula for these subgroups.~~

6.0 Subsequent Review of Alignment

~~Each district shall be required to certify curriculum maintain alignment if there are major any changes to a content area in the approved curricula in curriculum occur. The district shall only be required to submit documentation of curriculum alignment in the affected any content area upon the request by of the Department. Further, districts may be required to submit documentation of aligned curriculum in the assessed content area or areas which form the basis for any school rating.~~

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(a) and (b)(6) (14 **Del.C.** §122(a) & (b)(6))
14 **DE Admin. Code** 503

PUBLIC NOTICE**Educational Impact Analysis Pursuant to 14 Del.C. §122(d)****503 Instructional Program Requirements****A. TYPE OF REGULATORY ACTION REQUIRED**

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 **Del.C.** §122(a) and (b)(6), the Secretary of Education intends to amend 14 **DE Admin. Code** 503 Instructional Program Requirements. This regulation is being amended to update references to grade-level and course-level expectations to ensure alignment with current practice, to remove reference to "local" school districts, to add Health Education instructional program requirements, and to amend grammar and punctuation 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 the website: <https://education.delaware.gov/community/governance/regulations-code/post-a-comment/> by the close of business (4:30 p.m. EST) on or before December 1, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the regulation help improve student achievement as measured against state achievement standards? The amended regulation will help improve student achievement as measured against state achievement standards by ensuring instructional program requirements are met.

2. Will the 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 regulation help to ensure that all students' health and safety are adequately protected? The amended regulation does not directly impact student's health and safety.

4. Will the 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 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 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 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 decision-making authority and accountability for addressing the subject to be regulated does not change because of the amended regulation.

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

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

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

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

<https://regulations.delaware.gov/register/november2023/proposed/27 DE Reg 299RFA 11-01-23.pdf>

503 Instructional Program Requirements

1.0 English Language Arts

- 1.1 ~~Local school~~ School districts and charter schools shall provide instructional programs in English language arts for each grade K to 12.
- 1.2 All public school students in each grade K to 8 shall be enrolled in an English language arts program that demonstrates alignment to the Department of Education's adopted English Language Arts content standards and grade-level expectations.
- 1.3 All public school students in grades 9 to 12 shall complete the credits in English language arts necessary to graduate from high school through courses that demonstrate alignment to the Department of Education's adopted English Language Arts content standards and grade-level expectations.

2.0 Mathematics

- 2.1 ~~Local school~~ School districts and charter schools shall provide instructional programs in mathematics for each grade K to 12.
- 2.2 All public school students in each grade K to 8 shall be enrolled in a mathematics program that demonstrates alignment to the Department of Education's adopted mathematics content standards and grade-level expectations.
- 2.3 All public school students in grades 9 to 12 shall complete the credits in mathematics necessary to graduate from high school through courses that demonstrate alignment to the Department of Education's adopted mathematics content standards and grade-level course-level expectations.

3.0 Science

- 3.1 ~~Local school~~ School districts and charter schools shall provide instructional programs in science for each grade K to 12.

- 3.2 All public school students in each grade K to 8 shall be enrolled in a science program that demonstrates alignment to the Department of Education's adopted science content standards ~~and grade-level expectations~~.
- 3.3 All public school students in grades 9 to 12 shall complete the credits in science necessary to graduate from high school through courses that demonstrate alignment to the Department of Education's adopted science content standards ~~and course expectations~~.

4.0 Social Studies

- 4.1 ~~Local school~~ School districts and charter schools shall provide instructional programs in social studies for each grade K to 12.
- 4.2 All public school students in each grade K to 8 shall be enrolled in a social studies program that demonstrates alignment to the Department of Education's adopted social studies content standards ~~and grade-level expectations~~.
- 4.3 All public school students in grades 9 to 12 shall complete the credits in social studies necessary to graduate from high school through courses that demonstrate alignment to the Department of Education's adopted ~~Social Studies~~ social studies content standards ~~and grade-level expectations~~.

5.0 Physical Education

- 5.1 ~~Local school~~ School districts and charter schools shall provide instructional programs in physical education for each grade K to 12 ~~with the exception of the James H. Groves High School program. James H. Groves High School program is not required to provide instructional programs in physical education to its students and is exempt from the provisions of this subsection.~~
- 5.2 All public school students in each grade ~~4 to~~ K through 8 shall be enrolled in a comprehensive physical education program that demonstrates alignment to the Department of Education's adopted physical education content standards ~~and grade-level expectations~~.
- 5.3 All public school students in grades 9 to 12 shall complete the credit in physical education necessary to graduate from high school through courses that demonstrate alignment to the Department of Education's adopted physical education content standards ~~and grade-level expectations~~.
- ~~5.3.4~~ In addition to the ~~one~~ 1 credit required for high school graduation, only ~~one~~ 1 additional elective credit in physical education may be used to fulfill the graduation requirements.
- 5.4 The physical education requirements may be waived only for students who either have an excuse from a qualified licensed healthcare provider, which is defined as anyone lawfully authorized to diagnose and prescribe medical treatment or restriction, or objections based on religious beliefs. The ~~local~~ school district or charter school shall have the authority to grant such waivers. The ~~local~~ school district or charter school shall maintain records of the waivers granted and upon request, make them available for review consistent with Federal and state confidentiality laws.
- 5.5 ~~Local school~~ School districts and charter schools shall annually assess the physical fitness of each student in grades 4 and 7, and in grade 9 or 10. The physical fitness assessment tool used by the districts and charter schools shall be ~~one~~ 1 designated by the Delaware Department of Education.
- 5.5.1 ~~The local school~~ School districts and charter schools shall provide the results of the physical fitness assessment to the ~~parent(s), guardian(s), or Relative Caregiver~~ parents, guardians, or relative caregiver of each student. The school districts and charter schools shall also report this information to the Delaware Department of Education in a format determined by the Department.
- ~~5.5.1.4~~ 5.5.2 The Delaware Department of Education shall annually report the statewide grade level results of the physical fitness assessment to the public.

6.0 Visual and Performing Arts

- 6.1 ~~Local school~~ School districts and charter schools shall provide instructional programs in the visual and performing arts for each grade K to 12 ~~with the exception of the James H. Groves High School program. James H. Groves High School program is not required to provide instructional programs in visual and performing arts to its students and is exempt from the provisions of this subsection.~~

- 6.2 All public school students in each grade ~~4 to~~ K through 6 shall be enrolled in a both visual and performing arts ~~program~~ programs that ~~demonstrates~~ demonstrate alignment to the Department of Education's adopted visual and performing arts content standards and ~~grade-level~~ grade-level or course-level expectations.

7.0 Career and Technical Education

- 7.1 ~~Local school~~ School districts and charter schools, when consistent with the charter school's approved program, shall provide instructional ~~program(s)~~ programs in grades 7 and 8 that demonstrate alignment to career and technical education programs of study within the high school feeder ~~pattern(s)~~ patterns.
- 7.1.1 ~~No later than the 2017-2018 school year, career~~ Career and technical instructional ~~program(s)~~ programs in grades 7 and 8 shall be aligned to career and technical education programs of study at the high school level.
- 7.2 All public school students in grades 9 through 12 in ~~local~~ school districts, and charter schools when consistent with the charter school's approved program, shall be provided with the opportunity to enroll in and complete a career and technical education program of study.

8.0 World Language

- 8.1 ~~Local school~~ School districts and charter schools with any of grades 9 through 12 shall provide instructional programs in world languages for grades 9 through 12 that demonstrate alignment to the Department of Education's adopted world language content standards and ~~course~~ course-level expectations.
- 8.2 All public school students in grades 9 through 12 shall complete the credits in world languages required to graduate from high school through courses that ~~demonstrates~~ demonstrate alignment to the Department of Education's adopted world language content standards and ~~course~~ course-level expectations.

9.0 Health Education

- 9.1 School districts and charter schools shall provide instructional programs in health education for each grade K through 12 that meet the hours requirements outlined in 14 DE Admin. Code 551. James H. Groves High School program is not required to provide instructional programs in health education to its students and is exempt from the provisions of this subsection.
- 9.2 School districts and charter schools shall provide comprehensive health education programming for each grade K through 8 that demonstrates alignment to the Department of Education's adopted health education content standards.
- 9.3 All public school students in grades 9 to 12 shall complete the credits in health education necessary to graduate from high school through health education programming that demonstrates alignment to the Department of Education's adopted health education content standards.
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OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(a) and 604(b) (14 **Del.C.** §§122(a) and 604(b))

14 DE Admin. Code 737

PUBLIC NOTICE**Education Impact Analysis Pursuant to 14 Del.C. Section 122(d)****737 Tuition Billing for Special Schools and Programs****A. TYPE OF REGULATORY ACTION REQUIRED**

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 **Del.C.** §§122(a) and 604(b), the Secretary of Education intends to amend 14 **DE Admin. Code** 737 Tuition Billing for Special Schools and Programs. This amendment is needed to update language pertaining to tuition eligibility and processing of tuition billing and payments per 14 **Del. Code** Chapter 6.

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/governance/regulations-code/post-a-comment/> by the close of business (4:30 p.m. EST) on or before December 1, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? This regulation will provide additional funding to charter schools which could potentially improve achievement.
2. Will the amended regulation help ensure that all students receive an equitable education? This regulation will provide additional funding to charter schools which could potentially improve the equitable education of students.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This regulation will help to ensure that all students' health and safety are adequately protected.
4. Will the amended regulation help to ensure that all students' legal rights are respected? This regulation does not address the legal rights of students.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? This regulation will preserve the necessary authority and flexibility of 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? This regulation does not create unnecessary reporting requirements.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? This regulation does not address decision making authority and accountability for addressing the subject to be regulated be placed in the same entity.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? This regulation will not impede 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 this purpose.
10. What is the cost to the State and to the local school boards of compliance with the regulation? This

regulation does not result an additional cost to the State.

***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/november2023/proposed/27 DE Reg 303RFA 11-01-23.pdf>

737 Tuition Billing for Special Schools and Programs

4.0 Purpose

The purpose of this regulation is to outline the process for the tuition billing and payments between local school districts and tuition generating Special Schools and Special Programs.

2.0 Definitions

In this regulation, the following terms shall have the meanings indicated below:

~~“Direct Services” means the provision of instructional and educational services by the authorized Special School or Special Program that are readily identifiable to that program.~~

~~“Educational Related Expenses” means those expenses that are necessary to operate the Special School or Special Program to meet the criteria for which it was established and includes, but is not limited to, Direct Services and Indirect Costs as those terms are defined herein.~~

~~“Indirect Costs” means those costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective (e.g. award, project or activity) and cannot be readily and specifically identified with a particular final cost objective without efforts disproportionate to the results achieved. If an authorized Special School or Special Program elects to apply an indirect cost rate it shall not apply a rate that exceeds the Restricted Rate approved by the Department of Education in the fiscal year.~~

~~“Inter-district student” means a student who is attending a Special School or Special Program operated by any school district other than the school district in which the student’s parents, Relative Caregiver or legal guardian resides.~~

~~“Intra-district student” means a student who is attending a Special School or Special Program operated by the school district in which the student’s parents, Relative Caregiver or legal guardian resides.~~

~~“Local School District” means a reorganized school district or vocational technical school district established pursuant to Chapter 10 of Title 14 of the Delaware Code.~~

~~“Special Program” means a program established pursuant to 14 Del.C. §203 or that has been approved as a Special Program by the Department of Education with the consent of the State Board of Education.~~

~~“Special School” means a school established pursuant to 14 Del.C. §203 or that has been approved as a Special School by the Department of Education with the consent of the State Board of Education.~~

~~“Time and Effort Log” means the record of actual time worked in the Special School or Special Program by a local school district employee.~~

~~“Tuition Billing form” means the standardized template developed and approved by the Department of Education, and based on current state law, to determine the tuition costs allowable per pupil attending a Special School or Special Program.~~

3.0 Process for Determining Tuition Eligibility

3.1 A local school district may charge tuition for an intra- or inter- district student enrolled in a Special School or Special Program based on the following criteria:

3.1.1 The student shall be enrolled and attending the Special School or Special Program as of September 30th of the current school year; and

~~3.1.2 The charges attributed to the Special School or Special Program shall be limited to Educational Related Expenses or those expenses that have been approved by the Department of Education.~~

~~3.2 A local school district operating a tuition-eligible Special School or Special Program may not reallocate state units earned for the Special School or Special Program, if such reallocation requires an increase in the tuition tax rate or tuition billing amount. If a reallocation of state units earned will not require such an increase, districts may reallocate positions as necessary to ensure the most efficient delivery of services, except for those instances currently prohibited by state law, including but is not limited to, 14 Del.C., §1703(o).~~

4.0 Process for Tuition Billing

~~4.1 A local school district shall calculate the tuition charges by using the most current Tuition Billing forms and instructions developed and approved by the Department of Education.~~

~~4.2 The local school district shall submit tuition bills to the Department of Education for certification no later than November 15th of each year.~~

~~4.3 The Department of Education shall certify that the billing is true and correct no later than twenty (20) working days after receipt. No bill for tuition charges shall be paid until it has been certified by the Secretary of Education.~~

~~4.4 Upon certification, the local school district shall provide a copy of the certified tuition bill to the district(s) whose students are being served by the Special School or Special Program.~~

~~4.4.1 A district may bill for its students being served by a Special School or Special Program that it operates. All stipulations within this regulation shall be followed for intra-district students.~~

~~4.5 Any local school district that has received a tuition bill from another local school district shall pay the tuition charges no later than January 1st of the current school year.~~

~~4.6 All billing disputes shall be documented through written explanation and provided to the finance officer of the local school district operating the Special School or Special Program.~~

~~4.6.1 Only charges in dispute may be held; the undisputed remainder of the tuition bill shall be paid as described in 4.5.~~

~~4.6.2 Billing disputes shall be resolved and charges paid before the end of the current school year.~~

~~4.7 If any tuition bill is adjusted within the current school year after already being certified by the Department, and if the adjustments alter the Special School or Special Program's cost, individual enrollment, total enrollment or tuition rate per pupil from what was already certified, the district shall resubmit the tuition bill to the Department for approval and include reasons for change(s).~~

~~4.8 Tuition billings for a Special School or Special Program serving out-of-state students shall be submitted to the Department of Education on a form entitled "Establishment of Tuition Costs for Out-of-State/Country Students with Disabilities." The Department of Education shall certify the tuition bill in accordance with 14 Del.C., Chapter 6 and other sections of this regulation.~~

5.0 Tuition Billing Form and Reconciliation

~~5.1 For all estimated and actual tuition rate data, the sum of the sending district enrollments shall be equal to the exact number of students in the total program enrollment.~~

~~5.2 Tuition bills shall be prepared and submitted in accordance with this regulation for intra-district students served by an approved Special School or Special Program.~~

~~5.3 Tuition billings that yield an increase or decrease of 10% or more per pupil over the prior year estimate shall include a detailed explanation for the rate change.~~

6.0 Waivers

~~Tuition charges may be waived in accordance with 14 Del.C. Chapter 6.~~

7.0 Audit and Record Retention Requirements

~~The local school district shall follow the requirements for audit and record retention as prescribed by the Office of the Auditor of Accounts and Department of State—Delaware Public Archives.~~

1.0 Purpose

The purpose of this regulation is to outline tuition eligibility and the process for tuition billing and payments, per 14 Del.C. Chapter 6.

2.0 Definitions

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

"Department" means the Delaware Department of Education.

"Inter-district student" means a tuition-eligible student who is receiving services in a school district or charter school other than the district of residence.

"Receiving school district" means any reorganized school district which enrolls in its schools any pupil who is not a resident.

"Sending school district" means any reorganized school district which sends a resident student to a receiving school district or charter school.

"Special program" means a program established pursuant to 14 Del.C. §203.

3.0 Process for Determining Tuition Eligibility (Special Programs)

3.1 A school district may charge tuition for intra-district (meaning students receiving services in the school district in their district of residence) and inter-district students enrolled in a special program established pursuant to 14 Del.C. §203.

3.2 The student shall be enrolled and attending the special program as of September 30th of the current school year. School districts may reach agreements around partial year billing for inter-district students attending special programs for less than the full year.

4.0 Process for Determining Tuition Eligibility (PreK, Intensive, Complex)

4.1 Pursuant to 14 Del.C. §1703, a school district may bill tuition for local share and excess costs of students classified as preK, intensive and complex.

4.2 Pursuant to 14 Del.C. §509(f), a charter school may bill tuition for excess local costs of students classified as intensive and complex.

4.3 The student shall be enrolled and attending the school district or charter school as of September 30th of the current school year.

5.0 Tuition Calculations and Expenditures

5.1 The charges attributed to tuition billing shall be limited to educational-related expenses (meaning those expenses that are necessary to provide a free and appropriate education to tuition-eligible students) and eligible indirect costs (meaning those costs that have been incurred for common or joint purposes) that are necessary for the education of tuition-eligible students. An indirect cost rate shall not exceed the restricted rate approved by the Department in the fiscal year.

5.2. Any tuition funding collected by any receiving school district or charter school must be expended on costs identified as the basis for the charge.

6.0 Process for Tuition Billing

6.1 A school district or charter school shall calculate the tuition charges by using the most current tuition billing forms and instructions for any tuition expenditures for all tuition-eligible students, excluding private placements approved through the Interagency Collaborative Team (ICT). A tuition billing form means the standardized templates developed and approved by the Department to determine the tuition costs allowable per tuition-eligible student.

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- 6.2 A school district or charter school shall submit tuition bills to the Department for certification no later than November 15th of each year. This timeline is critical to ensuring timely payment of obligations to support students by January 1st in accordance with 14 Del.C. §602(d), and therefore must be met by all school districts and charter schools eligible to submit tuition bills. Failure to meet this deadline may result in the Department's inability to certify tuition bills.
- 6.3 Tuition bills must include documentary evidence to support and justify each entry on the tuition bill. Documents to be submitted may include enrollment reports, payroll reports, financial statements, etc., and must allow the Department to validate each tuition bill submitted.
- 6.3.1 Tuition billings that yield an increase or decrease of 10% or more per student over the prior year estimate shall include a detailed explanation for the change.
- 6.3.2 If the Department is unable to certify any tuition bill as submitted, additional documentary evidence may be requested.
- 6.4 The Department shall certify that the billing is true and correct no later than 20 working days after receipt of all documentary evidence including any additional information requested as allowed for in subsection 6.3.2. No bill for tuition charges shall be paid until it has been certified by the Secretary of Education, or designee.
- 6.5 Upon certification, the receiving school district or charter school shall provide a copy of the certified tuition bill to the sending school district whose students are being served by the receiving school district or charter school.
- 6.6 Any billing disputes on behalf of the sending school district shall be documented through written explanation and provided to the Chief Financial Officer (or equivalent) of the receiving school district or charter school and the Department no later than December 31st.
- 6.6.1 Only charges in dispute may be held; the undisputed remainder of the tuition bill shall be paid.
- 6.6.2 Billing disputes shall be resolved by the parties and charges paid before the end of the current school year. If disputes have not been resolved by May 1st of each year, both parties shall notify the Department of the circumstances and the Department shall provide a resolution no later than June 1st of the same year. Upon review, the Department shall provide a written decision to both parties, and that decision will serve as the basis for final certification of the tuition bill for immediate payment.
- 6.7 In accordance with 14 Del.C. §602(d), any sending school district that has received a tuition bill from a receiving school district or charter school shall pay the tuition charges no later than January 1st of the current school year. In the event payment is delayed beyond the statutorily required date, the Department may process tuition payments from the sending school district's local tuition appropriation.
- 6.8 If any tuition bill is adjusted within the current school year after being certified by the Department, and if the adjustments alter the cost, individual enrollment, total enrollment or tuition rate per student from what was already certified, the receiving school district or charter school shall send an amended tuition bill to the Department for approval and include justification.
- 6.9 Tuition billings for a special program serving out-of-state students shall be submitted to the Department on a form entitled "Establishment of Tuition Costs for Out-of-State/Country Students with Disabilities." The Department shall certify the tuition bill in accordance with 14 Del.C. Ch. 6 and other sections of this regulation.
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PROPOSED REGULATIONS

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(a) (14 Del.C. §122(a))
14 DE Admin. Code 1001

PUBLIC NOTICE

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

1001 Participation in Extra Curricular Activities

A. Type of Regulatory Action Required

Repeal of Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

The Secretary of Education intends to repeal 14 DE Admin. Code 1001 Participation in Extra Curricular Activities. This regulation is being repealed because it is no longer necessary. Academic eligibility criteria for middle and high school students' participation in extracurricular activities is established by the Delaware Interscholastic Athletic Association (DIAA) Board and Delaware public schools, including school districts and charter schools, are required to comply with such requirements pursuant to 14 Del.C. §304(3).

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 be repealed, 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/governance/regulations-code/post-a-comment/> by the close of business (4:30 p.m. EST) on or before December 1, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

***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/november2023/proposed/27 DE Reg 308RFA 11-01-23.pdf>

1001 Participation in Extra Curricular Activities

4.0 Academic Eligibility Criteria

~~Local school districts and charter schools shall establish their own academic eligibility criteria for participation in all extra-curricular activities except for interscholastic athletics. The academic eligibility criteria for interscholastic athletics is established in 14 DE Admin. Code 1009.2.6 DIAA Senior High School Interscholastic Athletics, and in 14 DE Admin. Code 1008.2.6 DIAA Junior High and Middle School Interscholastic Athletics.~~

~~Comment: In establishing and implementing academic eligibility criteria applicable to students with disabilities, districts are reminded that some flexibility may be contemplated by Federal guidelines. See 34 CFR Sec. 104.4.~~

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 1034

PUBLIC NOTICE

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

1034 DIAA Health and Safety Requirements

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§122(b)(15) and 303, the Delaware Interscholastic Athletic Association Board of Directors ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), proposes amendments to 14 DE Admin. Code 1034 DIAA Health and Safety Requirements. The regulation provides health and safety requirements that are designed to protect the physical well-being of student athletes and to promote healthy, adolescent lifestyles in accordance with 14 Del.C. §301. The proposed amendments include adding and striking terms in Section 2.0, revising Section 4.0, and embedding the definition of "Qualified Healthcare Professional" within Section 7.0. The proposed amendments are consistent with HS 1 for HB 193 of the 152nd General Assembly, which was signed into law on September 21, 2023, and were recommended to the Board by the Board's Sports Medicine Advisory Committee.

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 December 4, 2023. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation concerns health and safety requirements that are designed to protect the physical well-being of student athletes and to promote healthy, adolescent lifestyles and is not designed to help improve student achievement as measured against state achievement standards. The regulation is being amended as a result of HS 1 for HB 193 of the 152nd General Assembly. The proposed amendments are consistent with the bill that was signed into law on September 21, 2023.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation concerns health and safety requirements that are designed to protect the physical well-being of student athletes and to promote healthy, adolescent lifestyles and is not designed to help ensure that all students receive an equitable education. The regulation is being amended as a result of HS 1 for HB 193 of the 152nd General Assembly. The proposed amendments are consistent with the bill that was signed into law on September 21, 2023.

3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation concerns health and safety requirements that are designed to protect the physical well-being of student athletes and to promote healthy, adolescent lifestyles, so the regulation will help to ensure that all students' health and safety are adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation concerns health and safety requirements that are designed to protect the physical well-being of student athletes and to promote healthy, adolescent lifestyles and is not designed to help ensure all students' legal rights are respected. The regulation is being amended as a result of HS 1 for HB 193 of the 152nd General Assembly. The proposed amendments are consistent with the bill that was signed into law on September 21, 2023.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local

board and school level? The amended regulation does not change the authority or flexibility of decision makers at the local board and school level. By statute (14 **Del.C.** §303), DIAA develops rules and regulations relating to middle and secondary school interscholastic athletics for schools in Delaware, including the regulation of athletic programs of all public schools and such nonpublic schools that elect to become full or associate DIAA Member Schools. The Board enforces the regulations (14 **Del.C.** §304).

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

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

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies? The amended regulation concerns health and safety requirements that are designed to protect the physical well-being of student athletes and to promote healthy, adolescent lifestyles. The regulation is being amended as a result of HS 1 for HB 193 of the 152nd General Assembly. The proposed amendments are consistent with the bill that was signed into law on September 21, 2023.

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

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

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

<https://regulations.delaware.gov/register/november2023/proposed/27 DE Reg 309RFA 11-01-23.pdf>

1034 DIAA Health and Safety Requirements

1.0 Content

In accordance with 14 **Del.C.** §§301 and 303, this regulation provides health and safety requirements that are designed to protect the physical well-being of student athletes and to promote healthy, adolescent lifestyles, including physical examinations for student athletes at the middle and high school levels, the concussion protocol for all student athletes pursuant to 14 **Del.C.** §303(d), wrestling weight control programs, requiring medical personnel in attendance at football games, and requiring certain certifications for individuals who oversee certain interscholastic athletic activities.

2.0 Definitions

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

"Administrative Head" means the chief or head individual in charge of a DIAA member school, traditionally referred to or generally known as the principal or headmaster.

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

"Conditioning Program" means a voluntary conditioning program that is available to all interested, accepted and registered students at a Member School, is not restricted to members of a particular team, and in which sport-specific equipment and organized drills in the skills and techniques of a particular sport are prohibited.

"Executive Director" means the Executive Director of the DIAA.

"Guardian" or **"Legal Guardian"** means an individual who legally has responsibility for the care and management of the student during the student's minority. The relationship is a legal one and must be created by a court order signed by a judge, commissioner, or master of a court of competent jurisdiction.

"Informal Instruction" means drills to teach sport-specific skills with only demonstration-level contact permitted. Informal instruction does not involve team competitions or contests. Intentional or direct contact is not permitted.

"Member School" means a full or associate member school of the DIAA.

"Practice" means working on skills for a particular sport within a single team at a Member School as guided by coaches and includes team workouts and inner-team scrimmages.

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

"Qualified Healthcare Provider" means a Doctor of Medicine (MD), a Doctor of Osteopathic Medicine (DO), a Physician Assistant, an Advanced Practice Registered Nurse, athletic trainer, or sports physical therapist who is trained and experienced in the evaluation, management, and care of concussions or a licensed psychologist with training in neuropsychology and in the evaluation and management of concussions. Qualified Healthcare Providers shall be licensed by their state and in good standing with the State of Delaware.

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

"Relative Caregiver" means an adult who, by blood, marriage or adoption, is the child's great grandparent, grandparent, step grandparent, great aunt, aunt, step aunt, great uncle, uncle, step uncle, step parent, brother, sister, step brother, step sister, half brother, half sister, niece, nephew, first cousin or first cousin once removed but who does not have legal custody or legal guardianship of the student.

"Scrimmage" means an informal competition between schools in which a final score is not kept, the time periods are permitted to be modified, the results of the competition are not reported to the media, the coaches are permitted to interrupt the play to provide instruction, and the competition is strictly for practice purposes.

"Summer" means the period of time from the last scheduled date for DIAA spring sport championships to August 1st.

"Workout" means generic conditioning activities engaged in by individual student athletes, including aerobic, agility, balance, flexibility, and resistance training.

3.0 Physical Examinations

3.1 A student athlete shall not be eligible to try out, Practice, Scrimmage, or compete in an interscholastic contest unless a licensed physician (MD or DO), a licensed nurse practitioner, or a licensed physician's assistant verifies in writing on or after April 1 and before beginning such athletic activity for the current school year that the student athlete has been adequately examined within the last 12 months and is cleared medically to participate. However, should any conditions found in subsection 3.3 of this regulation occur since the last examination, a reexamination is required before the student athlete can be medically cleared. A student athlete who participates in a contest without a preparticipation physical evaluation shall be considered an ineligible athlete and the athlete and the student athlete's Member School shall be subject to penalties.

3.1.1 A student shall not participate in any Conditioning Programs during the Summer or school year without a current preparticipation physical evaluation.

3.1.2 Student athletes without a current preparticipation physical evaluation are required to submit an up-to-date physical and medical history form in order to participate in interscholastic athletic activities.

3.2 A DIAA approved form certifying the examination as well as the parent's, Legal Guardian's, or Relative Caregiver's consent, shall be on file with the Administrative Head prior to the student athlete participating in a Practice, Scrimmage, or game.

3.3 For any subsequent sports season in the school year, a limited reexamination shall be performed if any of the following circumstances exist: the student athlete has been treated for an injury during the preceding sports season, the student athlete has been out of school during the preceding sports

season with an illness other than the usual minor upper respiratory or gastrointestinal upset, an operation has been performed on the student athlete during the preceding sports season, or the student athlete has a remedial defect.

- 3.4 The medical history of the student athlete shall be available at the time of each examination.
- 3.5 A student athlete is temporarily ineligible to participate if the student athlete who is otherwise properly certified to participate in interscholastic athletics is physically unable to participate due to illness or injury for 5 consecutive days on which a Practice, Scrimmage or contest is held. Prior to resuming participation, the student athlete shall present to the Administrative Head or the Administrative Head's designee, a statement from a licensed physician (MD or DO), a nurse practitioner, or a physician's assistant that the student athlete is again physically able to participate. If a student athlete is physically unable to participate due to a head injury, the concussion protocol in Section 4.0 shall be followed.

4.0 Concussion Protocol

- 4.1 If a student athlete is suspected of sustaining a concussion or exhibits signs or symptoms of a concussion, the student athlete shall be removed from the Practice or game immediately.
- 4.2 A Qualified Healthcare ~~Professional~~ Provider shall determine whether an apparent concussion has occurred. The Qualified Healthcare ~~Professional~~ Provider shall be approved by the host school to provide on-site evaluations of student athletes who are suspected of sustaining a concussion or exhibit signs or symptoms of a concussion. If a Qualified Healthcare ~~Professional~~ Provider is not present or is not appointed or approved by the host school, the injury shall be treated as a concussion and the student athlete shall not return to play until the student athlete is evaluated by a Qualified Healthcare ~~Professional~~ Provider in an appropriate medical setting.
- 4.3 If a Qualified Healthcare ~~Professional~~ Provider determines that the student athlete did not sustain a concussion, the student athlete may return to play.
- 4.4 If a Qualified Healthcare ~~Professional~~ Provider determines that the student athlete sustained a concussion or is unable to rule out a concussion, the ~~student athlete shall be referred for further evaluation by a Qualified Physician.~~ The student athlete shall be ineligible to participate in Practices, Scrimmages, or contests until the student athlete receives written clearance from a Qualified ~~Physician~~ Healthcare Provider on the DIAA Acute Concussion Evaluation (ACE) and Return to Play Form.
- 4.4.1 Clearance to enter Stage 5 of the return to play protocol shall be made by a Qualified Healthcare Provider who is not employed by the member school.
- 4.4.2 For the purpose of this subsection, a licensed athletic trainer or school nurse shall provide final clearance after completion of the return to play protocol.
- 4.5 Failure to comply with the requirements of this regulation shall result in the student athlete being considered ineligible. The student athlete and Member School shall be penalized by the Board for violations of the concussion protocol.
- 4.6 If an official observes an apparent injury, the official shall report the injury to the student athlete's coach.
- 4.7 The Sports Medicine Advisory Committee may recommend amendments to the Concussion Protocol to the Rules and Regulations Committee and the Board.

5.0 High School Wrestling Weight Control Program

- 5.1 For health and safety reasons, the DIAA Wrestling Committee has recommended the Wrestling Weight Control Program which requires each student athlete to establish their minimum weight class via body composition testing. The Wrestling Weight Control Program, as recommended by the DIAA Wrestling Committee, is adopted by the Board. The DIAA Wrestling Committee may recommend amendments to the Board. The program requires hydration testing with a specific gravity not greater than 1.025, which immediately precedes the body composition assessment. A minimum weight class is determined by a body fat assessment. Male student athletes shall not compete at a weight class lower than 7% body fat and female student athletes shall not compete at a weight class lower than 12% body fat. Any student athlete's assessment that is below 7% for males and 12% for females shall require a medical release

signed by a licensed physician (MD or DO). The release shall not allow a student athlete to participate at a weight class below that for which the initial assessment allows. The program restricts student athletes to an average weight loss of 1.5% a week, with descent, until the student athlete has reached the minimum weight determined by the initial body composition testing. A 2-pound growth allowance shall be permitted on or after December 26th each year for student athletes who have certified at their approved minimum weight class. Student athletes shall not receive the 2-pound growth allowance until they have certified at their minimum weight.

- 5.2 Student athletes shall certify at their minimum weight class on or before the last competition date for wrestling in order to be eligible to participate at their minimum weight class in the dual meet and state tournaments series, including qualifying tournaments.
- 5.3 The Wrestling Weight Control Program includes an online roster management program utilizing the National Wrestling Coaches Association weight management program. The program creates an "alpha master roster" which must be presented to the opposing coach or tournament director prior to weighing in. Each Member School shall have access to the alpha master roster of all Member Schools.

6.0 Middle School Wrestling Weight Control Program

- 6.1 Each year, 4 weeks from the first day a student athlete appears at wrestling Practice, the student athlete shall establish the student athlete's minimum weight class at a weigh in witnessed by and attested to in writing by the athletic director or a designated staff member (excluding coaches) of the school the student athlete attends. A student athlete may recertify at a lower weight during the 4 weeks from the first day they appear at Practice. However, once certified at a weight, a student athlete shall not weigh in more than 1 class above the weight of the certification without automatically recertifying at a higher weight. Once recertified to a higher weight class the student athlete can no longer recertify lower. After 4 weeks from the first Practice day, a student athlete shall not compete in a weight class below the student athlete's duly established weight class.
- 6.2 By the end of 4 weeks of Practice, a certified team roster listing the established minimum weight class of each student athlete shall be sent to the Executive Director. Further, duly attested notices of additions to the certified roster shall be sent to the Executive Director without delay.
- 6.3 Weight classifications and length of match shall be designated by the Board.
- 6.4 A team that begins its season in October shall receive a 1-pound growth allowance in November and an additional 1-pound growth allowance in December. A team that begins its season in November shall receive a 1-pound growth allowance in December, an additional 1-pound growth allowance in January, and a third 1-pound growth allowance in February.
- 6.5 Member Schools that desire to conduct their wrestling program at a time other than the specified season must request permission from the Board.
- 6.6 Except as modified by this section, the current edition of the NFHS Wrestling Rules Book shall apply.

7.0 Required Medical Personnel in Attendance at All Football Games

Provision shall be made for a ~~Qualified Healthcare Professional~~ Doctor of Medicine (MD), a Doctor of Osteopathic Medicine (DO), school nurse, nurse practitioner, physician assistant, or athletic trainer to be present at all interscholastic football games in which a Member School participates. The ~~Qualified Healthcare Professional~~ Doctor of Medicine (MD), a Doctor of Osteopathic Medicine (DO), school nurse, nurse practitioner, physician assistant, or athletic trainer shall be licensed by their state and in good standing with the State of Delaware and must be approved or appointed by the Administrative Head or the Administrative Head's designee. The host school shall provide this service. Failure by the host school to provide this service shall result in a \$250.00 fine.

8.0 Required Certifications for Individuals Who Oversee Workouts, Conditioning Programs, Open Gym Programs, and Informal Instruction

All certified, emergency, and volunteer coaches, including individuals overseeing Workouts, Conditioning Programs, open gym programs, and Informal Instruction, shall maintain current certification in CPR, AED, and first aid and complete the NFHS' "Concussion in Sports" course online through [NFHSlern.com](https://www.nfhslearn.com) every 2 years.

PROPOSED REGULATIONS

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 9706(g)(2) (16 Del.C. §9706(g)(2))
16 DE Admin. Code 4305

PUBLIC NOTICE

4305 Trauma System Regulation

Office of Emergency Medical Services & Preparedness Section, Division of Public Health, Department of Health and Social Services (Department), has proposed amendments to the State of Delaware Trauma System Regulations. The proposed revisions to the Trauma System regulations bring the Delaware Statewide Trauma System and its components into alignment with the current revision of the American College of Surgeons' Committee on Trauma's *Resources for Optimal Care of the Injured Patient 2022 Standards*. The revisions were developed and recommended by the stakeholders who serve on the state Trauma System Committee and primarily are related to documentation of the requirements for Trauma System Participating Hospitals, modification of the Trauma Registry inclusion criteria to be in alignment with the National Trauma Data Bank criteria, updating of the Trauma Center Designation Process, and relocation of the Prehospital Trauma Triage Scheme to the Advanced and Basic Life Support Standing Orders. Older, original, and outdated sections were updated with current practices.

On November 1, 2023, pursuant to 16 Del.C. §9706 (g)(2), the Department plans to publish proposed amendments to the State of Delaware Trauma System Regulations and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the November 1, 2023 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Emergency Medical Services at (302) 223-2700.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them by December 1, 2023, at:

Division of Public Health
417 Federal Street
Dover, DE 19901
Email: DHSS_DPH_regulations@delaware.gov
Phone: (302) 744-44951

***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/november2023/proposed/27 DE Reg 314RFA 11-01-23.pdf>

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

<https://regulations.delaware.gov/register/november2023/proposed/27 DE Reg 314 11-01-23.htm>

DIVISION OF PUBLIC HEALTH

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

PUBLIC NOTICE

4459 Lead-Based Paint Hazards

Pursuant to 16 Del.C. §122(3)t., the Health Systems Protection section within the Division of Public Health, Department of Health and Social Services, is proposing revisions to the Lead Based Paints Hazards. The revisions include:

- Addition of electronic payments for Accreditation of Training Programs;
- Removal of the requirement for the Secretary to maintain a list of parties whose accreditation has changed status; and
- Addition of the ability for an Abatement Worker to apply for a 1 year provisional certification.

Copies of the proposed regulations are available for review in the November 1, 2023, edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744- 4700.

Any person who wishes to make written suggestions, testimony, briefs, or other written materials concerning the proposed regulations must submit them by Friday, December 1, 2023, at:

Division of Public Health
417 Federal Street
Dover, DE 19901
Email: DHSS_DPH_regulations@delaware.gov
Phone: (302) 744-4700

***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/november2023/proposed/27 DE Reg 315RFA 11-01-23.pdf](https://regulations.delaware.gov/register/november2023/proposed/27%20DE%20Reg%20315RFA%2011-01-23.pdf)

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

[https://regulations.delaware.gov/register/november2023/proposed/27 DE Reg 315 11-01-23.htm](https://regulations.delaware.gov/register/november2023/proposed/27%20DE%20Reg%20315%2011-01-23.htm)

DIVISION OF PUBLIC HEALTH

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

PUBLIC NOTICE

4459A Regulations Governing the Childhood Lead Poisoning Prevention Act

Pursuant to 16 Del.C. §122(3)t, the Health Systems Protection section within the Division of Public Health, Department of Health and Social Services, is proposing revisions to the Regulations Governing the Childhood Lead Poisoning Prevention. The revisions include:

- Addition of the Division's investigation and reporting obligations; and
- Technical and renumbering revisions.

Copies of the proposed regulations are available for review in the November 1, 2023, edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4700.

Any person who wishes to make written suggestions, testimony, briefs, or other written materials concerning the proposed regulations must submit them by Friday, December 1, 2023, at:

Division of Public Health
417 Federal Street
Dover, DE 19901
Email: DHSS_DPH_regulations@delaware.gov
Phone: (302) 744-4700

***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/november2023/proposed/27 DE Reg 315aRFA 11-01-23.pdf>

4459A Regulations Governing the Childhood Lead Poisoning Prevention Act
(Break in Continuity of Sections)

11.0 Division's Investigation and Reporting Obligations

- 11.1 Within 60 days of receiving notification that a child has an elevated blood lead level, the Division shall determine: the child's residential address from birth through testing, the site of the child's lead exposure, and the property owner of the site at which the child became exposed to lead. Any documents that the Division creates or holds that contain confidential health information shall be conspicuously marked and will not become public documents.
- 11.2 Within 10 days of identifying the site of lead exposure, the Division shall notify the Delaware State Lead-Based Paint Program of the location and contact information of the property owner. These communications will be public records subject to disclosure under the Freedom of Information Act, Delaware Code Title 29, Chapter 100.

~~44.0~~ 12.0 Severability

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

27 DE Reg. 109 (08/01/23)

~~42.0~~ 13.0 Penalty

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

***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/november2023/proposed/27 DE Reg 315a 11-01-23.htm>

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Sections 3004F(d) and 3008F(a) (16 **Del.C.** §§3004F(d) & 3008F(a))
16 **DE Admin. Code** 4501

PUBLIC NOTICE

4501 Regulations for Animals Held in Shelter

Pursuant to 16 **Del.C.** §3004F(d) and §3008F(a), Office of Animal Welfare, Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Animals Held in Shelter. On November 1, 2023, the Division of Public Health plans to publish as "proposed" revisions to the Animals Held in Shelter regulations. The revisions include updates to reflect current best practices in animal sheltering, edits required to mirror recent changes in Delaware Code, and technical corrections.

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

Any person who wishes to make written suggestions, testimony, briefs, or other written materials concerning the proposed regulations must submit them by December 1, 2023, at:

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

***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/november2023/proposed/27 DE Reg 317RFA 11-01-23.pdf](https://regulations.delaware.gov/register/november2023/proposed/27%20DE%20Reg%20317RFA%2011-01-23.pdf)

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

[https://regulations.delaware.gov/register/november2023/proposed/27 DE Reg 317 11-01-23.htm](https://regulations.delaware.gov/register/november2023/proposed/27%20DE%20Reg%20317%2011-01-23.htm)

DEPARTMENT OF LABOR DIVISION OF INDUSTRIAL AFFAIRS

Statutory Authority: 19 Delaware Code, Sections 105 and 2322B(19 **Del.C.** §§105 & 2322B)
19 **DE Admin. Code** 1341

PUBLIC NOTICE

1341 Workers' Compensation Regulations

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 19 **Del.C.** §§105 and 2322B, the Delaware Department of Labor, Office of Workers' Compensation ("Office"), proposes to modify 19 **DE Admin. Code** 1341 regarding the health care payment system, specifically the Workers' Compensation Regulations.

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:

Susan Justison
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 susan.justison@Delaware.gov. Any written submission in response to this notice and relevant to the proposed rules must be received by the above contact at the Delaware Department of Labor no later than 4 p.m. EST, December 1, 2023.

The action concerning determination of whether to adopt the proposed rule and guidelines 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.

19 **Del.C.** §2322B enables the Delaware Department of Labor to adopt and promulgate rules and regulations for adjustments to the health care payment system following adoption and recommendation by the Workers' Compensation Oversight Panel.

***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/november2023/proposed/27 DE Reg 317aRFA 11-01-23.pdf>

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

<https://regulations.delaware.gov/register/november2023/proposed/27 DE Reg 317a 11-01-23.htm>

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

REGISTER NOTICE

SAN # 2023-08

DOCKET # 2023-R-F-0013

3900 Wildlife

1. TITLE OF THE REGULATIONS:

Amend 7 **DE Admin. Code** 3900 Wildlife

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

The Division of Fish and Wildlife's Wildlife Section is proposing to make amendments to existing regulations within 7 **DE Admin. Code** 3900 Wildlife. Specifically, changes are proposed within 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, 21.0 Guide License, 22.0 Hunter and Trapper License Exempt Number, and 23.0 Non-native/Invasive Wildlife A new set of regulations is being proposed with the creation of, 24.0 Wildlife Management Zone Boundaries.

While expansive, most of the changes being proposed will provide additional hunting and trapping opportunities such as establishing new seasons, expanding current seasons, providing additional methods of take and developing new and improved reporting criteria for harvested game. However, some of the proposed changes are needed to minimize negative impacts to some species and to minimize damage to infrastructure and habitats on lands and waters administered by the Division, while others are minor administrative updates such as correcting grammar and misspellings.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

N/A

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

Statutory basis for these changes is authorized under 7 **Del.C.** §102, §103, §758, and §801

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

N/A

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 7 **DE Admin. Code** 3900 will be open November 1, 2023. The virtual public hearing will be held on Wednesday, December 13, 2023, beginning at 6:00 p.m. The web link to the virtual hearing can be accessed through the DNREC Public Hearings site at <https://dnrec.alpha.delaware.gov/public-hearings/>. If prompted, use Meeting ID: 981 1400 7545 Passcode: 955331. To access the audio-only portion of the virtual hearing, dial (305) 224- 1968 and enter the Meeting ID and Passcode noted above. Closed captioning is available in over 20 languages, including English and Spanish, to attendees via the Zoom platform utilized for all DNREC Public Hearings.

Those wishing to offer verbal comments during DNREC virtual public hearings must pre-register no later than noon on the date of the virtual hearing. The designated page for this Pre-Registration process can be found here: <https://dnrec.alpha.delaware.gov/public-hearings/comments/registration/>

The proposed amendments may be inspected online starting November 1, 2023 at https://regulations.delaware.gov/services/current_issue.shtml, or in-person, by appointment only, by contacting Joe Rogerson by phone at 302-735-3600 or by email at Joseph.Rogerson@delaware.gov.

Public comments will be received until close of business Friday, January 12, 2024. Comments will be accepted in written form via email to DNRECHearingComments@delaware.gov, or by using the online form at <https://de.gov/dnrecomments>, or by U.S. mail to the following address:

Lisa Vest, Hearing Officer
DNREC - Office of the Secretary
89 Kings Highway, Dover, DE 19901

7. PREPARED BY:

Joe Rogerson
Joseph.Rogerson@delaware.gov
(302) 735-3600

***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/november2023/proposed/27 DE Reg 318RFA 11-01-23.pdf>

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

<https://regulations.delaware.gov/register/november2023/proposed/27 DE Reg 318 11-01-23.htm>

DEPARTMENT OF SAFETY AND HOMELAND SECURITY
STATE BUREAU OF IDENTIFICATION

Statutory Authority: 24 Delaware Code, Section 1305(b)(1) (24 Del.C. §1305(b)(1))
24 DE Admin. Code 1300

PUBLIC NOTICE**1300 Board of Examiners of Private Investigators & Private Security Agencies**

Purpose: In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 24 of the Delaware Code, Chapter 13, Section 1305(b)(1), the Board of Examiners of Private Investigators and Private Security Agencies proposes to adopt regulations to allow the use of canines by licensed security guards for the detection of firearms and controlled substances.

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

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

<https://regulations.delaware.gov/register/november2023/proposed/27 DE Reg 320RFA 11-01-23.pdf>

1300 Board of Examiners of Private Investigators & Private Security Agencies**1.0 Firearm's Firearms Policy**

- 1.1 Section 1.0 shall apply only to individuals licensed under 24 Del.C. Ch. 13, while such individuals are acting in the performance of their duties as an armed security guard or armed armored car guard.
- 1.2 No individual licensed under 24 Del.C. Ch. 13 shall carry a firearm unless that individual has first passed an approved firearms course of instruction and an initial qualification administered by an approved firearms instructor. The course of instruction shall include a minimum 40 hours of training. The Professional Licensing Section may waive the 40 hour training requirement depending upon the applicant's professional credentials, training ~~and/or~~ or work experience (i.e. prior law enforcement). If waived, ~~they~~ the applicant must show proficiency and qualify a day and low light shoot with an approved firearms instructor. The initial qualification course shall be used to fulfill one day and one low

- light requirement during the first year; however an additional day shoot must be completed at least 90 days after the date of initial certification, within the calendar year.
- 1.3 In order to open carry a firearm while in the performance of their duties, individuals licensed to carry a firearm under 24 **Del.C.** Ch. 13 must shoot a minimum of three qualifying shoots per calendar year, scheduled on at least two separate days, with a minimum 90 days between scheduled day shoots. Of these three, there will be one mandatory “low light” shoot which may be combined with a day shoot. Two day shoots shall not be completed on the same date. These qualifying shoots will be administered by an approved firearms instructor.
- 1.3.1 An individual not meeting the minimum qualifications set forth in subsection 1.3 may have their firearms license suspended until such time that they meet the minimum three qualifying shoots within the calendar year.
- 1.4 Only the handguns with the following calibers are permitted:
- 1.4.1 9mm;
- 1.4.2 .357;
- 1.4.3 .38;
- 1.4.4 .40;
- 1.4.5 .45; or
- 1.4.6 .357 SIG.
- 1.5 All weapons must be either a revolver or semi-automatic and must be double-action or double-action only and must be maintained to factory specifications.
- 1.6 Under no circumstances will anyone under this Section be allowed to carry any type of weapon that is not described herein.
- 1.7 All individuals must meet the minimum qualifications set forth in subsection 1.3 with the same make/model/caliber of weapon that ~~he/she~~ the individual will carry.
- 1.8 All ammunition must be factory fresh (no re-loads).
- 1.9 The minimum passing score is 80%.
- 1.10 Private investigative, private security, and armored car agencies shall be held responsible for monitoring all firearm certification or recertification for their employees for compliance with promulgated rules and regulations.
- 1.11 All firearms licenses, armed security guard and armed armored car guard, are valid for a period of one year. Private investigative, private security, and armored car agencies must provide the Professional Licensing Section with documentation that employees are compliant with firearm certification and recertification requirements of Section 1.0 by January 15th of each year for the previous calendar year.
- 1.12 If an individual requests to carry a different approved weapon, while in the performance of ~~their~~ the individual's duties as an armed security guard or armed armored car guard, other than the one on file with the Professional Licensing Section, ~~he/she~~ the individual must have approval from the Director of Professional Licensing after providing documentation by ~~their~~ the individual's respective agency demonstrating that ~~they~~ the individual successfully passed a day and lowlight qualification shoot with ~~their~~ the new weapon. Upon approval, the individual can begin to carry the new weapon and the prior qualification of a different weapon will become void. Another day shoot with the new weapon must take place after 90 days, during the same calendar year. Individuals will only be authorized to carry the weapon ~~they~~ last qualified with and provided proof of qualification to the Professional Licensing Section.
- 1.12.1 An individual may not change weapons after September 30th, of the current calendar year, without prior approval of the Director of Professional Licensing, after submitting a request to the Professional Licensing Section. If approval is granted, the individual must be certified and ~~their~~ the individual's agency must provide documentation demonstrating that the individual successfully passed a day and low light qualification shoot with ~~their~~ the new weapon to the Professional Licensing Section prior to carrying the weapon.
- 1.13 Firearms Instructors providing instruction under Section 1.0;

- 1.13.1 Firearms instructors must be certified by the National Rifle Association as a Law Enforcement Instructor or through a law enforcement training and standards commission (i.e. C.O.P.T.). Certification by another professional firearms training institution as a "certified law enforcement firearms Instructor" must be approved by the Board. Instructors approved by the Board through another professional firearms training institution will have reciprocity approval with any other Board under Department of Safety and Homeland Security, Division of State Police, Professional Licensing Section.
- 1.13.2 Firearms instructors are restricted to teaching and qualifying individuals according to the type of firearm matching their certification. (For example, a certified handgun instructor may only instruct and qualify individuals with the handgun.)
- 1.13.3 All firearms instructors must be approved by the Professional Licensing Section before they are authorized to instruct or qualify licensed individuals.

(Break in Continuity of Sections)

4.0 Training Requirements

- 4.1 Each person licensed as a security guard under 24 **Del.C.** Ch. 13 shall successfully complete a training program approved by the Board, and any ~~such~~ additional training as the Board deems appropriate. Satisfactory completion of the training program shall be certified by mandatory testing with a passing grade of 75%. The test will be administered by a Board approved training/testing facility.
 - 4.1.1 The required training shall include, ~~but not be limited to,~~ instruction in rules and regulations, legal requirements and limitations, use of force, ethics, emergency services, diversity, communication, asset protection, and terrorism. The Board, in its discretion, may require such additional topics as it finds necessary.
 - 4.1.2 Individuals engaged in any violation of academic integrity which is validated by the testing facility will be required to repeat the testing process and incur any additional costs involved. If a subsequent violation of the academic standard is discovered and validated by the testing facility, the individual will be barred from taking any further tests and their license or application will be denied/suspended. No provision of this Section will exclude the individual from a due process hearing before the Board, if requested.
 - 4.1.3 Individuals may complete the training with either a Board approved training facility or the agency that employs them. The employer must hold either a Class B or Class C agency license.
- 4.2 Certified instructors must be employed by a Board approved training facility or a Class B or C agency providing the training. All instructors' certifications will be pursuant to subsection 4.2.1.
 - 4.2.1 Instructors for the training program must be certified by a Board approved training facility by completing an Instructor Certification Course. This course will be developed by an approved training/testing facility with collaboration from the Professional Licensing Section, and approved by the Board. An instructors test shall be mandatory with a passing grade of 75%. If this test is failed, the instructor shall re-take the course and the test until receiving a passing grade before being certified. Instructors who were approved by rules set by previous versions of this Section would remain eligible to instruct as long as they retake the Instructor Certification Course administered by the Board approved facility by January 1, 2021.
 - 4.2.2 In order to remain certified, instructors must take a refresher course offered by a Board approved training facility every five years or sooner as the Board may require. The refresher course will contain updates to the training curriculum and testing materials previously approved by the board.
 - 4.2.3 The approved training facility shall provide the Professional Licensing Section with the names and test scores of all instructors certified. This information will be forwarded to the Board.
 - 4.2.4 An ~~instructors~~ instructor's approval may be suspended or revoked as deemed necessary by the Board.
- 4.3 The Professional Licensing Section shall have the authority to require regular reports on training from licensees and employers, and shall report to the Board on compliance with this Section.

- 4.4 Training and test certifications shall be submitted with each new or renewal application, and the training shall be completed no more than one year prior to submission of the application.

5.0 Use Of Animals

~~The use of animals is prohibited.~~

- 5.1 The use of animals is prohibited, except for a canine to be used solely for the detection of firearms, ammunition, or controlled substances.
- 5.2 Any private security agency licensed under 24 Del.C. Ch. 13 wishing to use a canine, shall use a Delaware licensed security guard as the canine handler.
- 5.3 Both the canine and the security guard must have completed a training program consistent with the detection of all items listed. All certifications/re-certifications must be on file with the private security agency and available within 72 hours to the Professional Licensing Section for inspection.
- 5.4 The Board of Examiners shall review and approve or deny the request by a private security agency licensed under 24 Del.C. Ch. 13 to use a canine as outlined in subsection 5.1 of this regulation.
- 5.5 The Director of Professional Licensing shall have the authority to investigate any violation or complaint regarding the use of a canine. The Director may, without notice, issue a suspension of the use of a canine at a job site upon finding that an emergency exists that requires immediate action to protect the health and safety of the public. The suspension shall be effective immediately. The Professional Licensing Section shall be responsible for issuing a final written report to the Board at the conclusion of its investigation.

(Break in Continuity of Sections)

7.0 Employment Notification

- 7.1 Anyone applying for licensure/registration under this chapter may be rejected without refund, or have their license revoked, for knowingly omitting any criminal history, other material information or to make a false statement on their application.
- 7.2 Employers Responsibility
- 7.2.1 A licensed private security agency, after investigation, shall notify the Professional Licensing Section, in writing, of any terminated employees. This information is to be included in the next monthly roster report following the termination.
- 7.2.2 A licensed private security agency shall report to the Professional Licensing Section, in writing, the following:
- 7.2.2.1 The name of any employee arrested;
- 7.2.2.2 The name of any employee admitted to any mental hospital ward, mental institution or sanitarium; or
- 7.2.2.3 The name of any employee disabled from carrying, owning, or possession a gun by action of federal or state ~~statute and/or statute,~~ or court order, including bond orders and protection from abuse orders.

(Break in Continuity of Sections)

11.0 Personnel Rosters and Job Assignments

- 11.1 Anyone licensed as a private security agency (Class B or C) under 24 Del.C. Ch. 13 shall submit an alphabetical personnel roster and a job site list to the Professional Licensing Section by the tenth of every month. Anyone licensed as a private investigative agency (Class A) or armored car agency (Class D), under 24 Del.C. Ch. 13, shall submit an alphabetical personnel roster to the Professional Licensing Section by the tenth of January, April, July and October. Class A rosters only need to use the position code for the License Holder and Compliance Agent. Class D rosters must specify an individual that only has a yellow card, the License Holder and Compliance Agent.

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11.1.1 Alphabetical, by last name, personnel rosters shall include the full name, DOB, race, sex, expiration date, and position code of each individual ~~in your employ~~ employed by any agency governed by this regulation. For example:

Henry, John F.	05/23/43	B	M	05/23/00	PI
Montgomery, Frank G.	07/24/55	B	M	06/30/99	LH
Smith, Mark A.	01/25/60	W	M	01/25/99	SG
White, Helen E.	03/17/71	B	F	03/17/00	FA
Workman, Henry K.	08/15/60	W	M	08/15/99	CA

SG	Security Guard
FA	Firearms Guard
PI	Private Investigator
LH	License Holder
CA	Compliance Agent

11.2 Job site lists shall include the name, address, location, and hours of coverage. Employees shall not be listed on the job sites. For example:

The DuPont Industry
 Barley Mill Road
 2200 - 0600 Hours, Monday, Wednesday, and Friday

11.3 Rosters shall be submitted as required in subsection 11.1 regardless of the number of employees working in the State of Delaware.

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

<https://regulations.delaware.gov/register/november2023/proposed/27 DE Reg 320 11-01-23.htm>

STATE BUREAU OF IDENTIFICATION

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

PUBLIC NOTICE

2400 Board of Examiners of Constables

Purpose: In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 24 of the Delaware Code, Chapter 56, Section 5604(1), the Constable Board of Examiners proposes to adopt regulations to amend licensing requirements and make technical corrections to the regulation.

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

***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/november2023/proposed/27 DE Reg 324RFA 11-01-23.pdf>

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

<https://regulations.delaware.gov/register/november2023/proposed/27 DE Reg 324 11-01-23.htm>

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

PUBLIC NOTICE

2700 Board of Registration for Professional Land Surveyors

Pursuant to 24 **Del.C.** §2706(a)(1), the Delaware Board of Professional Land Surveyors ("Board") has proposed revisions to its Rules and Regulations. The revised subsection 10.1.2 would relax the PDH requirement for disabled, retired licensees under the age of 62. The other proposed amendments reflect technical and style changes consistent with the *Delaware Administrative Code Drafting and Style Manual*.

The Board will hold a public hearing on the proposed regulation changes on January 18, 2024, at 8:30 a.m. in the second-floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Professional Land Surveyors, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address or at Tashana.Branch@delaware.gov.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be February 7, 2024. The Board will deliberate on all of the public comments at its regularly scheduled meeting.

***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/november2023/proposed/27 DE Reg 325RFA 11-01-23.pdf>

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

<https://regulations.delaware.gov/register/november2023/proposed/27 DE Reg 325 11-01-23.htm>

DIVISION OF PROFESSIONAL REGULATION
Board of Elevator Mechanics
Statutory Authority: 24 Delaware Code, Section 6105(a)(1) (24 **Del.C.** §6105(a)(1))

PUBLIC NOTICE

6100 Board of Elevator Mechanics

Pursuant to 24 **Del.C.** §6105(a)(1), the Delaware Board of Elevator Mechanics ("Board") has proposed adoption of rules and regulations to implement its licensing law, Chapter 61 of Title 24 of the Delaware Code. In particular, the proposed rules and regulations set forth the process whereby applicants may be eligible for licensure under the grandfathering provision. Standards for licensure, practice and continuing education are adopted. The Board has

also proposed adoption of a list of crimes substantially related to the practice of providing elevator services.

A public hearing will be held on November 21, 2023 at 10:00 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Elevator Mechanics, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address or at danielle.ridgway@delaware.gov.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be **December 6, 2023**. The Board will deliberate on all of the public comments at its regularly scheduled meeting.

***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/november2023/proposed/27 DE Reg 325aRFA 11-01-23.pdf>

6100 Board of Elevator Mechanics

1.0 General

- 1.1 Governing statute: Chapter 61 of Title 24 of the Delaware Code governs the Board of Elevator Mechanics and the profession under its purview.
- 1.2 Pursuant to 24 **Del.C.** §6105(a)(1), the Board is authorized and hereby adopts these rules and regulations.
- 1.3 Pursuant to the Administrative Procedure Act, 29 **Del.C.** Ch. 101, the Board reserves the right to make amendments, modifications and additions to these rules and regulations.
- 1.4 The Board reserves the right to grant exceptions to the requirements of the rules or regulations upon a showing of good cause by the party requesting an exception, provided that the exception is not inconsistent with the requirements of 24 **Del.C.** Ch. 61.
- 1.5 Duty to update address. All licensees must provide the Division of Professional Regulation with their current mailing address and email address. Any change in mailing address or email address must be reported to the Division within 10 days of the change. All notifications and correspondence pertaining to a licensee's license that are sent through the mail will be sent only to the most recent address provided by the licensee. The failure to provide the Division with a current mailing address will not operate to excuse any duty or responsibility of the licensee and delivery to the most recent address provided by the licensee will be considered proper notice.

2.0 Definitions

The following words and terms mean the following:

"ASME" means the American Society of Mechanical Engineers.

"Board" means the Delaware Board of Elevator Mechanics.

"CE" means continuing education.

"Elevator" or "escalator" means a hoisting and lowering device equipped with a car or platform that moves in guides for the transportation of individuals or freight in a substantially vertical direction through successive floors or levels of a building or structure; or a power driven, inclined, continuous stairway used for raising or lowering passengers; or a type of passenger carrying device on which passengers stand or walk, and in which the passenger carrying surface remains parallel to its direction of motion and is uninterrupted, and includes elevators, escalators, moving walkways, dumbwaiters, wheelchair lifts, manlifts, stairway chairlifts that are not within a dwelling unit and any device within the scope of ASME A17.1 (Safety Code for Elevators and Escalators), ASME A18.1 (Safety Standard for Platform Lifts and Stairway Chairlifts), or ASME A90.1 (Safety Standards for Belt Manlifts), published by the ASME, 2004 Edition, which are incorporated herein by reference, as amended and supplemented. "Elevator" or "escalator" does not include any conveying devices, process equipment, and mine elevators. Conveying devices include personnel hoists, material hoists, conveyors, and any other

device outside of the scope of ASME A17.1, A18.1, or A90.1. "Dwelling unit" is a single unit providing complete, independent living facilities for 1 or more persons living as a single housekeeping unit, including permanent provisions for living, sleeping, eating, cooking and sanitation, and also includes outside access dedicated solely to that unit.

"Elevator services" or "elevator work" means to perform, install, maintain, troubleshoot or supervise any, which may include, but is not limited to, the installation, erection, modernization or repair of any elevator, escalator, dumbwaiter, material lift, vertical reciprocity conveyor (VRC) or conveyance. All elevator services or elevator work must be performed in accordance with the standards established in the ASME code and International Building Code (IBC) that have been adopted by the authority having jurisdiction and in any applicable local building code.

"IUEC" means International Union of Elevator Constructors.

"Stairway chairlift" means a lifting device that has a foot rest and seat, which is attached to stairs.

3.0 License required

- 3.1 No individual shall engage in the practice of providing elevator services nor hold oneself out to the public as being qualified to act as a licensed elevator mechanic, or otherwise assume or use any title or description conveying or tending to convey the impression that the individual is qualified to act as a licensed elevator mechanic, unless the individual has been duly licensed under Chapter 61 of Title 24 of the Delaware Code.
- 3.2 Whenever a state license to practice as an elevator mechanic has expired or been suspended or revoked, it shall be unlawful for the individual to act as an elevator mechanic in this State.

4.0 Applications

- 4.1 Applicants shall complete an application approved by the Board. Applications must be in the name of the individual, not a company. An applicant must submit proof of qualifications verified by attestation.
- 4.2 Where applicable, an applicant must provide proof of instruction, training, or apprenticeship in the form of a certified transcript, certificate of completion or any other document acceptable to the Board.
- 4.3 Proof of experience requires a notarized affidavit from the supervising licensed elevator mechanic describing the nature of the experience. If an applicant cannot obtain the required notarized affidavit from the supervising licensed elevator mechanic, the applicant shall submit a letter explaining why the experience affidavit cannot be obtained, and W-2 tax forms showing full time employment may be substituted at the discretion of the Board. The required experience and training must be completed prior to taking the licensure exam.
- 4.4 Applicants relying on military training and experience must submit official documentation from the supervising officials showing the type and approximate hours of work experience. Other official military documentation that reliably verifies military training and experience may be accepted at the discretion of the Board when supervisory officials are not available or cannot be located.
- 4.5 Incomplete applications will be retained for 1 year to allow an applicant the opportunity to supplement the application. After 1 year, incomplete applications are destroyed and, thereafter, an applicant must submit a new application with the appropriate fee.

5.0 Proof of Experience

- 5.1 An applicant applying for licensure based on experience must meet 1 of the following requirements:
- 5.1.1 Six years' full-time experience under the supervision of a licensed elevator mechanic; or
- 5.1.2 Eight thousand hours of full-time experience under the supervision of a licensed elevator mechanic, plus 576 hours of related instruction, or other approved training verified by a certificate of completion of apprenticeship from a lawful, registered apprenticeship program of any state; or
- 5.1.3 Four years' full-time experience under the supervision of a licensed elevator mechanic and 6,000 hours of technical training.

6.0 Examinations

Once all credentials have been verified, a license may be issued by the Division of Professional Regulation upon proof of obtaining a passing score on a Board accepted examination and payment of the applicable fee. The passing score will be determined by the testing agency, except that the passing score may not be less than 70%. The roster of persons qualified for licensure will appear in the minutes. A member of the Board may attend the examination. Examinations must be monitored by an approved, independent third party.

7.0 Insurance

A licensed elevator mechanic is not required to have general liability insurance if the licensee's employer has general liability insurance for all of its employees in the amount of at least \$300,000. Elevator applicants and licensees agree to work only for an elevator company that maintains a general liability insurance policy for all of its employees in the minimum amount of \$300,000.

8.0 Expiration, Renewal and Inactive Status

- 8.1 The licenses granted by the Board must be renewed by June 30th of each even numbered year, otherwise, they expire as of July 1st. It is the responsibility of the licensee to renew the licensee's license. The Board is not required to notify licensees of expiration dates.
- 8.1.1 As set forth in subsection 9.6, renewal applications will be randomly audited by the Board to ensure their accuracy. Licensees selected for random audit will be notified of that selection within 60 days after the renewal deadline. Licensees must then submit the documentation requested by the date indicated on the audit notice.
- 8.1.2 As a condition of renewal, applicants must attest to completion of continuing education (CE) as required by Section 9.0. Attestation shall be completed electronically. Licensees selected for random audit will be required to supplement their attestations with documentation of CE completion during the biennial period that is the subject of the audit.
- 8.2 A licensee may renew an expired license within 1 year after the renewal deadline by meeting all requirements and paying a late fee set by the Division. All late renewals will be audited for compliance with the CE requirements.
- 8.3 A licensee with an active license may request in writing to be placed on inactive status. Inactive status can be renewed electronically on a biennial basis. Inactive licenses may be reactivated by the Board upon written request with proof of completion of 10 CE credits acquired within the 2 years preceding application and payment of the appropriate fee set by the Division.
- 8.4 A licensee is not authorized to work as an elevator mechanic in this State during the period of inactive status.
- 8.5 An individual whose license has expired for more than 1 year must reapply as a new applicant with proof of completion of 10 CE credits acquired within the 2 years preceding application.

9.0 Continuing Education

- 9.1 Licensees shall complete 10 hours of approved CE during each renewal period with the following exceptions: a person licensed less than 1 year does not need to complete CE at the first renewal; and a person licensed 1 year but less than 2 years must submit 5 CE hours at the first renewal. Beginning with the licensee's second renewal, the licensee must complete 10 hours of CE in compliance with this Section.
- 9.2 CE is required of all licensees and shall be completed by June 30 of any year in which a license is to be renewed. CE earned in excess of the required credits for the 2-year period may not be carried over to the next biennial period. Licensees will only get CE credit for their first attendance at CE courses during each licensing period. Licensees may retake a CE course in the same licensing period but will not receive additional CE credit.
- 9.3 Courses must be designed to maintain and enhance the knowledge and skills of licensees related to elevator work as defined by these rules and regulations.

- 9.4 Sponsors or licensees can obtain Board approval of courses at any time by completing a form approved by the Board and including a course outline with the number of classroom hours showing the breakdown of time allotted for each part of course content, the curriculum vitae or resume of the instructor and the appropriate fee set by the Division. The completed application will be presented for review at the next regularly scheduled Board meeting.
- 9.4.1 Sponsors or licensees seeking pre-approval should submit the request as provided in subsection 9.4 at least 60 days before the CE course is being offered.
- 9.4.2 Approval of CE automatically expires 2 years from the date of Board approval.
- 9.5 CE courses certified by the following organizations will be automatically accepted by the Board:
- 9.5.1 National Elevator Industry Education Program or NEIEP;
- 9.5.2 Certified Elevator Technician Certification or CET as offered by the National Association of Elevator Contractors;
- 9.5.3 National Association of Elevator Contractors or NAEC;
- 9.5.4 National Association of Elevator Safety Authorities or NAESA; and
- 9.5.5 Qualified Elevator Inspector Training Fund or QEITF.
- 9.6 Post-Renewal Audit. Verification of CE hours shall be by attestation. Attestation shall be completed electronically. The Board will conduct random audits of renewal applications to ensure the veracity of attestations and compliance with the CE requirements. Licensees selected for the random audit shall submit CE course attendance verification in the form of a certificate signed by the course presenter or by a designated official of the sponsoring organization. Licensees shall retain their CE course attendance documentation for each licensure period. Licensees shall retain their CE course attendance documentation for at least 3 years after renewal. Licensees found to be deficient or found to have falsely attested may be subject to disciplinary action and sanctions. Licensees renewing during the late renewal period shall be audited.
- 9.7 An applicant for license renewal may be granted an extension of time in which to complete CE hours or a total or partial waiver of CE requirements upon a showing of hardship. Hardship may include disability, illness, extended absence from the country and exceptional family responsibilities. No extension of time or waiver shall be granted unless the licensee submits a written request to the Board prior to the expiration of the license.

10.0 Grandfathering

Any person holding a master electrician special elevator license, issued by the Delaware Board of Electrical Examiners, on or before June 30, 2024, will be issued an elevator mechanic license. An applicant who does not qualify for grandfathering must apply as a new applicant.

11.0 Reciprocity

- 11.1 An applicant for licensure by reciprocity shall submit an electronic application or through the Division of Professional Regulation, pay the required fee, and request that verifications of licensure or letters of good standing to be sent to the Board from the licensing agencies of all jurisdictions where the applicant is or has been licensed.
- 11.2 If the reciprocal state's requirements are not substantially similar to those of this State, as determined by the Board, the applicant shall submit proof of practice for at least 5 years after licensure. Proof of practice requires an employer's notarized affidavit describing the nature of the applicant's experience. If an applicant cannot obtain a notarized affidavit from the employer, the applicant must submit a letter explaining why the experience affidavit cannot be obtained, and W-2 forms or other tax documents showing 5 years full time employment may be substituted at the discretion of the Board.
- 11.3 Determination of Substantial Similarity of Licensing Standards. The applicant must submit to the Board a copy of the reciprocal state's current statute and rules and regulations pertaining to licensure requirements. The burden of proof is upon the applicant to demonstrate that the statute and rules of the licensing state are at least equivalent to the experience and examination requirements of this State. Based upon the information presented, the Board shall make a determination regarding whether

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the licensing requirements of the applicant's licensing state are substantially similar to those of Delaware.

12.0 Organization of the Board

12.1 Election of Officers. Annually, the Board shall elect officers to serve for a 1-year term. Special elections to fill vacancies shall be held upon notice and shall be only for the balance of the original term.

12.2 Duties of the Officers

12.2.1 President. The president shall preside at all meetings, designate subordinates when provided by law, sign correspondence on behalf of the Board, and perform other functions inherent in the position.

12.2.2 Vice President. The Vice President assumes the duties and powers of the President when the President is unavailable.

13.0 Voluntary Treatment Option For Chemically Dependent Or Impaired Professionals

13.1 A voluntary treatment option is available for chemically dependent or impaired professionals as provided in 29 Del.C. §8807(n) who are reported to the Board or Division using the following procedures:

13.1.1 If the report is received by the president of the Board, that president shall immediately notify the Director of Professional regulation or that Director's designate of the report. If the Director of Professional Regulation receives the report, they shall immediately notify the president of the Board, or that president's designate or designates.

13.1.2 The president of the Board or that president's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform the individual in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give the individual the opportunity to enter the Voluntary Treatment Option.

13.1.3 In order for the individual to participate in the Voluntary Treatment Option, the individual shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board president or that president's designate.

13.1.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board president or that president's designate or designates or the Director of the Division of Professional Regulation or that Director's designate may, in consultation with the with the treating professional, deem necessary, only if the action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or that Director's designate and the president of the Board or that president's designate for a treatment plan and progresses satisfactorily in the treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the President of the Board.

13.1.5 Failure to cooperate fully with the Board president or that president's designate or designates or the Director of the Division of Professional Regulation or that Director's designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option and the Board president or that president's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in 29 Del.C. §8807(h).

13.2 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes the following provisions:

- 13.2.1 Entry of the regulated professional into a treatment program approved by the Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.
- 13.2.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the president of the Board or to that president's designate or designates or to the Director of the Division of Professional Regulation or that Director's designate at intervals as required by the president of the Board or that president's designate or designates or the Director of the Division of Professional Regulation or that Director's designate, and the person making the report will not be liable when the reports are made in good faith and without malice.
- 13.2.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.
- 13.2.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment programs. In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subsection shall approximate and reasonably reflect the costs necessary to defray the expenses of the Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.
- 13.2.5 Agreement by the regulated professional that failure to satisfactorily progress in the treatment program shall be reported to the Board's president, or that president's designate or designates or to the Director of the Division of Professional Regulation or that Director's designate by the treating professional who shall be immune from any liability for reporting made in good faith and without malice.
- 13.3 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider the records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.
- 13.4 The Board's president, that president's designate or designates or the Director of the Division of Professional Regulation or the Director's designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if the action is deemed necessary to protect the public health, welfare or safety.
- 13.5 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.
- 13.6 Failure to enter into an agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.
- 13.7 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from the reports, and shall have that person's confidentiality protected if the matter is handled in a non-disciplinary matter.
- 13.8 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have the professional's confidentiality protected.

14.0 Crimes substantially related to work of an Elevator Mechanic

- 14.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or the solicitation to commit any of the following crimes, is deemed to be a crime substantially related to the work of an elevator mechanic in the State of Delaware without regard to the place of conviction:
 - 14.1.1 Menacing (felony). 11 Del.C. §602

- [14.1.2 Reckless endangering in the first degree. 11 Del.C. §604](#)
- [14.1.3 Assault in the second degree. 11 Del.C. §612](#)
- [14.1.4 Assault in the first degree. 11 Del.C. §613](#)
- [14.1.5 Manslaughter. 11 Del.C. §632](#)
- [14.1.6 Murder by abuse or neglect in the second degree. 11 Del.C. §633](#)
- [14.1.7 Murder by abuse or neglect in the first degree. 11 Del.C. §634](#)
- [14.1.8 Murder in the second degree. 11 Del.C. §635](#)
- [14.1.9 Murder in the first degree. 11 Del.C. §636](#)
- [14.1.10 Unlawful sexual contact in the second degree. 11 Del.C. §768](#)
- [14.1.11 Unlawful sexual contact in the first degree. 11 Del.C. §769](#)
- [14.1.12 Rape in the fourth degree. 11 Del.C. §770](#)
- [14.1.13 Rape in the third degree. 11 Del.C. §771](#)
- [14.1.14 Rape in the second degree. 11 Del.C. §772](#)
- [14.1.15 Rape in the first degree. 11 Del.C. §773](#)
- [14.1.16 Sex offender unlawful conduct against a child. 11 Del.C. §777A](#)
- [14.1.17 Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree. 11 Del.C. §778](#)
- [14.1.18 Sexual abuse of a child by a person in a position of trust, authority or supervision in the second degree. 11 Del.C. §778A](#)
- [14.1.19 Unlawful imprisonment in the first degree. 11 Del.C. §782](#)
- [14.1.20 Kidnapping in the second degree. 11 Del.C. §783](#)
- [14.1.21 Kidnapping in the first degree. 11 Del.C. §783A](#)
- [14.1.22 Arson in the second degree. 11 Del.C. §802](#)
- [14.1.23 Arson in the first degree. 11 Del.C. §803](#)
- [14.1.24 Burglary in the second degree. 11 Del.C. §825](#)
- [14.1.25 Burglary in the first degree. 11 Del.C. §826](#)
- [14.1.26 Robbery in the second degree. 11 Del.C. §831](#)
- [14.1.27 Robbery in the first degree. 11 Del.C. §832](#)
- [14.1.28 Theft; lost or mislaid property; mistaken delivery \(felony\). 11 Del.C. §842](#)
- [14.1.29 Theft; false pretense \(felony\). 11 Del.C. §843](#)
- [14.1.30 Extortion. 11 Del.C. §846](#)
- [14.1.31 Theft of rented property \(felony\). 11 Del.C. §849](#)
- [14.1.32 Use, possession, manufacture, distribution and sale of unlawful telecommunication and access devices \(felony\). 11 Del.C. §850](#)
- [14.1.33 Receiving stolen property. 11 Del.C. §851](#)
- [14.1.34 Identity theft. 11 Del.C. §854](#)
- [14.1.35 Forgery. 11 Del.C. §861](#)
- [14.1.36 Issuing a false certificate. 11 Del.C. §878](#)
- [14.1.37 Unlawful use of payment card. 11 Del.C. §903](#)
- [14.1.38 Criminal impersonation of a police officer. 11 Del.C. §907B](#)
- [14.1.39 Insurance fraud. 11 Del.C. §913](#)
- [14.1.40 Home improvement fraud. 11 Del.C. §916](#)
- [14.1.41 New home construction fraud. 11 Del.C. §917](#)
- [14.1.42 Dealing in children. 11 Del.C. §1100A](#)
- [14.1.43 Endangering the welfare of a child. 11 Del.C. §1102](#)
- [14.1.44 Crime against a vulnerable adult. 11 Del.C. §1105](#)
- [14.1.45 Sexual exploitation of a child. 11 Del.C. §1108](#)

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- 14.1.46 Dealing in child pornography. 11 Del.C. §1109
 - 14.1.47 Possession of child pornography. 11 Del.C. §1111
 - 14.1.48 Sexual offenders; prohibitions from school zones. 11 Del.C. §1112
 - 14.1.49 Sexual solicitation of a child. 11 Del.C. §1112A
 - 14.1.50 Perjury in the second degree. 11 Del.C. §1222
 - 14.1.51 Perjury in the first degree. 11 Del.C. §1223
 - 14.1.52 Hate crimes. 11 Del.C. §1304
 - 14.1.53 Stalking. 11 Del.C. §1312
 - 14.1.54 Bombs, incendiary devices, Molotov cocktails and explosive devices. 11 Del.C. §1338
 - 14.1.55 Adulteration. 11 Del.C. §1339
 - 14.1.56 Possession of a firearm during a felony. 11 Del.C. §1447
 - 14.1.57 Theft of a firearm. 11 Del.C. §1451
 - 14.1.58 Breaking and entering, etc. to place or remove equipment. 11 Del.C. §2410
- 14.2 Crimes substantially related to the work of an elevator mechanic shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.
-

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 FINANCE

DIVISION OF REVENUE

Statutory Authority: 29 Delaware Code, Section 8303(7) and 30 Delaware Code, Section 558
(29 Del.C. §8303(7) & 30 Del.C. §558)

ORDER

Regulations Governing Tax Refund Intercept Claims of Other States

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 29 Del.C. § 8303(7), the Delaware Department of Finance (the "Department"), through its Division of Revenue ("Revenue"), proposed to adopt regulations on the tax refund intercept claims of other states. The regulations establish procedures for Revenue and other State Claimant Governments to follow in connection with the program, including a certification process and a notice and opportunity for an administrative hearing prior to offsetting against a state tax refund.

II. FINDINGS OF FACT

The Department finds that the proposed regulation is necessary to implement 30 Del.C. §558 and facilitate the process for other State Claimant Governments to refer debts for collection under the tax refund intercept program. The Department finds that the proposed regulation should be adopted as submitted. Notice of the proposed regulation and a Regulatory Flexibility Analysis and Impact Statement as required under 29 Del.C. Ch. 104 were published in the *Register of Regulations* on September 1, 2023. The Department provided the public with an opportunity to submit written comments for 30 days concerning the proposed regulation and did not receive written comments.

III. DECISION AND EFFECTIVE DATE OF ORDER

The Department adopts the regulations as proposed. The effective date of this Order shall be ten (10) days following its publication in the *Delaware Register of Regulations*.

IT IS SO ORDERED this 3rd day of October 2023.

Department of Finance
Richard J. Geisenberger
Secretary of Finance

Regulations Governing Tax Refund Intercept Claims of Other States

1.0 Authority and Purpose

- 1.1 The Secretary is authorized under 29 Del.C. §8303(7) to establish and promulgate regulations as the Secretary may deem necessary to govern the administration and operation of the Department.
- 1.2 This regulation establishes policies and procedures for the intercept program set forth in 30 Del.C. §558.

2.0 Definitions

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

- "Claimant government" has the meaning ascribed to it in 30 Del.C. §558(b)(1)a and 30 Del.C. §558(b)(10).
- "Debtor" means a person, organization, or entity who owes a debt to a claimant government.
- "Department" means the Delaware Department of Finance.
- "Director" means the individual appointed to serve as Director of Revenue pursuant to 29 Del.C. §8303(2)b.
- "Program" refers to the intercept program authorized under 30 Del.C. §558.
- "Refund" has the meaning ascribed to it in 30 Del.C. §558(b)(1)b.
- "Revenue" means the Delaware Division of Revenue, a division of the Delaware Department of Finance.
- "Secretary" means the individual appointed to serve as Secretary of the Delaware Department of Finance pursuant to 29 Del.C. §8302(a).
- "Tax debt" has the meaning ascribed to it in 30 Del.C. §558(b)(1)c.
- "Taxing official" has the meaning ascribed to it in 30 Del.C. §558(b)(1)d.
- "Taxpayer" has the meaning ascribed to it in 30 Del.C. §558(b)(1)e.

3.0 General Provisions

- 3.1 This regulation applies only to tax debts owed to a claimant government.
- 3.2 A claimant government is not precluded from using other debt collection procedures available under applicable law. Debt collection procedures may be used separately or in conjunction with the program.
- 3.3 The Director shall ensure that claimant governments are not provided with or given access to tax returns or information from tax returns, including the amount of income or particulars set forth or disclosed in a report or return required under Title 30 of the Delaware Code and information on a federal return or report which is required to be attached to or included in a State tax return, except to the limited extent necessary to administer the program. Access to tax information granted by the Director shall be on a need-to-know basis to perform program related duties and shall be memorialized in writing. Claimant governments shall take necessary steps to protect tax information from inadvertent disclosure and unauthorized access.
- 3.4 The Director shall have the authority under 30 Del.C. §558(b)(8) to enter into agreements with taxing officials of claimant governments relating to:

- 3.4.1 Procedures and methods to be employed by a claimant government with respect to the operation of the program;
- 3.4.2 Safeguards against the disclosure or inappropriate use of personally identifiable information regarding the taxpayer obtained or maintained in the administration of the program; and
- 3.4.3 A referral threshold amount.

4.0 Request for Intercept

- 4.1 Referral threshold. No single tax debt owed to a claimant government may be referred to Revenue for intercept under the program if the tax debt amount is less than \$100.00. Revenue and the claimant government may agree to a higher threshold amount in writing.
- 4.2 Authority to certify tax debt and request intercept. A taxing official may certify to the Director the existence of a tax debt owed to a claimant government and request that the Director withhold a refund to which the taxpayer is entitled. A taxing official may not certify or request the Director to withhold a refund, unless the laws of the claimant government extend a like comity for the collection of a tax debt owed to this State as required by 30 Del.C. §558(b)(2)b.
- 4.3 Referral requirements. When a taxing official refers a tax debt to Revenue for intercept, the taxing official must provide:
 - 4.3.1 The full name of the taxpayer and, if required by the Director, the taxpayer's address;
 - 4.3.2 The taxpayer's Social Security number or federal tax identification number;
 - 4.3.3 The amount of the tax debt; and
 - 4.3.4 A detailed statement for the applicable taxable year showing tax, interest, and penalty; or data that sufficiently describes the tax debt in the Director's discretion.
- 4.4 Certification. When a taxing official refers a tax debt to Revenue for intercept, the taxing official shall certify to the Director that:
 - 4.4.1 The debtor exhausted all rights to administrative remedies and appeals related to the tax debt;
 - 4.4.2 The debtor's rights to applicable administrative remedies and appeals lapsed;
 - 4.4.3 The claimant government determined the assessment of tax, interest, and penalty to be final and enforceable; and
 - 4.4.4 The claimant government determined that the tax debt is more than the referral threshold specified in this regulation or more than the amount specifically agreed to in writing by Revenue and the claimant government.
- 4.5 Noncompliance. Revenue may reject a referral that does not comply with the requirements of this regulation.
- 4.6 Post-referral obligations. After referring a tax debt to Revenue, the claimant government shall promptly notify Revenue and make the appropriate correction of the referral if:
 - 4.6.1 The claimant government determines that an error has been made with respect to the information transmitted to Revenue;
 - 4.6.2 The claimant government receives a payment on account of a tax debt referred for intercept; or
 - 4.6.3 The claimant government determines that the tax debt amount is otherwise incorrect.

5.0 Intercept Procedures

- 5.1 Upon referral of a tax debt under this regulation, Revenue will compare tax refund records with records of tax debts referred for intercept.
- 5.2 For purposes of this regulation, a match for a tax refund owed to a debtor will occur when the taxpayer identifying number and name are the same as the taxpayer identifying number and name of a debtor submitted by the claimant government.
- 5.3 After a match, the Director shall promptly take reasonable steps to notify the taxpayer of a claimant government's request for intercept and include a copy of the certification by the taxing official. The

- Director shall also promptly take reasonable steps to notify the taxpayer of the right to challenge the proposed intercept by filing a written protest.
- 5.4 The taxpayer's written protest must include detailed reasons for the taxpayer's opposition of the intercept and supporting documents. The taxpayer must hand deliver or mail the written protest to the Director so that the Director receives it no later than 30 days from the date of the notice.
- 5.5 If a taxpayer files a timely protest, the Director shall:
- 5.5.1 Suspend the proposed intercept;
 - 5.5.2 Impound the claimed amount of the taxpayer's refund;
 - 5.5.3 Pay the unclaimed amount of the refund to the taxpayer;
 - 5.5.4 Send a copy of the protest and supporting documents to the claimant government for a determination of the merits of the protest in accordance with the laws of that state; and
 - 5.5.5 Pay the impounded amount to the taxpayer if the claimant government fails to recertify to the Director within 45 days of the date of the protest that the claimant government reviewed the issues raised by the taxpayer, the taxpayer exhausted the administrative and judicial remedies provided under the laws of the state of the claimant government, and the final tax debt amount.
- 5.6 Subject to the taxpayer's rights of notice and protest, the Director shall pay the entire refund or the amount certified to the claimant government, whichever is less. The Director shall pay a refund in excess of the certified amount to the taxpayer.
- 5.7 If more than 1 claimant government has a debt against the taxpayer, Revenue will remit payments in order of priority as determined by the Director.
- 5.8 If a refund is less than the certified amount, the Director shall withhold amounts from subsequent refunds due to the taxpayer provided the claimant government shall withhold subsequent refunds of taxpayers certified to the claimant government by the Director.
- 5.9 The Director shall take reasonable steps to notify the taxpayer that the refund has been reduced and the amount of the reduction.
- 5.10 Joint tax returns. If a match relates to a joint personal income tax, the Director shall promptly take reasonable steps to notify a non-debtor taxpayer of a claimant government's request for intercept and the right to challenge the proposed intercept.
- 5.10.1 The non-debtor taxpayer must hand deliver or mail a written protest to the Director so that the Director receives the written protest no later than 30 days from the date of the notice.
 - 5.10.2 The non-debtor taxpayer's written protest must include a detailed description of the taxpayer's reasons for a proper share of the refund and supporting documents.
 - 5.10.3 The non-debtor taxpayer may attempt to make the required showing to the Director's satisfaction by providing documentation to establish a right to a portion of the refund based on income reported by the non-debtor taxpayer on the joint return.
 - 5.10.4 If the non-debtor taxpayer files a timely protest and makes the required showing, Revenue shall remit the proper share of the tax refund to the non-debtor taxpayer and apply the balance of the refund in the manner prescribed in subsections 5.5 and 5.6.
- 5.11 In the event the debtor is due a refund with a non-debtor due to filing Married Filing Combined Separate on 1 return, the Director shall regard a taxpayer as entitled to separate refunds based upon the taxes due and prior payments of a taxpayer individually. The intercept contemplated in this regulation shall not be applicable to a separate refund due to the non-debtor taxpayer. The intercept provisions shall apply to a separate refund due to the debtor taxpayer.
- 5.12 Revenue has made reasonable attempts to notify a taxpayer if Revenue uses the current address information contained in Revenue's records related to a tax return.
- 5.13 Revenue will advise a claimant government of the names and addresses of the debtors from whom debts were collected and of the amounts collected from the debtors. Revenue will not advise as to the source of payment from which the amounts were collected.
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FINAL REGULATIONS

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Pharmacy Over the Counter (OTC) & Physician Administered Drugs (PAD)

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XIX Medicaid State Plan regarding Pharmacy Over the Counter (OTC) & Physician Administered Drugs (PAD), specifically, to align state plan with current reimbursement and provide for future flexibility. 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 September 2023 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 1, 2023, at which time the Department would receive information, factual evidence, and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The purpose of this proposed regulation is to advise the public that Delaware Health and Social Services (DHSS)/ Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan regarding Pharmacy Over the Counter (OTC) & Physician Administered Drugs (PAD).

Background

Historically, CMS' Medicare fee schedule for Part B drugs was calculated as Average Sales Price (ASP)+6%. However, for five years beginning 10/1/2022, CMS changed the rate for some Part B drugs to ASP+8%. Since states get these pre-calculated rates from the quarterly CMS Medicare fee schedule file, they are already paying ASP+8% for these drugs. In addition, CMS will be introducing a future rate type into the Medicare fee schedule that is different than ASP+6% and the ASP+8%. To relieve states from having to submit multiple SPAs for these changes, CMS requested states to update any references to ASP+6% to the "Medicare fee schedule."

Also, CMS anticipates the introduction of new OTC products that Medicaid programs will be required to cover. These include OTC naloxone (in first half 2023) and OTC oral contraceptives (in second half 2023). To reduce the number of SPAs to accommodate these new OTC drug classes, CMS requests that states insert general language into the pharmacy coverage pages of their State Plans that reference covered OTCs listed in the state's provider manual. Delaware's provider manual already has these products listed in a table so will be in compliance with the state plan when this SPA is approved.

In addition, there are changes to remove specific drugs/drug classes for coverage of other exceptions, with replacement language that points to the preferred drug list, or when determined to be medically necessary. These were made to achieve the same purpose as the CMS-requested OTC language change.

Statutory Authority

42 CFR 447.20

Purpose

The purpose of this proposed regulation is to align Delaware's Medicaid State Plan with current reimbursement policy, provide for future flexibility with less administrative burden, and to update the State Plan in anticipation of future OTC drugs/drug classes that Medicaid will be required to cover, thus reducing the need to submit multiple State Plan Amendments.

Summary of Proposed Changes

Effective for services provided January 1, 2023, DHSS/DMMA proposes to amend Attachment 3.1-A and Section 4.19-B of the Medicaid State Plan to update over the counter drugs and physician administered drug sections.

Public Notice

In accordance with the federal public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 440.386 and the state public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA gave public notice and provided an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on October 1, 2023.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact Statement

There is no anticipated fiscal impact.

Summary of Comments Received with Agency Response and Explanation of Changes

Comment: There were comments supporting the proposed changes to more easily allow for anticipated changes in drug coverage, reimbursement policies and requirements.

Agency response: DMMA appreciates the support.

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

- State Council for Persons with Disabilities (SCPD)
- Governor's Advisory Council for Exceptional Citizens (GACEC)

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the September 2023 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding Pharmacy Over the Counter (OTC) & Physician Administered Drugs (PAD), specifically, to align state plan with current reimbursement and provide for future flexibility and shall be final effective November 11, 2023.

10/13/2023 | 3:12 PM EDT

Date of Signature

Josette D. Manning Esq., Secretary, DHSS

Pharmacy Over the Counter (OTC) & Physician Administered Drugs (PAD)

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

<http://regulations.delaware.gov/register/november2023/final/4.19-B-p14 Amended.pdf>

http://regulations.delaware.gov/register/november2023/final/sp_attachment_3_1_a_2-2b Amended.pdf

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Ground Emergency Medical Transportation (GEMT)

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XIX Medicaid State Plan regarding Ground Emergency Medical Transportation (GEMT), specifically, to increase Medicaid reimbursement for emergency transportation providers. 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 September 2023 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 1, 2023, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

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

Background

Delaware legislature has introduced a bill to revise Medicaid reimbursement for emergency transportation services (GEMT), effective in SFY 2024. In its current form, this legislation calls for increasing the present percentages of the Medicare rates that Medicaid pays for the services to 75% of Medicare across the board.

The amendment is needed to adjust for changes in the percentages of Medicare rates on which Medicaid bases its reimbursement; this is in response to a Delaware state legislated requirement to increase emergency transportation reimbursement. The proposed changes will allow for the update in reimbursement at this time and will provide greater flexibility for Medicaid to implement future changes without the need for future amendments.

Statutory Authority

42 C.F.R § 430.10 and § 447.201

Purpose

The purpose of this proposed regulation is to update Ground Emergency Medical Transportation (GEMT), specifically, to increase Medicaid reimbursement for emergency transportation providers.

Summary of Proposed Changes

Effective July 1, 2023, the DHSS/DMMA proposes to amend Attachment 4.19-B page 3 of the Title XIX Medicaid State Plan to increase Medicaid reimbursement for emergency transportation providers.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 440.386 and the state public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA gave public notice and provided an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on October 1, 2023.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact

	Federal Fiscal Year 2024	Federal Fiscal Year 2025
General (State) funds	\$309,000	\$312,000
Federal funds	\$457,800	\$462,500

Summary of Comments Received with Agency Response and Explanation of Changes

Comment: There was a comment supporting the proposed changes.

Agency response: DMMA appreciates the support.

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

- Governor's Advisory Council for Exceptional Citizens (GACEC)

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the September 2023 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Title XIX Medicaid State Plan regarding Ground Emergency Medical Transportation (GEMT), specifically, to increase Medicaid reimbursement for emergency transportation providers and shall be final effective November 11, 2023.

10/13/2023 | 7:48 PM EDT

Date of Signature

Josette D. Manning Esq., Secretary, DHSS

Ground Emergency Medical Transportation (GEMT)

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

<http://regulations.delaware.gov/register/november2023/final/4.19-B page 3 Amended--.pdf>

DEPARTMENT OF INSURANCE

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Section 102 (18 **Del.C.** §102)

18 **DE Admin. Code** 1406

REGULATORY IMPLEMENTING ORDER

1406 Third Party Administrators

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

In the September 1, 2023 edition of the *Register of Regulations*, at 27 **DE Reg.** 150 (September 1, 2023), the Commissioner of the Delaware Department of Insurance (Commissioner) published a proposal to allow for the required review of the operations of the administrator to be completed virtually or on-site.

The Department also took the opportunity to make grammatical and formatting edits throughout the regulation.

The Department received one timely comment from the American Council of Life Insurers in support of the implementation of virtual business practices and commented that the modernization of Third Party Administrator audit laws is both prudent and timely.

II. FINDINGS OF FACTS

The Commissioner finds that the amendments to 18 **DE Admin. Code** 1406 as proposed in the September 1, 2023 *Register of Regulations*, having been properly noticed and open for public comment, should be adopted for the reasons set forth in the proposal.

III. DECISION TO ADOPT THE PROPOSED AMENDMENTS

For the foregoing reasons, the Commissioner concludes that it is appropriate to adopt the proposed amendments to 18 **DE Admin. Code** 1406.

IV. EFFECTIVE DATE OF ORDER

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

IT IS SO ORDERED.

The 10th day of October, 2023.

Trinidad Navarro
Delaware Department of Insurance

*Please note that no changes were made to the regulation as originally proposed and published in the September 2023 issue of the *Register* at page 150 (27 DE Reg. 150). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

<https://regulations.delaware.gov/register/november2023/final/27 DE Reg 342 11-01-23.htm>

DEPARTMENT OF STATE DIVISION OF THE ARTS

Statutory Authority: 29 Delaware Code, Sections 8729(c) and 10113(b)(4) (29 **Del.C.** §§8729(c) and 10113(b)(4))
1 **DE Admin. Code** 1001

ORDER

1001 Assistance for the Development of the Arts Regulations

The Division of the Arts is changing the current regulations of the **Division of Arts Assistance for the Development of the Arts. 1 DE Admin. Code** 1001. The reason for the change is solely to update the website URL stated in the regulations.

The regulatory change is authorized pursuant to 29 **Del.C.** §8729(c) and is exempt from the procedural requirements of the Administrative Procedures Act and may be adopted informally. 29 **Del.C.** §10134(b)(4). Pursuant to 29 **Del.C.** §8729(c), the Director and the Delaware State Arts Council shall establish such rules and regulations as are necessary to determine the eligibility of any instrumentality, or agency or political subdivision, private or public nonprofit association for participation in contracts authorized by this section.

The Division hereby adopts these regulations and the effective date of this Order shall be ten days after this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED this 11 day of October, 2023.

Jessica Ball
Director, Delaware Division of the Arts

1001 Assistance for the Development of the Arts Regulations

1.0 Introduction

These regulations are authorized pursuant to 29 **Del.C.** §8729(c) which established a special fund of the State of Delaware to encourage instrumentalities, agencies and political subdivisions of the State and private and public nonprofit associations in the development of the arts in the State and to enhance the appreciation of artistic expressions by citizens of the State. Arts Funding is dictated by the availability of State, Federal, and other funds, and necessarily changes on a year to year basis. Current available funding may be found at <http://www.artsdel.org/grants> <https://arts.delaware.gov/grant-overview/>.

2.0 Grantee Categories

2.1 Delaware Artists

To be eligible for funding as a Delaware artist, the applicant must:

- 2.1.1 Be at least 18 years of age.
- 2.1.2 Be a resident of Delaware for at least one year at the time of application. Individual artists shall submit a valid Delaware Driver's License or Delaware Motor Vehicle Identification Card as proof of residency.
- 2.1.3 Recipients must remain Delaware residents during the grant period.

- 2.1.4 Not be enrolled in degree or certificate-granting educational programs at the time of application or for the duration of the grant period.
- 2.1.5 Additional grant specific eligibility guidelines may change in each fiscal year, given the availability and source of grant funding. Current guidelines are posted at <http://www.artsdel.org/grants> <https://arts.delaware.gov/grant-overview/>.
- 2.2 Delaware Arts Organizations
To be eligible for funding as an arts organization, the applicant must:
- 2.2.1 Identify in their charter, incorporation papers, bylaws, and IRS nonprofit determination letter at least one of the following as a primary purpose of the organization: the promotion, presentation, production, or teaching of the arts. The Division of the Arts shall make all final determinations as to the primary purpose of the organization.
- 2.2.2 Certify that the organization is based and chartered in Delaware as a nonprofit organization; exempt from federal income tax under Section 501(c)(3) or 501(c)(4) or 509(a) of the Internal Revenue Code; and eligible to receive donations allowable as charitable contributions under Section 170(c) of the Internal Revenue Code of 1954.
- 2.2.3 Have a stable, functioning board of directors that meets at least quarterly.
- 2.2.4 Additional grant specific eligibility guidelines may change in each fiscal year, given the availability and source of grant funding. Current guidelines are posted at <http://www.artsdel.org/grants> <https://arts.delaware.gov/grant-overview/>.
- 2.3 Delaware Community Based Organizations
To be eligible for funding as a community-based organization, the applicant must:
- 2.3.1 Identify in their charter, incorporation papers, bylaws, and IRS nonprofit determination letter a primary purpose of the organization other than the promotion, presentation, production, or teaching of the arts. The Division of the Arts shall make all final determinations as to the primary purpose of the organization. Such purpose may be, but is not limited to, libraries, civic groups, community/senior centers, festivals, parks/recreation programs, and universities and colleges.
- 2.3.2 Be based and chartered in Delaware as a nonprofit organization; exempt from federal income tax under Section 501(c)(3) or 501(c)(4) or 509(a) of the Internal Revenue Code; and eligible to receive donations allowable as charitable contributions under Section 170(c) of the Internal Revenue Code of 1954. Organizations that have not received Delaware incorporation or IRS nonprofit designation are not eligible to apply for Project Support, and
- 2.3.3 Have a stable, functioning board of directors that meets at least quarterly, or
- 2.3.4 Be an established unit of municipal, county, or state government within Delaware.
- 2.3.5 Additional grant specific eligibility guidelines may change in each fiscal year, given the availability and source of grant funding. Current guidelines are posted at <http://www.artsdel.org/grants> <https://arts.delaware.gov/grant-overview/>.
- 2.4 Delaware Arts Education Providers
To be eligible for arts education funding, the applicant must be:
- 2.4.1 Delaware public, private, or parochial school with an established arts curriculum and staff, pre-K through 12, or
- 2.4.2 Delaware public school district and/or consortia of public schools, or
- 2.4.3 Delaware arts organization with a demonstrated commitment to arts learning, that also meets the eligibility requirements for arts organization funding, or
- 2.4.4 Professional arts service or arts education organization based and chartered in Delaware.
- 2.4.5 Additional grant specific eligibility guidelines may change in each fiscal year, given the availability and source of grant funding. Current guidelines are posted at <http://www.artsdel.org/grants> <https://arts.delaware.gov/grant-overview/>.
- 2.5 Regional/National Nonprofit Organizations
To be eligible for funding, the applicant must:

- 2.5.1 Be chartered as a nonprofit organization; exempt from federal income tax under Section 501(c)(3) or 501(c)(4) or 509(a) of the Internal Revenue Code; and eligible to receive donations allowable as charitable contributions under Section 170(c) of the Internal Revenue Code of 1954.
- 2.5.2 Provide the program(s) or service(s) funded by the grant directly to the Delaware Division of the Arts or to its constituents, on behalf of the Division, under written agreement with the Division of the Arts.
- 2.5.3 Additional grant specific eligibility guidelines may change in each fiscal year, given the availability and source of grant funding. Current guidelines are posted at <http://www.artsdel.org/grants> <https://arts.delaware.gov/grant-overview/>.

3.0 Grant Award Process

- 3.1 Organizational Grants. Organizational grants reviewed on an annual basis or for multi-year approval are reviewed by impartial peer review panels, (hereinafter "Grant Panels.") The decision to use private citizens on grant review Grant Panels reflects the importance of having diverse public and expert participation in the grant-making process.
 - 3.1.1 Grant panels: Composition:

Individuals who work or live in Delaware are eligible to serve on Grant Panels. Grant Panels are composed of artists, arts educators, arts and nonprofit organization administrators, corporate and fund raising managers, knowledgeable arts specialists, and interested community members. Panelists are chosen for their professional experience, expertise in an artistic discipline, knowledge of the community, and ability to objectively review grant materials. The Division convenes Grant Panels, mindful of Delaware's demographic and geographic diversity. Additional out-of-state panelists may be selected in order to incorporate regional or national perspective, to provide additional expertise and diversity, or to mitigate the potential for conflicts of interest.
 - 3.1.2 Conflicts of Interests

Grant Panelists are screened for conflicts of interest, and where they exist, panelists are recused from discussion of the grant application or assigned to an alternate panel where a conflict does not exist. Such conflicts are determined by review of statements and/or applications filed by Arts Council members, Division Staff, panelists, and Grantees
 - 3.1.3 Nominations

Grant Panelist nominations are accepted and processed by the Division of the Arts year round.
 - 3.1.4 Grant Review Panel Meetings

Grant Panel meetings are public, posted and held in accordance with 29 **Del.C.** Ch. 100. Meetings are chaired by a member of the State Arts Council or Division of the Arts staff.
 - 3.1.5 Grant Review Process

Grant Panelists evaluate and rank applications according to grant specific criteria identified by Division staff, and published at <http://www.artsdel.org/grants> <https://arts.delaware.gov/grant-overview/>. Grant Panel comments and rankness are incorporated into the funding recommendation process, and made available to applicants upon notification of the funding decision. At the conclusion of their review, the Grant Panel makes a recommendation to the State Arts Council.
 - 3.1.6 Grant Award

The State Arts Council, at a meeting open to the public consistent with 29 **Del.C.** Ch. 100, reviews the Grant Panel recommendations and rankings of applicants, to match them with available grant funds. At the conclusion of this review, the State Arts Council makes funding recommendations to the Division Director, who is responsible for all final funding decisions. The Division announces grant awards after the approval of the State's fiscal year budget.
- 3.2 Artist Fellowship Grants

Delaware's arts community is very close-knit, and individual artists tend to be very familiar with the work of other Delaware artists. The nature of artists' work is that it is inextricably linked to them as individuals. Because of that, it is difficult to find impartial judges to adjudicate Fellowship applications

for individual artists. Consequently, the Division of the Arts contracts with an out-of-state organization to facilitate the review of Artist Fellowship applications. Grant specific criteria are published at <http://www.artsdel.org/grants> <https://arts.delaware.gov/grant-overview/>.

3.2.1 Grant panels: Composition:

The facilitating organization presents a list of potential judges to Division staff, who selects the judges whose expertise most clearly aligns with the applications submitted each year. Out-of-state judges are chosen for their professional experience, expertise in an artistic discipline, and ability to objectively review grant materials.

3.2.2 Grant Review Process

Applications are submitted to the Division of the Arts. Upon review for completeness and accuracy, all materials are forwarded directly to the facilitating organization, which is responsible for distribution of the applications to the judges. Judges review the applications individually and submit their scores and comments to the facilitating organization. Scores and judges' comments are then forwarded to the Division staff. Division staff members present a list of funding recommendations, based on scores and available funds, to the State Arts Council for review at a public meeting.

3.2.3 Grant Award

The State Arts Council conducts a public review of the recommendations from Division staff in accordance with 29 **Del.C.** Ch. 100. At the conclusion of the public review, the State Arts Council makes its funding recommendations to the Division Director, who is responsible for all final funding decisions. Fellowship awards are announced after public approval by the State Arts Council and Division Director.

3.3 Short-term grants and Special Projects, and Interagency Partnerships

3.3.1 Grant Panelist Selection-

Short-term (non-annual) grant applications, special project grant applications, and interagency partnership agreements are assigned by the Division Director to the program specialist whose purview includes the arts discipline or project category.

3.3.2 Grant review process

Division staff review and evaluate short-term, special project grant applications according to criteria developed by Division staff and published with the grant guidelines. Staff recommendations are submitted to the Division Director for review.

3.3.3 Grant Award

The Division Director reviews staff recommendations and makes final funding decisions. Notification letters are sent out within six weeks of the application submission deadline. Funding decisions are presented to the State Arts Council at their quarterly meetings.

4.0 Appeals

4.1 Applicants may appeal funding decisions only on the basis of procedural error or impropriety. Dissatisfaction with the amount of an award, or a decision not to fund a project, is not sufficient reason for appeal.

4.2 Standard of Review:

Grant determinations may be reconsidered if the Division Director determines that the application was reviewed on the basis of criteria other than those appearing in the published guidelines for that grant category; that Grant Panelists or Council members were influenced by Council members who failed to disclose conflicts of interest, or that erroneous information was provided by staff, panelists, or Council members at the time of the application's review, and such erroneous information was relied upon by the Grant Panel, Council, or Division Director in making the grant determination.

4.3 Procedure for Appeal

4.3.1 Consultation

Prior to submitting an appeal, applicants should first consult with the staff member assigned to the application to review the panel comments and considerations.

4.3.2 Written Request for Appeal

After consulting with the assigned staff member, if the applicant wishes to pursue an appeal, the appeal must be sent in writing to the Division Director within 30 days of the date notifying the applicant of the funding decision. The letter should contain evidence to support one or more of the grounds for appeal noted in 4.1.

4.3.3 Review

The Director will notify the Chair of the State Arts Council of the appeal. The Director and Chair will review the appeal and, at their discretion, will make a ruling or submit the appeal to the full Council for review and recommendation.

4.3.4 Notification

The Director will notify the applicant in writing of the ruling on the appeal.

4.3.5 Arts Council Review

After reviewing the appeal letter determination, the applicant may request a public hearing with the Council, pursuant to 29 **Del.C.** Ch. 100. At the conclusion of the public hearing, the Council will reconsider the appeal and make a final ruling. A simple majority vote of the Council will determine the appeal outcome.

DIVISION OF PROFESSIONAL REGULATION

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

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

24 DE Admin. Code 1800

ORDER

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

After due notice in the Delaware Register of Regulations and two Delaware newspapers, a public hearing was held on September 12, 2023 at a scheduled meeting of the Delaware Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners ("Board") to receive comments regarding proposed amendments to the Board's rules and regulations. The new Section 5.0 establishes a continuing education requirement for licensees.

The proposed changes to the rules and regulations were published in the *Delaware Register of Regulations*, Volume 26, Issue 12 on June 1, 2023, contemplating a July 11, 2023 public hearing. On August 1, 2023 in Volume 27, Issue 2 of the *Delaware Register of Regulations*, public notice was given that the public hearing had been rescheduled to be held on September 12, 2023 at 8:30 a.m. Notice of the September 12, 2023 hearing was also 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 September 27, 2023, 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on October 10, 2023.

Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

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

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

At the public hearing on September 12, 2023, Mr. Charles Robbins spoke publicly in favor of the amendments and noted that when the proposal to adopt a continuing education was proposed earlier this year, the Board received additional public support which he encouraged be incorporated in the Board's consideration of the amendment.

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. The Board considered the public comments from Mr. Robbins in favor of amending the regulations.

Pursuant to 24 **Del.C.** § 1806(a)(2), the Board has the statutory authority to promulgate rules and regulations related to requirements for continuing education. And, having received only supportive comments concerning the proposed amendment, the Board finds reason to amend the regulations as proposed and hereby takes action to do so.

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 10th day of October 2023.

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

/s/ Harold Caswell, President, Professional /s/ Jonathan Cochran, Professional Member
Member

/s/ Philip Sharp, Vice President, /s/ Russell Yetter, Professional Member
Professional Member

/s/ John Mills, Secretary, Professional /s/ James Anderson, Public Member
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 June 2023 issue of the *Register* at page 1046 (26 DE Reg. 1046). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/november2023/final/27 DE Reg 347 11-01-23.htm>

DIVISION OF PROFESSIONAL REGULATION

Board of Home Inspectors

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

ORDER

4100 Board of Home Inspectors

After due notice in the *Delaware Register of Regulations* and two Delaware newspapers, a public hearing was held on July 11, 2023 at a scheduled meeting of the Delaware Board of Home Inspectors ("Board") to receive comments regarding proposed amendments to the Board's rules and regulations. The proposed regulation changes addressed a growing practice in the profession of licensed home inspectors performing partial home inspections and not producing written reports. In addition, they expand the list of certifying bodies acceptable to the Board for experience applicants.

The proposed changes to the rules and regulations were initially published in the *Delaware Register of*

Regulations, Volume 26, Issue 5 on November 1, 2022 with a proposed hearing date of January 10, 2023. The hearing was canceled, and the Notice was re-published in the April 1, 2023 *Register*, Volume 26, Issue 10 with a hearing date of May 9, 2023. The May 9, 2023 hearing was canceled. A General Notice of the hearing rescheduled for July 11, 2023 was published in the *Register* on June 1, 2023, Volume 26, Issue 12. Notice of the July 11, 2023 hearing was published in the *News Journal* (Exhibit 1) and the *Delaware State News*. Exhibit 2. Pursuant to 29 **Del.C.** § 10118(a), the date to receive final written comments was July 26, 2023. The Board deliberated on the proposed revisions at its regularly scheduled meeting on September 12, 2023.

Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

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

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

Board Exhibit 3: July 11, 2023 email from Eric Thorn, Esquire.

There were no comments presented by testimony at the public hearing on July 11, 2023. Written comment was submitted by Eric Thorn, Esquire pertaining to proposed revisions to subsection 4.5.2, which outlines the experience requirements for non-trainee/experience applicants. Subsection 4.5.2 originally stated that an applicant can meet experience requirements by documenting no fewer than 75 home inspections and providing evidence that the applicant is a member of the American Society of Home Inspectors (ASHI). Subsection 4.5.2 has been amended to require that the applicant is a *certified* member of ASHI, or the National Association of Home Inspectors (NAHI) or the International Association of Certified Home Inspectors (INTERNACHI). Mr. Thorn commented that NAHI closed its doors in 2016 and no longer has members.

Findings of Fact and Conclusions

Pursuant to 24 **Del.C.** § 4106(a)(1), the Board has the statutory authority to promulgate rules and regulations.

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. The Board considered the written comments submitted by Mr. Thorn. The Board found that certified membership in NAHI may meet the licensure requirements where such certification was obtained or held prior to 2016. The Board decided that further revision of the proposed regulatory amendments was not warranted.

Decision and Effective Date

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

IT IS SO ORDERED this 10th day of October 2023.

DELAWARE BOARD OF HOME INSPECTORS

/s/ Robert Clark, Chairperson

/s/ Lisa Roddis

/s/ Tammy Dawson

/s/ John Kerrigan Sr., Vice Chairperson

/s/ David Zebley

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

***Please note that no changes were made to the regulation as originally proposed and published in the April 2023 issue of the *Register* at page 825 (26 DE Reg. 825). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/november2023/final/27 DE Reg 348 11-01-23.htm>

GENERAL NOTICES

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Proposed Renewal for the DDDS Lifespan Waiver

HOME AND COMMUNITY-BASED SERVICES WAIVER

In accordance with the public notice requirements of 42 CFR 441.304(d)(1), 42 CFR 441.304(e), and 42 CFR 441.304(f) and Title 29, Chapter 101 of the Delaware Code, Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) gives notice related to the renewal of the DDDS HCBS Medicaid Waiver authorized under section 1915(c) of the Social Security Act.

Purpose

The purpose of this posting is to provide public notice and elicit public input regarding Delaware's proposed renewal of its current 1915 (c) HCBS Lifespan Waiver that serves individuals with intellectual and developmental disabilities (IDD).

Overview and Summary of the Lifespan Waiver Amendment

Delaware proposes to renew the DDDS waiver that has been in continuous operation since 1987. The waiver must be renewed every five years. Any changes during those five years must be made through an amendment to the current approved waiver. The DDDS waiver is targeted to individuals with intellectual developmental disabilities (IDD) (including brain injury), autism spectrum disorder, and Prader-Willi Syndrome. It provides services and supports as an alternative to institutional placement and promotes independence, enables the individual to live "their good life" safely in the community, encourages community engagement, and respects and supports their desire to work or engage in other productive activities.

Change(s) to the current waiver include:

- Updating language regarding background checks to implement certain flexibilities approved by CMS during the public health emergency.
- Increasing the combined Respite and Personal Care service budget from \$3,500 per person to \$5,000 per person annually.
- Increasing the current Home and Vehicle Accessibility Adaptations budget from \$6,000 per member every 5 years (inclusive of both services) to \$10,000 per member every 5 years (inclusive of both services).
- Adding a new provider type to Assistive Technology, Home and Vehicle Accessibility Adaptations, and Specialized Medical Equipment and Supplies.
- Adding a new provider type for Residential Habilitation-Shared Living.
- Adding the option of providing specific activities virtually for Supported Employment (Individual), Behavioral Consultation, and Nurse Consultation.
- Removing language from Appendix C (Prevocational Services) that reference payments of sub-minimum wages.
- Other technical changes related to state procedure/policy changes and for purposes of clarification and grammar.

Background

Delaware has operated a Home and Community Based Services (HCBS) Waiver for individuals with intellectual

and developmental disabilities continuously since 1987. The authority under the Social Security Act that allows HCBS waivers to be created requires that each waiver be renewed every five years.

Public Comment Submission Process

As required by 42 CFR Part 441.304, DHSS/DMMA must establish and use a public input process for any changes in the services or operation of the waiver. Per Del. Code, Title 29, Ch. 101 §10118 (a), the opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. The opportunity for public written comment shall be extended for a minimum of 15 days after the final public hearing when 1 or more public hearings are held on the proposal. The public is invited to review and comment on the proposed Lifespan Waiver Amendment. Comments must be received by 4:30 p.m. on December 15, 2023. Individuals may submit written comments using one or all the following methods:

By email: DHSS_DMMA_Publiccomment@Delaware.gov
(Please identify in the subject line: DDDS Lifespan Waiver Amendment)

By fax: 302-255-4481 to the attention of Melissa Dohring

By written comments sent to:
DDDS Lifespan Waiver Amendment
Division of Medicaid and Medical Assistance
Planning, Policy & Quality Unit
1901 North DuPont Highway
P.O. Box 906
New Castle, Delaware 19720-0906

This public notice, the Renewal, and a summary of the Renewal are posted online at:

<https://dhss.delaware.gov/dhss/dmma/homeandc.html>

The DMMA and DDDS websites will indicate the locations at which the hardcopy can be viewed.

The hardcopy waiver amendment will be available at the following locations from November 1, 2023, through December 15, 2023.

- DDDS Fox Run Office at: 2540 Wrangle Hill Road, Suite 200, Bear, DE 19701
- Thomas Collins Building at: 540 South Dupont Hwy, 1st Floor, Dover, DE 19901
- Woodbrook Office at: 1056 S. Governors Ave, Dover, DE 19904
- Stockley Center campus at: 26351 Patriots Way, Georgetown, DE 19947 - 101 Lloyd Lane and 101 Boyd Blvd.

Public Hearings

Notice will be published regarding the amendment in the November 1, 2023, Delaware Register of Regulations with a link to the website where the complete application may be found. The comment period begins on November 1, 2023, and ends on December 15, 2023.

This timeframe allows an additional period of 15 days for the public to comment after the last public meeting.

The public will have the opportunity to comment using the process described in the Register notice.

Following the comment period the State reviews, considers, and responds to all comments received.

Dates and Locations for Public Hearings for the Lifespan Waiver Renewal-**New Castle County****• November 20, 2023**

10:00 am- 11:00 am

Delaware State Patrol, Troop 2

100 Corporal Stephen J. Ballard Way

Newark, DE 19702

***If you would prefer to participate virtually:**

Via Zoom:

<https://ddds.zoom.us/j/84687310917>

833 548 0282 US Toll-free

Meeting ID: 846 8731 0917

Kent County**• November 21, 2023**

2:00 pm- 3:00 pm

Kent County Public Library

497 S. Red Haven Lane

Dover, DE 19901

***If you would prefer to participate virtually:**

Via Zoom:

<https://ddds.zoom.us/j/82054612719>

833 548 0282 US Toll-free

Meeting ID: 820 5461 2719

Sussex County**• November 22, 2023**

6:00 pm - 7:00 pm

Georgetown Public Library

123 W. Pine Street

Delaware Room

Georgetown, De 19947

***If you would prefer to participate virtually:**

Via Zoom:

<https://ddds.zoom.us/j/86841187213>

833 548 0282 US Toll-free

Meeting ID: 868 4118 7213

DDDS will summarize any public feedback received including any changes it has made as a result of the public comment to the proposed Lifespan Waiver Renewal that will be submitted to CMS.

If you require special assistance and/or services to participate in the public hearing (e.g., sign language interpretation or other translation services, etc.) please call or e-mail the following contact at least ten (10) days prior to the hearing for arrangements: Kami Giglio at 302-387-7388 or Kamin.Giglio@delaware.gov.

The prompt submission of requests helps to ensure the availability of qualified individuals and appropriate accommodations in advance.

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

Date 10/13/2023 | 9:15 AM EDT

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

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

NOTICE

Moderate Non-Attainment Plan For New Castle County For The 2015 8-Hour Ozone National Ambient Air Quality Standard and Basic Inspection & Maintenance Performance Standard Certification For New Castle County

1. TITLE OF THE REGULATIONS:

Moderate Non-Attainment Plan For New Castle County For The 2015 8-Hour Ozone National Ambient Air Quality Standard

Basic Inspection & Maintenance Performance Standard Certification For New Castle County

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

On June 4, 2018, the Environmental Protection Agency (EPA) designated 51 areas of the country as "non-attainment" under the 2015 8-hour ozone National Ambient Air Quality Standard (NAAQS) of 70 parts per billion (ppb). Ground level ozone, one of the principal components of "smog," is a serious air pollutant that harms human health and the environment. Among those non-attainment areas is the Philadelphia-Wilmington-Atlantic City (PA-NJ-MD-DE) Moderate Non-Attainment Area (NAA). This NAA includes New Castle County in Delaware. On October 7, 2022, EPA published a final rule to reclassify certain ozone nonattainment areas from Marginal to Moderate for the 2015 ozone NAAQS and instructed those areas to develop the following State Implementation Plans (SIP):

Docket #2023-R-A-0016: "Moderate Non-Attainment Plan For New Castle County For The 2015 8-Hour Ozone National Ambient Air Quality Standard". This document contains Delaware's SIP revision for meeting the Attainment Plan requirements associated with the 2015 8-hour ozone NAAQS. Hearing begins at 6:00 pm.

Docket #2023-R-A-0017: "Basic Inspection & Maintenance Performance Standard Certification For New Castle County". This document addresses how Delaware demonstrates that the vehicle Inspection and Maintenance (I/M) Program meets the performance standard, as defined within the I/M regulations (40 CFR Part 51, subpart S) and the Clean Air Act, through a Performance Standard Modeling certification. Hearing begins immediately following Docket #2023-R-A-0016 hearing.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Del.C.** Ch. 60, Section 6010 (a) and (c).

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

None.

6. NOTICE OF PUBLIC COMMENT:

Two virtual public hearings (Docket #2023-R-A-0016 and Docket #2023-R-A-0017) will be held on Tuesday, November 28, 2023 beginning at 6 p.m. The web link to the virtual hearing can be accessed through the DNREC Public Hearings site at <https://de.gov/dnrehearings>. If prompted for a password, please use: 666395. To access the audio-only portion of the virtual hearing, dial 1-646-931-3860 and enter the event code 860 4729 4107. Closed-captioning in over 20 languages, including English and Spanish, is available to attendees via the Zoom platform utilized for all DNREC Public Hearings.

GENERAL NOTICES

Those wishing to offer verbal comments during DNREC public hearings must pre-register no later than noon of the date of the virtual hearing at <https://de.gov/dnrecomments> or by telephone at 302-739-9001.

The proposed SIP documents may be inspected online starting November 1, 2023 at http://regulations.delaware.gov/services/current_issue.shtml or by contacting Carolyn Cook, by phone at 302-739-9402 or by email at Carolyn.Cook@delaware.gov. The MOVES input/output files may be requested by contacting Carolyn Cook at the contact information provided.

The Department will accept public comment through the close of business on December 13, 2023. Comments will be accepted in written form via email to DNRECHearingComments@delaware.gov, or by using the online form at <https://de.gov/dnrecomments>, or by U.S. mail to the following address:

Theresa Smith, Hearing Officer
DNREC - Office of the Secretary
89 Kings Highway, Dover, DE 19901

7. PREPARED BY:

Carolyn Cook
Division of Air Quality-DNREC
100 W. Water Street, Suite 6A, Dover, DE 19904
Phone: (302)739-9402; email: Carolyn.Cook@delaware.gov

***Please Note: Due to the formatting requirements of the proposed SIP documents they are being attached here as PDF documents:**

<https://regulations.delaware.gov/register/november2023/general/2015> Ozone NAAQS Proposal
[Certification SIP 10-12-23.pdf](#)

<https://regulations.delaware.gov/register/november2023/general/2015> Ozone NAAQS Proposal
[Appendices - Certification SIP 10-12-23.pdf](#)

<https://regulations.delaware.gov/register/november2023/general/2015> Ozone NAAQS Proposal Attainment
[Plan SIP 10-12-23.pdf](#)

<https://regulations.delaware.gov/register/november2023/general/2015> Ozone NAAQS Proposal
[Appendices - Attainment Plan SIP 10-12-23.pdf](#)

DEPARTMENT OF TRANSPORTATION

DIVISION OF TRANSPORTATION SOLUTIONS

Traffic Engineering Section

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

NOTICE

Senate Bill 89 as amended by Senate Amendment 1 - Fairfax Subdivision

September 19, 2023

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

Ms. Smallwood,

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

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

§4505. Traffic control devices.

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

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

"No Trucks Over 2 Axles Except Residential Services" on all local streets in the Fairfax subdivision

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

Thank you,
Peter Haag
Chief of Traffic Engineering

DELAWARE RIVER BASIN COMMISSION
PUBLIC NOTICE

The Delaware River Basin Commission will hold a public hearing on Wednesday, November 8, 2023, 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 participate, will be posted on the Commission's website, www.drbc.gov, at least ten (10) days prior to the hearing date.

The Commission's quarterly business meeting will be held on Wednesday, December 6, 2023 commencing at 10:30 a.m. The business meeting will be held remotely. An agenda will be posted on the Commission's website, www.drbc.gov, at least ten (10) days prior to the meeting date.

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

Pamela M. Bush, Esq.
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 every 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 PUBLIC HEALTH
PUBLIC NOTICE**4305 Trauma System Regulation**

Office of Emergency Medical Services & Preparedness Section, Division of Public Health, Department of Health and Social Services (Department), has proposed amendments to the State of Delaware Trauma System Regulations. The proposed revisions to the Trauma System regulations bring the Delaware Statewide Trauma System and its components into alignment with the current revision of the American College of Surgeons' Committee on Trauma's *Resources for Optimal Care of the Injured Patient 2022 Standards*. The revisions were developed and recommended by the stakeholders who serve on the state Trauma System Committee and primarily are related to documentation of the requirements for Trauma System Participating Hospitals, modification of the Trauma Registry inclusion criteria to be in alignment with the National Trauma Data Bank criteria, updating of the Trauma Center Designation Process, and relocation of the Prehospital Trauma Triage Scheme to the Advanced and Basic Life Support Standing Orders. Older, original, and outdated sections were updated with current practices.

On November 1, 2023, pursuant to 16 Del.C. §9706 (g)(2), the Department plans to publish proposed amendments to the State of Delaware Trauma System Regulations and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the November 1, 2023 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Emergency Medical Services at (302) 223-2700.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them by December 1, 2023, at:

Division of Public Health
417 Federal Street
Dover, DE 19901
Email: DHSS_DPH_regulations@delaware.gov
Phone: (302) 744-44951

DIVISION OF PUBLIC HEALTH
PUBLIC NOTICE
4459 Lead-Based Paint Hazards

Pursuant to 16 **Del.C.** §122(3)t., the Health Systems Protection section within the Division of Public Health, Department of Health and Social Services, is proposing revisions to the Lead Based Paints Hazards. The revisions include:

- Addition of electronic payments for Accreditation of Training Programs;
- Removal of the requirement for the Secretary to maintain a list of parties whose accreditation has changed status; and
- Addition of the ability for an Abatement Worker to apply for a 1 year provisional certification.

Copies of the proposed regulations are available for review in the November 1, 2023, edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744- 4700.

Any person who wishes to make written suggestions, testimony, briefs, or other written materials concerning the proposed regulations must submit them by Friday, December 1, 2023, at:

Division of Public Health
417 Federal Street
Dover, DE 19901
Email: DHSS_DPH_regulations@delaware.gov
Phone: (302) 744-4700

DIVISION OF PUBLIC HEALTH
PUBLIC NOTICE

4459A Regulations Governing the Childhood Lead Poisoning Prevention Act

Pursuant to 16 **Del.C.** §122(3)t, the Health Systems Protection section within the Division of Public Health, Department of Health and Social Services, is proposing revisions to the Regulations Governing the Childhood Lead Poisoning Prevention. The revisions include:

- Addition of the Division's investigation and reporting obligations; and
- Technical and renumbering revisions.

Copies of the proposed regulations are available for review in the November 1, 2023, edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744- 4700.

Any person who wishes to make written suggestions, testimony, briefs, or other written materials concerning the proposed regulations must submit them by Friday, December 1, 2023, at:

Division of Public Health
417 Federal Street
Dover, DE 19901
Email: DHSS_DPH_regulations@delaware.gov
Phone: (302) 744-4700

CALENDAR OF EVENTS/HEARING NOTICES

DIVISION OF PUBLIC HEALTH
PUBLIC NOTICE
4501 Regulations for Animals Held in Shelter

Pursuant to 16 **Del.C.** §3004F(d) and §3008F(a), Office of Animal Welfare, Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Animals Held in Shelter. On November 1, 2023, the Division of Public Health plans to publish as "proposed" revisions to the Animals Held in Shelter regulations. The revisions include updates to reflect current best practices in animal sheltering, edits required to mirror recent changes in Delaware Code, and technical corrections.

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

Any person who wishes to make written suggestions, testimony, briefs, or other written materials concerning the proposed regulations must submit them by December 1, 2023, at:

Division of Public Health

417 Federal Street

Dover, DE 19901

Email: DHSS_DPH_regulations@delaware.gov

Phone: (302) 744-4951

DEPARTMENT OF LABOR
DIVISION OF INDUSTRIAL AFFAIRS
PUBLIC NOTICE
1341 Workers' Compensation Regulations

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 19 **Del.C.** §§105 and 2322B, the Delaware Department of Labor, Office of Workers' Compensation ("Office"), proposes to modify 19 **DE Admin. Code** 1341 regarding the health care payment system, specifically the Workers' Compensation Regulations.

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:

Susan Justison

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 susan.justison@Delaware.gov. Any written submission in response to this notice and relevant to the proposed rules must be received by the above contact at the Delaware Department of Labor no later than 4 p.m. EST, December 1, 2023.

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

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF FISH AND WILDLIFE
PUBLIC NOTICE
3900 Wildlife

The Division of Fish and Wildlife's Wildlife Section is proposing to make amendments to existing regulations within 7 **DE Admin. Code** 3900 Wildlife. Specifically, changes are proposed within 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, 21.0 Guide License, 22.0 Hunter and Trapper License Exempt Number, and 23.0 Non-native/Invasive Wildlife. A new set of regulations is being proposed with the creation of, 24.0 Wildlife Management Zone Boundaries.

While expansive, most of the changes being proposed will provide additional hunting and trapping opportunities such as establishing new seasons, expanding current seasons, providing additional methods of take and developing new and improved reporting criteria for harvested game. However, some of the proposed changes are needed to minimize negative impacts to some species and to minimize damage to infrastructure and habitats on lands and waters administered by the Division, while others are minor administrative updates such as correcting grammar and misspellings.

The hearing record on the proposed changes to 7 **DE Admin. Code** 3900 will be open November 1, 2023. The virtual public hearing will be held on Wednesday, December 13, 2023, beginning at 6:00 p.m. The web link to the virtual hearing can be accessed through the DNREC Public Hearings site at <https://dnrec.alpha.delaware.gov/public-hearings/>. If prompted, use Meeting ID: 981 1400 7545 Passcode: 955331. To access the audio-only portion of the virtual hearing, dial (305) 224- 1968 and enter the Meeting ID and Passcode noted above. Closed captioning is available in over 20 languages, including English and Spanish, to attendees via the Zoom platform utilized for all DNREC Public Hearings.

Those wishing to offer verbal comments during DNREC virtual public hearings must pre-register no later than noon on the date of the virtual hearing. The designated page for this Pre-Registration process can be found here: <https://dnrec.alpha.delaware.gov/public-hearings/comments/registration/>

The proposed amendments may be inspected online starting November 1, 2023 at https://regulations.delaware.gov/services/current_issue.shtml, or in-person, by appointment only, by contacting Joe Rogerson by phone at 302-735-3600 or by email at Joseph.Rogerson@delaware.gov.

Public comments will be received until close of business Friday, January 12, 2024. Comments will be accepted in written form via email to DNRECHearingComments@delaware.gov, or by using the online form at <https://de.gov/dnrecomments>, or by U.S. mail to the following address:

Lisa Vest, Hearing Officer
DNREC - Office of the Secretary
89 Kings Highway, Dover, DE 19901

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

STATE BUREAU OF IDENTIFICATION

PUBLIC NOTICE

1300 Board of Examiners of Private Investigators & Private Security Agencies

Purpose: In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 24 of the Delaware Code, Chapter 13, Section 1305(b)(1), the Board of Examiners of Private Investigators and Private Security Agencies proposes to adopt regulations to allow the use of canines by licensed security guards for the detection of firearms and controlled substances.

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

STATE BUREAU OF IDENTIFICATION**PUBLIC NOTICE****2400 Board of Examiners of Constables**

Purpose: In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 24 of the Delaware Code, Chapter 56, Section 5604(1), the Constable Board of Examiners proposes to adopt regulations to amend licensing requirements and make technical corrections to the regulation.

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

DEPARTMENT OF STATE**DIVISION OF PROFESSIONAL REGULATION****PUBLIC NOTICE****2700 Board of Registration for Professional Land Surveyors**

Pursuant to 24 **Del.C.** §2706(a)(1), the Delaware Board of Professional Land Surveyors ("Board") has proposed revisions to its Rules and Regulations. The revised subsection 10.1.2 would relax the PDH requirement for disabled, retired licensees under the age of 62. The other proposed amendments reflect technical and style changes consistent with the *Delaware Administrative Code Drafting and Style Manual*.

The Board will hold a public hearing on the proposed regulation changes on January 18, 2024, at 8:30 a.m. in the second-floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Professional Land Surveyors, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address or at Tashana.Branch@delaware.gov.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be February 7, 2024. The Board will deliberate on all of the public comments at its regularly scheduled meeting.

DIVISION OF PROFESSIONAL REGULATION**PUBLIC NOTICE****6100 Board of Elevator Mechanics**

Pursuant to 24 **Del.C.** §6105(a)(1), the Delaware Board of Elevator Mechanics ("Board") has proposed adoption of rules and regulations to implement its licensing law, Chapter 61 of Title 24 of the Delaware Code. In particular, the proposed rules and regulations set forth the process whereby applicants may be eligible for licensure under the grandfathering provision. Standards for licensure, practice and continuing education are adopted. The Board has also proposed adoption of a list of crimes substantially related to the practice of providing elevator services.

A public hearing will be held on November 21, 2023 at 10:00 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Elevator Mechanics, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address or at danielle.ridgway@delaware.gov.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be **December 6, 2023**. The Board will deliberate on all of the public comments at its regularly scheduled meeting.