
Delaware Register of Regulations

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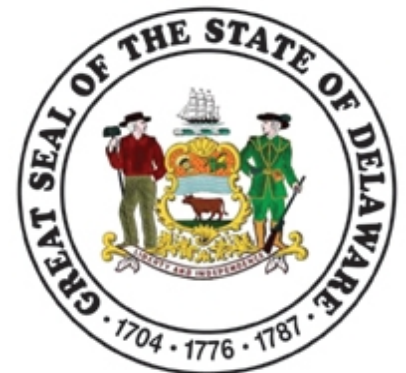
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Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before September 15, 2023.

Cover Photo
Wyoming, Delaware

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF 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.

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
November 1	October 15	4:30 p.m.
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.

DIVISION OF RESEARCH STAFF

Falah Al-Falahi, Legislative Research Analyst; **Mark J. Cutrona**, Director; **Richard Dillard**, Legislative Drafting Advisor; **Amanda Fulton**, Special Projects Administrative Specialist; **Deborah Gottschalk**, Sr. Legislative Attorney; **Quran Hernandez**, Graphics and Printing Technician III; **Benjamin Kowal**, Joint Legislative Oversight Sunset Committee Analyst; **Robert Lupo**, Graphics and Printing Supervisor; **Colinda Marker**, Executive Assistant; **Amanda McAtee**, Joint Legislative Oversight Sunset Committee Analyst; **Carolyn Meier**, Delaware Code Editor; **Kathleen Morris**, Fiscal Administrative Officer; **Nathan Poore**, Graphics and Printing Technician IV; **Joel Rudnick**, Legislative Librarian; **Erika Schrader**, Assistant Registrar of Regulations; **Yvette W. Smallwood**, Registrar of Regulations; **Holly Vaughn Wagner**, Deputy Director; **Carrie Wanstall**, Administrative Specialist III; **Natalie White**, Legal Publications Editor; **Cara Wilson**, Legislative Attorney.

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Vehicle Services

Statutory Authority: 21 Delaware Code, Section 302, 29 Delaware Code, Section 8404(8), and
 30 Delaware Code, Section 3003 (21 **Del.C.** §302, 29 **Del.C.** §8404(8) & 30 **Del.C.** §3003)
 2 **DE Admin. Code** 2266

ERRATA

2266 Vehicle Document Fees

* **Please Note:** The Department of Transportation regulation, 2 **DE Admin. Code** 2266, was published as proposed in the *Delaware Register of Regulations*, 27 **DE Reg.** 94 (08/01/23). Section 8.0 and subsection 9.1.1 were inadvertently published incorrectly.

Section 8.0 was published as:

If the amount of purchase price indicated on a non-dealer bill of sale is less than the average trade-in value as listed in the most recent N.A.D.A. Guide, the document fee is to be assessed on the current average trade in value as listed in the N.A.D.A. Guide. However, the owner may obtain an appraisal from a Delaware ~~license~~ licensed vehicle dealer and such appraisal may also be considered in determining vehicle document fee.

Section 8.0 should have read:

If the amount of purchase price indicated on a non-dealer bill of sale is less than the average trade-in value as listed in the most recent N.A.D.A. Guide, the document fee is to be assessed on the current average ~~trade in~~ trade-in value as listed in the N.A.D.A. Guide. However, the owner may obtain an appraisal from a Delaware ~~license~~ licensed vehicle dealer and such appraisal may also be considered in determining vehicle document fee.

Subsection 9.1.1 was published as:

9.1.1 Use the current year manufacturer's suggested retail price, if one exists, or the M.S. R. P. from the prior year's model. Depreciate that price using the following formula.

Vehicle Price	Amount Depreciation
\$0 - \$10,000	10%
\$10,001 - \$20,000	15%
\$20,001 - \$100,000	20%
Example:	1989 Oldsmobile 88, Royale, 4D Sedan
1988 M.S.R.P.	\$14,498
	<u>x .15% Depreciation</u>
	\$2,174 Depreciation
	Document fee will be based on \$14,498 - \$2,174 = \$12,324

Subsection 9.1.1 should have read:

9.1.1 Use the current year manufacturer's suggested retail price, if one exists, or the M.S. R. P. from the prior year's model. Depreciate that price using the following formula.

Vehicle Price	Amount Depreciation
\$0 - \$10,000	10%
\$10,001 - \$20,000	15%

\$20,001 - \$100,000 ±	20%
Example:	1989 Oldsmobile 88, Royale, 4D Sedan
1988 M.S.R.P.	\$14,498
	<u>x .15% Depreciation</u>
	\$2,174 Depreciation
	Document fee will be based on \$14,498 - \$2,174 = \$12,324

This regulation is corrected and being published as a final regulation in the October 2023 *Register*.

Symbol Key

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

Proposed Regulations

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

DELAWARE RIVER BASIN COMMISSION

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

PUBLIC NOTICE

Notice of Proposed Rulemaking and Public Hearing

Amendments to Rules of Practice and Procedure

SUMMARY: The Commission proposes to amend its Rules of Practice and Procedure to: resolve ambiguities around the automatic termination of project approvals issued by the Commission; make conforming amendments to related provisions as appropriate; update the Commission's Water Resources Program and Project Review procedures to better conform them to current practice; remove references to the Federal Freedom of Information Act that create confusion about the regulations applicable to requests for Commission public records; and align pronouns with the Commission's policies regarding diversity, inclusion, and belonging.

DATES: *Written comments:* Written comments will be accepted through 5 p.m. on November 30, 2023.

Public hearings: Public hearings will be held remotely via Zoom on the following dates at the noted times. Details about accessing the hearings are available on the Commission's website, www.drbc.gov.

1. November 13, 2023, 1:30 p.m. to no later than 4:00 p.m.
2. November 13, 2023, 6:30 p.m. to no later than 9:00 p.m.

A notice including these public hearing dates, times and locations was posted on the Commission's website on September 29, 2023, and circulated that day directly to Commission notice subscribers interested in this subject matter. Members of the public may sign up through the Commission's website to receive direct notice via email of additions or changes to the information provided above.

ADDRESSES: *To submit written comments:* Written comments will be accepted until 5 p.m. on November 30, 2023 through the Commission's online public comment collection system at: <https://hearing.drbc.commentinput.com?id=T95htQGAg>. To request an exception from use of the online system based on

lack of access to the Internet, please contact: Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628.

To register to speak at public hearings: Although attendance at the hearings is not limited and requires no registration, those who wish to provide oral comment at a hearing must register in advance to do so. Registration will be through Zoom. Links to the Zoom registration for each of the public hearing dates and times are posted at www.drbc.gov. Online registration will remain open until 5 p.m. on the day prior to the hearing date or until all available speaking slots have been filled, whichever is earlier. Each person who wishes to provide oral comment may do so at only one public hearing. Registrations will be monitored, and if capacity is not adequate to accommodate all who wish to speak, additional opportunities may be added.

FOR FURTHER INFORMATION CONTACT: For information regarding the public hearings and submission of written comments, contact Kate Schmidt, Communications Specialist, at kate.schmidt@drbc.gov (preferred) or 609-883-9500, ext. 205. For information concerning the proposed amendments, contact Pamela Bush, Commission Secretary and Assistant General Counsel, at pam.bush@drbc.gov (preferred) or 609-477-7203.

SUPPLEMENTARY INFORMATION: The Delaware River Basin Commission ("DRBC" or "Commission") is a Federal-interstate compact agency formed by the enactment of concurrent legislation by four states and the United States in 1961¹ to manage the water resources of the Delaware River Basin (the "Basin") without regard to political boundaries. The Commission's members are, *ex officio*, the governors of the basin states (Delaware, New Jersey, New York, and Pennsylvania) and the Division Engineer of the U.S. Army Corps of Engineers North Atlantic Division, who represents the United States.

¹United States Public Law 87-328, Approved Sept. 27, 1961, 75 Statutes at Large 688; 53 Delaware Laws, Ch. 71, Approved May 26, 1961; New Jersey Laws of 1961, Ch. 13, Approved May 1, 1961; New York Laws of 1961, Ch. 148, Approved March 17, 1961; Pennsylvania Acts of 1961, Act. No. 268, Approved July 7, 1961.

Background

The Commission's Rules of Practice and Procedure ("RPP"), comprising part 401 of Title 18 of the Code of Federal Regulations, govern the adoption and revision of the Commission's Comprehensive Plan and Water Resources Program, the exercise of the Commission's authority pursuant to the provisions of Article 3.8 of the Delaware River Basin Compact (the "Compact") and other actions of the Commission mandated or authorized by the Compact, including but not limited to the administration of public access to records and information in the Commission's possession.

The proposed amendments are intended primarily to resolve ambiguities in the current language of paragraph (a) of § 401.41 ("Limitation of approval"); to replace certain out-of-date provisions, such as the requirement for paper copies of project review applications under Section 3.8 of the Compact, that no longer conform to current practice; and to eliminate references to the Federal Freedom of Information Act ("FOIA") in Subpart H--Public Access to Records and Information, because the Commission is not a federal agency and because the Compact expressly exempts the Commission from the Federal Administrative Procedure Act, of which FOIA is a part. The changes proposed to § 401.41 create the need for conforming changes in four other provisions of Subpart C but do not alter the Commission's interpretation or implementation of these provisions.

Ambiguities in the language of paragraph (a) of § 401.41 came to light in 2022 in connection with a request in accordance with this provision for extension of an approval issued in 2019 under Section 3.8 of the Compact. The current provision states that a Commission approval "shall expire three years from the date of Commission action unless prior thereto the sponsor has expended substantial funds (in relation to the cost of the project) in reliance upon such approval." The provision further provides that "[a]n approval may be extended or renewed by the Commission upon application." The questions raised by this language include: whether, if the listed conditions are met, an expiring docket automatically extends or renews without the need for Commission action; whether, if acknowledgement or a decision is necessary, the Commission must vote on the matter or the Executive Director may issue the acknowledgment or render the decision; whether the project sponsor may be relieved of the requirement that it have "expended substantial funds" if circumstances beyond the sponsor's control have prevented it from doing so; whether public notice and a public hearing should be provided before an extension is acknowledged, approved or denied; and the duration of an extension if acknowledged or approved.

Proposed Amendments

Amendments to § 401.41

Proposed § 401.41(a). Paragraph (a) of § 401.41 operates when the instrument of Commission approval

contains no expiration date. This occurs when the Commission approves an activity such as dredging under Section 3.8 of the Compact and accompanying regulations at 18 C.F.R. 401.35(a)(7) or construction under the Commission's Flood Plain Regulations, 18 C.F.R. part 415. Because the Commission exercises no continuing oversight over dredging and construction activities, no renewal of an approval for such activities is ordinarily required. Section 401.41(a) serves as a backstop in the unusual instances in which the approved activity is not promptly undertaken. In contrast, approvals for ongoing withdrawals and discharges are issued for limited terms of ten and five years, respectively, as set forth in the instrument of approval. Under existing regulations, an application for renewal of an approval, when required, must be submitted no fewer than 120 days in advance of the assigned expiration date unless the instrument of approval provides otherwise. See 18 C.F.R. 401.43(b)(4)(ii). (An amendment proposed in this rulemaking would change the required timing of submission to 180 days in advance of the assigned expiration date.) That paragraph (a) of § 401.41 operates only when an approval contains no expiration date is made explicit in the amended rule.

In addition, the proposed amendments extend from three years to five the time by which a Commission approval that lacks an expiration date "shall expire" if certain requirements are not met. In the Commission's view, a period of five years, rather than the current three, is appropriate given modern permitting and construction timeframes for Commission-approved projects. As noted above, five years is also the term of a Commission approval for a wastewater discharge, and is the term normally applied to individual permits issued under the Coastal Zone Management Rules established by an agency of one of the Commission's member states, the New Jersey Department of Environmental Protection ("NJDEP") (see N.J. Admin. Code § 7.7-8.2).

Additional changes to § 401.41 are proposed to resolve ambiguities in the current language. Under the proposed revision, the project sponsor must submit a written request for an extension, accompanied by supporting documentation. In response, the Executive Director by a written determination must grant a five-year extension if the sponsor's request and supporting documentation demonstrate to the Executive Director's satisfaction that certain criteria are met. Specifically, the Executive Director must grant the extension if he or she determines: (1) that no material change is proposed to the project as approved; (2) that the sponsor has expended, at a minimum, the lesser of one million dollars or substantial funds in relation to the cost of the project or has been prevented from doing so by circumstances beyond the sponsor's control; and (3)-(4), that neither the Commission's Comprehensive Plan nor the condition of the project site has changed in a manner important to determining whether the project would substantially impair or conflict with the Comprehensive Plan.

The term "material change" is proposed to be added to Subpart I--General Provisions, § 401.121 (Definitions), and defined as, "a change to a project previously approved by the Commission that is important in determining whether the project would substantially impair or conflict with the Commission's comprehensive plan." The proposed definition restates the purpose of the Commission's review as set forth in Article 3.8 of the Compact, which provides in relevant part that "[t]he commission shall approve a project whenever it finds and determines that such project would not substantially impair or conflict with the comprehensive plan and may modify and approve as modified, or may disapprove any such project whenever it finds and determines that the project would substantially impair or conflict with such plan."

As proposed, amended § 401.41(a) would also require public notice of a determination by the Executive Director on or before the Commission's next quarterly public hearing or business meeting. The proposed language establishes that determinations by the Executive Director under the provision are appealable in accordance with Subpart F--Administrative and Other Hearings, §§ 401.81 - 401.90.

Proposed § 401.41(b). The proposed amendments include a new § 401.41(b), which makes clear that if one or more material changes to an approved project are proposed, or if the Executive Director determines that any one or more of the other criteria listed at proposed § 401.41(a) are not satisfied, the project sponsor must apply for renewal and modification of its approval in accordance with the customary application procedure for any docket renewal or approval issued by the Commission. This section applies to any Commission approval, whether or not it includes an expiration date, and regardless of whether the project sponsor has expended a minimum amount of funds in relation to the cost of a project. (Existing § 401.43(b)(4)(iii) sets forth the fee associated with modification of a Commission approval.)

Proposed § 401.41(c). Proposed § 401.41(c) would effectively preserve the current § 401.41(b), which provides that a project review application (as opposed to a Commission approval) that remains dormant (defined by the rule as "no active pursuit of approvals") for three years from the date of Commission receipt of the application will terminate without further action by the Commission.

Conforming amendments in part 401

Introduction of the new defined term, "material change," creates the need to replace existing language with the new term in four other provisions of part 401. In each of these instances, the current language includes the undefined term "substantial change," or some variant of that term. The affected provisions are § 401.8(a), § 401.42(e), § 401.43(b)(1)(ii), and § 401.43(b)(4)(iii).

Updates of Subparts B and C

The proposed amendments would revise provisions of the RPP concerning the Water Resources Program and the review of projects under Section 3.8 of the Compact, to align them with current practice.

Period to be covered by the Water Resources Program. Article 13.2 of the Compact requires the Commission to "annually adopt a water resources program, based upon the comprehensive plan, consisting of the projects and facilities which the commission proposes to be undertaken . . . during the ensuing six years or such other reasonably foreseeable period as the commission may determine." Currently, § 401.22 dictates that the Water Resources Program "will be a reasonably detailed amplification of that part of the Comprehensive Plan which the Commission recommends for action within the ensuing six-year period." The proposed revision would restore the flexibility the Compact allows regarding the period to be covered by the annual program.

Information required for concurrent inclusion of a project in the Comprehensive Plan and Water Resources Program. Section 401.23 establishes that a project may be added to the Comprehensive Plan and included in the Water Resources Program by concurrent action of the Commission, provided that in such instances the project sponsor has furnished the Commission with detailed information, a list of which is set forth in the provision. As amended, the list is replaced by a reference to § 401.4(b), which contains a list of the information that must be provided for any project proposed to be included in the Comprehensive Plan.

Removal of provisions concerning out-of-use classifications. Sections 401.24-401.26 relate to a system of classifying projects included in the Water Resources Program as either "A" list or "B" list projects. Because this classification system is no longer in use, these sections are proposed to be deleted.

Time of referral of a project by a state or Federal agency. The proposed amendments include a revision of § 401.38, captioned "Form of referral by State or Federal agency," to conform the language of this provision to current practice. In practice, the Commission reviews projects concurrently with reviews performed by the regulatory agencies of its member states and the Federal government. Accordingly, as proposed, § 401.38 provides that upon receipt of an application for a project that is subject to Commission review (rather than upon issuance of an approval as in the current rule), the member state agency will refer the application to the Commission.

Form of submission of a project review application. The proposed rule would amend § 401.39, captioned "Form of submission of projects," to provide that for any project subject to review under Section 3.8 of the Compact, an application will be considered complete and ripe for technical review by Commission staff when the project sponsor submits a completed application using the form provided on the Commission's website and pays the applicable fee plus any outstanding fees, penalties, or interest. The Commission's ability to request additional information from a project sponsor is preserved. The amendment would leave certain submission requirements and procedures to the instructions in the applicable form. It would conform § 401.39 to the practice already used by the Commission and most applicants, as well as by some regulatory agencies of the Commission's state and Federal members.

Timely submission of a renewal application. The proposed amendments include the revision of paragraph § 401.43(b)(4)(ii) to provide that a project sponsor must file its application for renewal of an expiring approval 180 calendar days prior to the date of expiration of the approval to avoid a late fee. The current rule requires that to avoid a late fee, a renewal application must be filed 120 days prior to the date of expiration of the approval.

Fees for name change and change of ownership. The amendments are proposed to include consolidation into a single fee of the fees that currently apply, respectively, when the sponsor of a project undergoes a name change (§ 401.43(b)(4)(iv)) and when the project undergoes a change of ownership (§ 401.43(b)(4)(v)). A corresponding change is required to the accompanying Table 3 to § 401.43. The amendment is proposed because the two types of events entail comparable time and effort on the part of the Commission's project review staff.

Public Access to Records and Information

Subpart H of the RPP contains regulations related to the disclosure of Commission records to members of the public upon request. The rules currently identify the Federal FOIA as authority pursuant to which the Commission promulgated Subpart H, and the subpart contains multiple references to the FOIA. Although certain language in the current Subpart H is identical to language in the FOIA, the Commission, a Federal-interstate compact agency, is not a Federal agency, and the Commission is expressly exempt by § 15.1(m) of the Compact from the Federal

Administrative Procedure Act, of which FOIA is a part. The agenda for a January 29, 1975 Commission conference session and business meeting at which adoption of the then-draft Subpart H regulations was discussed makes clear the Commission understood this at the time. The agenda states, "The Commission is not subject to the Administrative Procedures (*sic*) Act. However, staff recommends approval of these regulations in any case as a matter of desirable policy." At a business meeting on February 26, 1975, the Commission adopted the Subpart H regulations as proposed.

References to the FOIA in Subpart H have created confusion on the part of individuals who seek access to Commission records. In particular, requests for records filed with the Commission under Subpart H often cite to procedural provisions of the FOIA that differ from those in Subpart H. The proposed amendments would eliminate an important source of such confusion. The proposed amendments also would remove gendered pronouns used in the current regulations to align with the Commission's support of diversity, equity, inclusion and belonging.

Public Process

Substance of comments. The Commission welcomes and will consider comments that concern the potential impacts of the proposed amendments on the conservation, utilization, development, management and control of the water and related resources of the Delaware River Basin and on public participation in the Commission's water resource management activities.

Non-digitized, voluminous materials such as books, journals and collections of documents will not be accepted. Digital submissions of articles and websites must be accompanied by a statement containing citations to the specific findings or conclusions the commenter wishes to reference.

Submission of written comments. Written comments along with any attachments should be submitted through the Commission's web-based comment system (<https://hearing.drbc.commentinput.com?id=T95htQGAg>) until 5 p.m. on November 30, 2023. All materials should be provided in searchable formats, preferably in .pdf searchable text. Notably, a picture scan of a document may not result in searchable text. Comments received through any method other than the designated on-line method, including via email, fax, postal/delivery services or hand delivery, will not be considered or included in the rulemaking record unless accompanied by a written request for an exception based on lack of access to the web-based comment system. Such requests and accompanying materials may be sent to: Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628.

Public hearings. To provide for an orderly process, support public and community health measures, and provide expanded access to interested parties regardless of their geographic location, the Commission is conducting its public hearings virtually. Attendance at the hearings is not limited and requires no registration. However, to eliminate uncertainty on the part of attendees about whether they will have an opportunity to provide oral comment, those who wish to speak at a hearing must register in advance to do so, using the link on the Commission's website. Registrations will be monitored, and if capacity is not adequate to accommodate all who wish to speak, additional opportunities may be added. Key elements of the procedure are as follows:

- Online registration to speak at a public hearing will remain open until 5 p.m. the day prior to each hearing.
- Each person who wishes to provide oral comment may do so at only one public hearing.
- Speaking time will be limited to approximately three minutes per speaker.
- Elected government officials and their staff will have the opportunity to identify themselves when registering to attend a hearing.
- Attendance at the public hearings is not limited and requires no advance registration.
- Written and oral comment will receive equal consideration.

The Commission appreciates the public's participation and input on this important matter.

Translation Services for Rulemaking Materials. The Commission will consider requests for translation of this notice and the proposed rule text into languages other than English. To request translation of documents related to this rulemaking, please send an e-mail to translate@drbc.gov. Please specify both the requested language and the requested documents.

More Information. Detailed and up-to-date information about the public process, including all proposed rule text, related documents and links for online registration to speak at each of the scheduled public hearings, can be found on the DRBC website, www.drbc.gov.

For the reasons set forth in the preamble, the Delaware River Basin Commission proposes to amend its *Administrative Manual, Rules of Practice and Procedure*, as set forth below.

DELAWARE RIVER BASIN COMMISSION

18 C.F.R. CHAPTER III - SUBCHAPTER A - ADMINISTRATIVE MANUAL

PART 401 - RULES OF PRACTICE AND PROCEDURE

[Editor's note: New text appears in bold face with underscore, and text to be deleted appears in bold face with strikethrough. Asterisks represent no change to the existing rule text.]

Subpart A -- Comprehensive Plan

* * * * *

401.8 Public projects under Article 11 of the Compact.

(a) After a project of any federal, state or local agency has been included in the Comprehensive Plan, no further action will be required by the Commission or by the agency to satisfy the requirements of Article 11 of the Compact, except as the Comprehensive Plan may be amended or revised pursuant to the Compact and this part. Any project which is materially changed ~~substantially~~ from the project as described in the Comprehensive Plan will be deemed to be a new and different project for the purposes of Article 11 of the Compact. Whenever a change is made the sponsor shall advise the Executive Director, who will determine whether the change is deemed ~~substantial~~ a material change within the meaning of this part.

* * * * *

Subpart B -- Water Resources Program

* * * * *

401.22 Concept of the program.

The *Water Resources Program*, as defined and described in Section 13.2 of the *Compact*, will be a reasonably detailed amplification of that part of the *Comprehensive Plan* which the Commission recommends for action ~~within the ensuing six-year period~~. That part of the Program consisting of a presentation of the water resource needs of the Basin will be revised only at such intervals as may be indicated to reflect new findings and conclusions, based upon the Commission's continuing planning programs.

401.23 Procedure.

The Water Resources Program will be prepared and considered by the Commission for adoption annually. ~~Each project~~ Projects included in the *Water Resources Program* shall have been previously included in the *Comprehensive Plan*, except that a project may be added to both the Plan and the Program by concurrent action of the Commission. In such instances, the ~~The~~ project's sponsor shall furnish the ~~following~~ information listed in § 401.4(b) prior to the inclusion of the project in the Comprehensive Plan and Water Resources Program. :

- (a) ~~The Comprehensive Plan data brought up to date for the period of the Water Resources Program;~~
- (b) ~~Specific location and dimension of a structural project, and specific language of a standard, policy or other non-structural proposal;~~
- (c) ~~The plan of operation of a structural project;~~
- (d) ~~The specific effects of a non-structural project;~~
- (e) ~~Sufficient data to indicate a workable financial plan under which the project will be carried out; and~~
- (f) ~~A timetable for implementation.~~

401.24 Preparation and adoption.

~~The Water Resources Program will be prepared and considered by the Commission for adoption annually. Projects required to satisfy the Basin needs during the period covered by the Program may be classified as follows:~~

- (a) ~~A List: This shall include public projects which require no further review, and inclusion in such list shall be deemed to be approved for the purposes of Section 3.8 of the Compact;~~
- (b) ~~B List: This shall include public projects not included in the A list and privately sponsored projects which are proposed or anticipated by the Commission.~~

PROPOSED REGULATIONS

401.25 Alternatives for public projects.

~~Any public project which has been included in the Comprehensive Plan but is not on the "A" list of the current Water Resources Program, at the option of the sponsor, may be submitted for review and approval under Section 3.8 of the Compact in accordance with Subpart C of these regulations.~~

401.26 Inventory of other projects.

~~Each Water Resources Program will include, for information purposes only, an inventory of projects approved during the previous year pursuant to Section 3.8 of the Compact but which are not part of the Comprehensive Plan or Water Resources Program.~~

Subpart C -- Project Review Under Section 3.8 of the Compact

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401.38 Form of referral by State or Federal agency.

Upon receipt of an application approval by any state or federal agency ~~for of~~ any project reviewable by the Commission under these regulations, if the project has not prior thereto been reviewed and approved by the Commission, such agency shall refer the project for review under Section 3.8 of the *Compact* in such form and manner as shall be provided by Administrative Agreement.

* * * * *

401.39 Form of submission of projects ~~not requiring prior approval by State or Federal agencies.~~

~~Where a project does not require approval by any other state or federal agency, or where such approval is required but an Administrative Agreement is not in force, the project shall be submitted directly to the Commission for review and determination of compatibility with the *Comprehensive Plan*, in such form of application, with such supporting documentation, as the Executive Director may reasonably require for the administration of the provisions of the *Compact*. These shall include without limitation thereto:~~

- (a) ~~*Exhibits to Accompany Application.*~~ The application shall be accompanied by the following exhibits:
- (1) ~~Abstract of proceedings authorizing project, where applicable;~~
 - (2) ~~General map showing specific location and dimension of a structural project, or specific language of a standard or policy in the case of a non-structural proposal;~~
 - (3) ~~Section of the United States Geological Survey topographic map showing the territory and watershed affected;~~
 - (4) ~~Maps, drawings, specifications and profiles of any proposed structures, or a description of the specific effects of a non-structural project;~~
 - (5) ~~Written report of the applicant's engineer showing the proposed plan of operation of a structural project;~~
 - (6) ~~Map of any lands to be acquired or occupied;~~
 - (7) ~~Estimate of the cost of completing the proposed project, and sufficient data to indicate a workable financial plan under which the project will be carried out; and~~
 - (8) ~~Analyses and conclusions of regional water supply and wastewater investigations.~~
- (b) ~~*Letter of Transmittal.*~~ The application shall be accompanied by a letter of transmittal in which the applicant shall include a list of all enclosures, the names and addresses to which communications may be directed to the applicant, and the names and addresses of the applicant's engineer and counsel, if any.
- (c) ~~Unless otherwise ordered by the Commission, two copies of the application and accompanying papers shall be filed. If any application is contested, the Commission may require additional copies of the application and all accompanying papers to be furnished by the applicant. In such cases, certified copies or photographic prints or reproductions may be used.~~
- (a) *Submission constituting application.* Where a project is subject to review under Section 3.8 of the Compact, the submission shall be in accordance with such form of application as the Executive Director may prescribe and with such supporting documentation as the Executive Director may reasonably require for the administration of the provisions of the Compact. An application shall be deemed complete and the Commission's review of the application may

commence upon submission of the completed form in accordance with paragraph (b) of this section, and payment of the applicable fee as set forth in § 401.43 together with all balances due the Commission, if any, by the applicant or any member of its corporate structure, for unpaid fees, penalties, or interest.

(b) *Submission of Applications.* Application forms and accompanying submissions shall be filed in accordance with the filing instructions included on the application form.

(c) *Availability of Forms.* Any person may obtain a copy of any form prescribed for use in paragraph (a) on the Commission's website, <https://www.drbc.gov>.

* * * * *

401.41 Limitation of approval; dormant applications.

~~(a) Approval by the Commission under these regulations shall expire three years from the date of Commission action unless prior thereto the sponsor has expended substantial funds (in relation to the cost of the project) in reliance upon such approval. An approval may be extended or renewed by the Commission upon application.~~

~~(b) Any application that remains dormant (no proof of active pursuit of approvals) for a period of three years from date of receipt, shall be automatically terminated. Any renewed activity following that date will require submission of a new application.~~

(a) *Extension by Executive Director.* For any Commission approval not assigned an expiration date, the Commission's approval shall expire five years from the approval date unless prior thereto the Executive Director extends the approval for an additional five-year period based upon a written request from the project sponsor accompanied by supporting documentation demonstrating to the Executive Director's satisfaction that the following criteria have been met:

- (1) Either (a), the project sponsor has expended, at a minimum, the sum of one million dollars (\$1,000,000) or an amount representing substantial funds in relation to the cost of the project in reliance upon the Commission's approval; or (b) in the alternative, circumstances beyond the project sponsor's control (including but not limited to, pending legal challenges to local, state or federal permits) have prevented the sponsor from expending an amount equal to either of the sums set forth in (a);
- (2) no material changes to the project as approved are proposed;
- (3) the condition of the project site has not changed in a manner important to determining whether the project would substantially impair or conflict with the Commission's Comprehensive Plan; and
- (4) the Commission's Comprehensive Plan has not changed in a manner important to determining whether the project would substantially impair or conflict with the Comprehensive Plan.

Otherwise, the Executive Director shall deny the request.

Public notice of a determination by the Executive Director pursuant to this paragraph (a) shall be provided no later than the Commission's next regularly scheduled public hearing or business meeting following the determination. A determination by the Executive Director pursuant to this section is appealable in accordance with subpart F of this part.

(b) *Review by Commissioners.* If in the view of the Executive Director (or if appealed to the Commission pursuant to subpart F, in the view of the Commission), one or more material changes to a project as approved are proposed, or if the Executive Director determines that any one or more of the other criteria listed at § 401.41(a) are not satisfied, the project sponsor must apply for renewal and modification of its approval in accordance with the customary application procedure for any docket renewal or approval.

(c) *Automatic Termination of Application.* Any application that remains dormant (no proof of active pursuit of approvals) for a period of three years from date of receipt, shall be automatically terminated without further action of the Commission. Any renewed activity following that date will require submission of a new application.

PROPOSED REGULATIONS

401.42 One permit program.

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(e) *Comprehensive Plan projects.* Articles 11 and 13 of the Compact require certain projects to be included in the Comprehensive Plan. To add a project not yet included in the Comprehensive Plan, the project sponsor shall submit a separate application to the Commission. If following its review and public hearing the Commission approves the addition of the project to the Comprehensive Plan, the Commission's approval will include such project requirements as are necessary under the Compact and Commission regulations. All other project approvals that may be required from the Signatory Party Agency or the Commission under regulatory programs administered pursuant to this section may be issued through the One Permit Program. An application for renewal or modification of a project in the Comprehensive Plan that does not **materially** change the project ~~so substantially as to render it a new and different project~~ may be submitted only to the Signatory Party Agency unless otherwise specified in the Administrative Agreement.

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401.43 Regulatory program fees.

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(b) * * *

(1) * * *

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(ii) *Project requiring inclusion in the comprehensive plan.* Any project that in accordance with section 11 or section 13.1 of the *Delaware River Basin Compact* and DRBC regulations must be added to the Comprehensive Plan (also, "Plan"). In addition to any new project required to be included in the Plan, such projects include existing projects that in accordance with section 13.1 of the *Compact* are required to be included in the Plan and which were not previously added to the Plan. Any existing project that is **materially** changed ~~substantially~~ from the project as described in the Plan shall be deemed to be a new and different project for purposes of this section.

* * * * *

(4) * * *

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(ii) *Late filed renewal application.* Any renewal application submitted fewer than ~~420~~ **180** calendar days in advance of the expiration date or after such other date specified in the docket or permit or letter of the Executive Director for filing a renewal application shall be subject to a late filed renewal application charge in excess of the otherwise applicable fee.

(iii) *Modification of a DRBC approval.* Following Commission action on a project, ~~each any~~ **material change to the** project ~~revision or modification that the Executive Director deems substantial as approved~~ shall require an additional application **and accompanying** fee. **Such fee shall be** calculated in accordance with paragraph (e) of this section and **may be** subject to an alternative review fee in accordance with paragraph (b)(3) of this section.

(iv) *Name change or change of ownership.* Each project with a docket or permit issued by the DRBC ~~or by a Signatory Party Agency pursuant to the One Permit Program rule (§ 401.42)~~ will be charged an administrative fee as set forth in paragraph (e) of this section **if it undergoes a change in name or a "change in ownership" as that term is defined at § 420.31(e)(2) of this title.**

~~(v) *Change of ownership.* Each project that undergoes a "change in ownership" as that term is defined at 18 CFR 420.31(e)(2) will be charged an administrative fee as set forth in paragraph (e) of this section.~~

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Table 3 to § 401.43--Additional Fees

Proposed action	Fee	Fee maximum
* * * * *	*	*
Name change	\$1,228¹	
Name Change or Change of Ownership	\$1,842¹	

¹ Subject to annual adjustment in accordance with paragraph (c) of this section.

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Subpart H -- Public Access to Records and Information

Authority: 5 U.S.C. 552

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401.103 Request for existing records.

- (a) Any written request to the Commission for existing records not prepared for routine distribution to the public shall be deemed to be a request for records pursuant to the **provisions of this part Freedom of Information Act**, whether or not the **provisions of this part are Freedom of Information Act** is mentioned in the request, and shall be governed by the provisions of this part.

* * * * *

401.104 Preparation of new records.

The ~~Freedom of Information Act and the~~ provisions of this part apply only to existing records that are reasonably described in a request filed with the Commission pursuant to the procedures herein established. The Commission shall not be required to prepare new records in order to respond to a request for information.

401.105 Indexes of certain records.

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- (b) A copy of each such index is available at cost of duplication from the **Records Access FOIA** Officer.

401.106 Records Access FOIA Officer

The Executive Director shall designate a Commission employee as the **Records Access FOIA** Officer. The **Records Access FOIA** Officer shall be responsible for Commission compliance with the **provisions of this part Freedom of Information Act and these regulations**. All requests for agency records shall be sent **in writing to the Records Access Officer in a manner consistent with § 401.108(a)**. ÷

FOIA Officer

~~Delaware River Basin Commission~~

~~P.O. Box 7360~~

~~West Trenton, New Jersey 08628-0360~~

* * * * *

401.108 Filing a request for records.

- (a) All requests for Commission records shall be **submitted filed in writing delivered** to the **Records Access FOIA** Officer **on such form as the Executive Director may prescribe, which shall be available on the Commission's website, https://www.drbc.gov**, or by **written request mailing it** to the Commission. ~~The Commission will supply forms for written requests, 25 Cosey Road, West Trenton, NJ 08628.~~

- (b) * * *

- (1) If the description is insufficient to locate the records requested, the **Records Access FOIA** Officer will so notify the person making the request and indicate the additional information needed to identify the records requested.

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PROPOSED REGULATIONS

- (c) Upon receipt of a request for records, the **Records Access FOIA** Officer shall enter it in a public log (which entry may consist of a copy of the request). The log shall state the date and time received, the name and address of the person making the request, the nature of the records requested, the action taken on the request, the date of the determination letter sent pursuant to § 401.109(b), the date(s) any records are subsequently furnished, the number of staff-hours and grade levels of persons who spent time responding to the request, and the payment requested and received.
- (d) A denial of a request for records, in whole or in part, shall be signed by the **Records Access FOIA** Officer. The name and title or position of each person who participated in the denial of a request for records shall be set forth in the letter denying the request. This requirement may be met by attaching a list of such individuals to the letter.

401.109 Time limitations.

- (a) All time limitations established pursuant to this section shall begin as of the time at which a request for records is logged in by the **Records Access FOIA** Officer pursuant to § 401.108(c). An oral request for records shall not begin any time requirement. A written request for records sent elsewhere within the Commission shall not begin any time requirement until it is redirected to the **Records Access FOIA** Officer and is logged in accordance with § 401.108(c). A request that is expected to involve fees in excess of \$50.00 will not be deemed received until the requester is promptly notified and agrees to bear the cost or has so indicated on the initial his request.
- (b) Within ten working days (excepting Saturdays, Sundays, and legal public holidays) after a request for records is logged by the **Records Access FOIA** Officer, the record shall be furnished or a letter shall be sent to the person making the request determining whether, or the extent to which, the Commission will comply with the request, and, if any records are denied, the reasons therefor.

* * * * *

- (c) If any record is denied, the letter shall state the right of the person requesting such records to appeal any adverse determination to the Executive Director of the Commission. Such an appeal shall be filed within 30 days from receipt of the **Records Access FOIA** Officer's determination denying the requested information (where the entire request has been denied), or from the receipt of any information made available pursuant to the request (where the request has been denied in part). Within 20 working days (excepting Saturdays, Sundays, and legal public holidays) after receipt of any appeal, or any authorized extension, the Executive Director or the Executive Director's his designee shall make a determination and notify the appellant of such his determination. If the appeal is decided in favor of the appellant the requested information shall be promptly supplied as provided in this part. If on appeal the denial of the request for records is upheld in whole or in part, the appellant shall be entitled to appeal to the Commission at its regular meeting. In the event that the Commission confirms the Executive Director's denial the appellant shall be notified of the provisions for judicial review.

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401.110 Fees.

- (a) * * *
- (1) * * *
- (i) * * *
- (A) Processing **FOIA** requests for records;

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- (c) Payment shall be made by check or money order payable to "Delaware River Basin Commission" and shall be sent to the **Records Access FOIA** Officer.

* * * * *

401.115 Discretionary disclosure by the Executive Director

- (a) The Executive Director may, in his exercise discretion, to disclose part or all of any Commission record that is otherwise exempt from disclosure pursuant to this part. ~~The whenever the~~ Executive Director ~~shall exercise his discretion to disclose such records whenever he~~ determines that such disclosure is in the public interest, will promote the objectives of the Commission, and is consistent

with the rights of individuals to privacy, the property rights of persons in trade secrets, and the need for the Commission to promote frank internal policy deliberations and to pursue its regulatory activities without disruption.

- (b) Discretionary disclosure of a record pursuant to this section shall invoke the requirement that the record shall be disclosed to any person who requests it pursuant to § 401.108, but shall not set a precedent for discretionary disclosure of any similar or related record and shall not obligate the Executive Director ~~to exercise his discretion~~ to disclose any other record that is exempt from disclosure.

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Subpart I -- General Provisions

401.121 Definitions

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- (e) **Material change shall mean a change to a project previously approved by the Commission that is important in determining whether the project would substantially impair or conflict with the Commission's comprehensive plan.**

- (f) **Sponsor** shall mean any person authorized to initiate, construct or administer a project.

* * * * *

Dated: November 2, 2021.

Pamela M. Bush, Esquire

Commission Secretary and Assistant General Counsel.

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(2) (14 Del.C. §122(b)(2))
14 DE Admin. Code 608

PUBLIC NOTICE

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

608 Unsafe School Choice Option Policy

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)(2), the Department of Education developed amendments to 14 DE Admin. Code 608 Unsafe School Choice Option. The regulation sets forth the State's unsafe school choice policy in accordance with 20 U.S.C. § 7912(a). The regulation was reviewed in accordance with 29 Del.C. §10407. The proposed amendments include grammatical and style changes to comply with the *Delaware Administrative Code Drafting and Style Manual*.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/governance/regulations-code/post-a-comment/> by the close of business (4:30 p.m. EST) on or before November 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 concerns the State's unsafe school choice policy and is not designed to help improve student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure all students receive an equitable education by ensuring a safe school option.
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 by ensuring a safe school option.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation concerns the State's unsafe school choice policy and is not designed to help ensure that all students' legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision 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 because the reporting requirement already exists.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? By statute (14 **Del.C.** §122(b)(2)), the Department promulgates regulations governing the protection of the health and physical welfare of public school students in Delaware. The amended regulation does not change the Department's decision making authority and accountability for addressing the subject 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/october2023/proposed/27 DE Reg 217RFA 10-01-23.pdf>

608 Unsafe School Choice Option Policy

1.0 Purpose

~~The Elementary and Secondary Education Act (ESEA) of 1965, as amended by the Every Student Succeeds Act (ESSA) of 2015, requires that a State Education Agency establish a State Unsafe School Choice Option policy in order to receive funding under ESEA. The State receives funds under Title 20, Chapter 70 of the United States Code (Strengthening and Improvement of Elementary and Secondary Schools) and, as a result, is required to establish and implement an unsafe school choice policy in accordance with 20 U.S.C. § 7912(a). Pursuant to 14 Del.C. §122(b)(2), this regulation sets forth the State's unsafe school choice policy.~~

2.0 Definitions

~~In this regulation, the following terms shall have the meanings indicated below. The following words and terms, when used in this regulation, shall have the following meanings:~~

~~"Crime" shall have the same meaning as provided in 14 Del.C. §4112.~~

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

~~"Enrolled Students" unless the context indicates otherwise, means all students included in the Delaware Student Information System (DELSIS) report for the year of the data collection.~~

~~"Expulsion" means, for purposes of this regulation, the exclusion from the regular school setting for a period determined by the local district board or charter school board not to exceed one year. The process for readmission shall be determined by the local district board or charter school board.~~

~~"Firearm" means handgun, rifle, shotgun, or other type of firearm as that term is defined in the federal Gun Free Schools Zone Act at 18 U.S.C.A. §921.~~

~~"Fiscal Year" means the period of July 1 through June 30.~~

~~"Gun Free Schools Violation" means the prohibited bringing to school, or possession while in school of a firearm by a student.~~

~~"Persistently Dangerous School dangerous school" means a school that has five or more unsafe incidents for every one hundred students enrolled for three consecutive fiscal years meets the criteria in subsection 3.1.~~

~~"Safe School school" means a school in the same school district that is not currently identified by the Department of Education as a persistently dangerous school.~~

~~"School" means any public school including charter schools. School property shall have the same meaning as provided in 14 ~~Del.C.~~ §4112 (a)(9).~~

~~"Suspension" means, for the purpose of this regulation, the external (out of school) removal of a student from the general school population.~~

~~"Unsafe Incidents" means any of the following:~~

~~The school suspended or expelled a student for a gun free schools violation; or~~

~~The school suspended or expelled a student for a crime committed on school property which is required to be reported under 14 ~~Del.C.~~ §4112; or~~

~~The school reported a crime committed by a non student on school property that is required to be reported under 14 ~~Del.C.~~ §4112.~~

~~"Violent Felony felony" shall have the same meaning means any crime as provided in 11 ~~Del.C.~~ §4201(c).~~

3.0 Identification of Persistently Dangerous Schools

~~3.1 The Department of Education shall identify each Persistently Dangerous School using the data reported to it pursuant to the provisions of 14 ~~Del.C.~~ §4112, 14 ~~DE Admin. Code~~ 601, and any expulsion and suspension data as required by the Department.~~

~~3.1 A school shall be identified as a persistently dangerous school if 5 or more unsafe incidents for every 100 students enrolled occurred during the 3 previous consecutive fiscal years.~~

~~3.2 Unsafe incidents are set forth in subsections 3.2.1 through 3.2.4.~~

~~3.2.1 The school suspends or expels a student for bringing a firearm to school in violation of 11 ~~Del.C.~~ §1457A.~~

~~3.2.2 The school suspends or expels a student for possessing a firearm while in school in violation of 11 ~~Del.C.~~ §1457A.~~

~~3.2.3 The school suspends or expels a student for a crime committed on school property that is required to be reported under 14 ~~Del.C.~~ §4112.~~

~~3.2.4 The school reported a crime committed by a nonstudent on school property that is required to be reported under 14 ~~Del.C.~~ §4112.~~

~~3.2 3.3 Notwithstanding any provision herein to the contrary, any year that a ~~School school~~ fails to comply with the reporting mandates, as set forth in 3.1 above, to the Delaware Department of Education or to the appropriate police agency as set forth above required by law, the Department of Education will consider the ~~School school~~ as if it otherwise met the criteria to be classified as a ~~Persistently Dangerous School~~ for that year until such time as it may be determined, in the sole discretion of the Department, that the ~~School~~ has met such reporting requirements persistently dangerous school for the entire fiscal year. For the purpose of this regulation, fiscal year means the period of July 1 through June 30.~~

PROPOSED REGULATIONS

3.4 The Department shall identify each persistently dangerous school using the data reported to it pursuant to the provisions of 14 Del.C. §4112, 14 DE Admin. Code 601, and any expulsion and suspension data as required by the Department. For the purpose of this regulation, expulsion means the exclusion from the regular school setting for a period determined by the local district board or charter school board not to exceed 1 year and suspension mean the external, out-of-school removal of a student from the general school population.

~~3.3~~ 3.5 A School school that is identified as a Persistently Dangerous School will persistently dangerous school shall retain that designation the identification as a persistently dangerous school for the entire fiscal year. For the purpose of this regulation, fiscal year means the period of July 1 through June 30.

4.0 Students Attending Schools Labeled as Persistently Dangerous

4.1 A student attending a ~~Persistently Dangerous School~~ persistently dangerous school shall be allowed to choice to a ~~Safe School~~ safe school in the same school district, including a charter ~~school~~ school, provided that a charter school option exists in that school district's boundaries.

4.2 Each public school district having ~~one~~ 1 or more ~~Persistently Dangerous Schools~~ persistently dangerous schools and any charter school identified as a ~~Persistently Dangerous School~~ persistently dangerous school shall develop a plan and time line that describes the process for notifying parents of the ~~School's~~ school's status and for relocating any student who exercises the right to choice to a ~~Safe School~~ safe school. The plan shall also describe the corrective actions that will be implemented. The plan shall be forwarded to the Department of ~~Education~~ no later than September 15th of the year that the ~~School~~ school is identified.

5.0 Students Who are Victims of a Violent Felony

5.1 A student who is the victim of a ~~Violent Felony~~ violent felony while in or on the grounds of a ~~School~~ school in which the student is enrolled and attending shall be allowed to choice to a ~~Safe School~~ safe school in the same school district, including a charter ~~school~~ school, provided that a charter school option exists in that school district's boundaries.

5.2 All school districts and charter schools shall establish a plan that describes their policies and procedures for providing school choice options to a student who is the victim of a ~~Violent Felony~~ violent felony, including the process for notifying parents.

5.3 Each school district and charter school shall post the policy and procedures on the school district's or charter school's website, with hard copies provided to any requesting parties.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 3126 (14 Del.C. §3126)
14 DE Admin. Code 902

PUBLIC NOTICE

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

902 Gifted or Talented Education Plan

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del.C. §3126, the Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 902 Gifted and Talented Education Plan. This regulation is being amended to clarify language in order to continue to allow gifted and talented services to be provided based on a school district's or

charter school's capacity and to outline school district and charter school responsibilities.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before November 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 will help improve student achievement as measured against state achievement standards by ensuring each district has the flexibility to offer identification and support for students based on the district's individual capacity. This will provide districts and charter schools the autonomy needed to provide the most equitable supports and services possible for students.

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

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendment regulation does not significantly impact 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 regarding the promotion of students.

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no anticipated 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/october2023/proposed/27 DE Reg 220RFA 10-01-23.pdf>

902 Gifted or Talented Education Plan

1.0 Purpose

The purpose of this regulation is to establish that a gifted or talented student, as identified by a professionally qualified person or persons, may require differentiated educational programs or services beyond those normally provided by the regular school program in order to address the ~~individual's~~ individual student's capabilities. The school districts' or charter schools' capacity to provide the differentiated educational programs or services should also be considered as this varies between school districts and charter schools.

2.0 Definitions

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

"Gifted or Talented Education Plan" or **"Plan"** means a Delaware Department of Education approved document created by a school district or charter school for the development, implementation, and evaluation of an identification process and appropriate services for gifted or talented students.

"Gifted or Talented Student talented student" means a child enrolled in a Delaware public school who has been identified by a professionally qualified person or persons as meeting the following definition of gifted or talented:

A child capable of high performance with demonstrated achievement ~~and/or~~ or potential ability in any of the following areas, singularly or in combination:

- General intellectual ability;
- Specific academic aptitude;
- Creative or productive thinking;
- Leadership ability;
- Visual and performing arts ability; or
- Psychomotor ability.

"Relative Caregiver caregiver" means, pursuant to 14 **Del.C.** §202(f)(2), 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.

3.0 Development and Components of the Plan

- 3.1 Each school district ~~shall~~ or charter school may have a Plan which, at a minimum, shall:
- 3.1.1 Outline goals and specific outcomes;
 - 3.1.2 Be developed with input from various stakeholder groups including parents;
 - 3.1.3 Provide the process for identification of gifted or talented students by professionally qualified persons;
 - 3.1.4 Outline an identification process that ensures all students have an equal opportunity to be identified and participate in the program;
 - 3.1.5 Provide for a communication process, which shall include procedures to inform ~~parent(s), guardian(s), or Relative Caregiver(s)~~ parents, guardians, or relative caregivers of a student's participation in the gifted or talented education program;
 - 3.1.6 Establish procedures for requiring that, at a minimum, each teacher assigned to teach a student identified as gifted or talented be certified in accordance with the applicable Professional Standards Board regulations.
 - 3.1.7 Establish procedures for ~~the identification and placement of a student who was identified as gifted or talented in the school district from which the student transferred~~ students who transfer into the school district or charter school who have been identified as gifted or talented in their prior school; and
 - 3.1.8 Provide for an evaluation of the Plan ~~provided for its gifted or talented students.~~
- 3.2 Implementation of the gifted or talented programs and services shall be aligned to the Plan.

4.0 Department of Education Responsibilities

- 4.1 The Department of Education shall maintain a resource guide of best ~~practices, on its website,~~ practices on its website that a school district or charter school may use in the development and implementation of its Plan.

- 4.2 Each Plan shall be reviewed periodically, but not less than every ~~five~~ 5 years, by the Department of Education for compliance with this regulation, and any substantive changes to the Plan shall be provided for review for compliance with this regulation.

5.0 School District and Charter School Responsibilities

- 5.1 Each school district or charter school shall provide a Plan that outlines the anticipated services provided based upon each individual district's capacity. This shall include how each district identifies gifted learners and in which defined ability areas.
- 5.2 Each school district's or charter school's Plan shall be reviewed periodically, but not less than every 5 years, by the Department of Education for compliance with this regulation and equitable practices. Any substantive changes to the Plan shall be provided within 1 year for review for compliance with this regulation.
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OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(18) (14 Del.C. §122(b)(18))
14 DE Admin. Code 910

PUBLIC NOTICE

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

910 Delaware Requirements for Issuance of the Secondary Credential

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)(18), the Delaware Department of Education ("Department") developed amendments to 14 DE Admin. Code 910 Delaware Requirements for Issuance of the Secondary Credential. The regulation provides the requirements for a Secondary Credential. This regulation is being amended pursuant to 29 Del.C. §10407 which requires regulations to be reviewed on a recurring basis every four years. The amendments include corrections to grammar and style in order to comply with the *Delaware Administrative Code Drafting and Style Manual*.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before November 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 regulation addresses the Secondary Credential, which is given to applicants who satisfactorily pass a Department-approved secondary credential assessment. The proposed amendments to the regulation are not designed to help improve student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The regulation addresses the Secondary Credential, which is given to applicants who satisfactorily pass a Department-approved secondary credential assessment. The proposed amendments to the regulation are not designed to help ensure that all students receive an equitable education.

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

The regulation addresses the Secondary Credential, which is given to applicants who satisfactorily pass a Department-approved secondary credential assessment. The proposed amendments to the regulation are not designed to help ensure that all students' health and safety are adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation addresses the Secondary Credential, which is given to applicants who satisfactorily pass a Department-approved secondary credential assessment. The proposed amendments to the regulation are not designed to help to ensure that all students' legal rights are respected.

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

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

7. Will 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. By statute (14 **Del.C.** §121(b)(18)), the Department is authorized to prescribe a regulation that provides for the operation of adult education and family literacy programs. Such regulation is proposed by the Secretary of Education and is subject to the approval of the State Board of Education.

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

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

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

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

<https://regulations.delaware.gov/register/october2023/proposed/27 DE Reg 223RFA 10-01-23.pdf>

910 Delaware Requirements for Issuance of the Secondary Credential

1.0 Purpose

Pursuant to 14 **Del.C.** §122(b)(18), a Delaware secondary credential is given to persons who satisfactorily pass a secondary credential assessment approved and recognized by the Delaware Department of Education.

2.0 Definitions

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

“**Assessment**” means a set of tests that evaluates high school skill levels in the content areas of English Language Arts, Math, Science and Social Studies.

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

“**Secondary Credential**” means a document that verifies the successful completion of the assessment that evaluates high school level skills in the areas of English Language Arts, Math, Science and Social Studies.

3.0 Eligibility for a Secondary Credential Assessment

3.1 For persons 18 years of age or older, ~~an applicant~~ the person shall:

-
- 3.1.1 Be a resident of Delaware or, if a resident of another state, be currently employed in Delaware and have been ~~se~~ employed for a minimum of ~~six~~ 6 months prior to taking the test; and
 - 3.1.2 Certify by signature on the secondary credential assessment application form that ~~they are~~ the person is not enrolled in a public or ~~non-public~~ nonpublic school program.
 - 3.2 For a person 16 or 17 years of ~~age~~ an applicant age, ~~the person~~ shall:
 - 3.2.1 Seek a waiver of the 18 years of age requirement by completing a written application to the ~~Delaware Department of Education~~ that includes showing good cause for taking the test early and designating where the test will be taken; and
 - 3.2.2 Be a resident of ~~the State of~~ Delaware; and
 - 3.2.3 Verify that ~~they are~~ the person is at least 16 years of age at the time of the application for the waiver of the age requirement using a birth certificate, driver's license, a State of Delaware Identification Card or other comparable and reliable documentation of age; and
 - 3.2.4 Provide verification of withdrawal from the applicant's public or ~~non-public~~ nonpublic school program; and
 - 3.2.5 Provide a transcript from the applicant's public or ~~non-public~~ nonpublic school program.

4.0 Scores Required for a Delaware Secondary Credential

An individual shall attain ~~the minimum passing standard as approved by the Department~~ a minimum score of 145 on each subject test of the GED®.

5.0 Assessment Approval Process

- 5.1 The assessment provider must complete a Department-approved application. The application must include, at a minimum, all of the following:
 - 5.1.1 Provider's qualification and experience;
 - 5.1.2 Assessment content and form;
 - 5.1.3 Validation and norming processes;
 - 5.1.4 Assessment delivery;
 - 5.1.5 Technology processes;
 - 5.1.6 Security provisions;
 - 5.1.7 Accommodations processes;
 - 5.1.8 Assessment scoring and reporting processes;
 - 5.1.9 Assessment data access requirements;
 - 5.1.10 Practice test and supplementary instructional materials;
 - 5.1.11 Staff training;
 - 5.1.12 Alignment with college and career readiness standards and Delaware accountability system; and
 - 5.1.13 Cost and timeframe for implementation.
- 5.2 Completed applications shall be submitted to the Department.
- 5.3 The Department will evaluate the application based on the criteria in subsections 5.1.1 through 5.1.13.

6.0 Currently Recognized Assessments and Publication

- 6.1 The GED® Test has been ~~previously~~ approved and is a currently the only Department-recognized secondary credential assessment.
- 6.2 ~~The Department will publish annually a list of approved assessments.~~

PROPOSED REGULATIONS

PROFESSIONAL STANDARDS BOARD

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

PUBLIC NOTICE

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

1501 Salary Supplements for Educators

A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del.C. §§1203, 1205(b), 1305(l), and 1305(o), the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1501 Salary Supplements for Educators. The regulation concerns knowledge and skills salary supplements pursuant to 14 Del.C. §1305(k), national certification salary supplements pursuant to 14 Del.C. §1305(l), and additional responsibility assignment salary supplements pursuant to 14 Del.C. §1305(n). In accordance with 14 Del.C. §1305(o), the Board is required to annually review the supplements and promulgate recommendations as necessary. The proposed amendment to this regulation is to revise subsection 4.1.7 as a result of HB 231 of the 152nd General Assembly. HB 231 amended 14 Del.C. §1305(l) to allow salary supplements for school-based physical therapists who have passed the National Physical Therapy Exam (NPTE) administered by the Federation of State Boards of Physical Therapy and was signed into law on August 3, 2023.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before November 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? In accordance with 14 Del.C. §1305(o), the national certifications in Section 4.0 and the additional responsibility assignment in Section 5.0 are intended to lead to improvements in teacher effectiveness and student achievement. The Board is proposing to amend subsection 4.1.7 regarding the salary supplement for school-based physical therapists. The Board is not proposing any amendments to additional responsibility assignment salary supplements in Section 5.0.

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

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses salary supplements for educators and is not designed to address students' legal rights.

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

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

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

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

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

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

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? The Department provides for funding salary supplements in its annual budget. The proposed amendments are consistent with the FY24 Appropriations Act (House Bill 195) that went into effect on June 30, 2023 and HB 231 that went into effect on August 3, 2023.

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

<https://regulations.delaware.gov/register/october2023/proposed/27 DE Reg 226RFA 10-01-23.pdf>

1501 Salary Supplements for Educators

1.0 Content

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

2.0 Definitions

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

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

"Administrator Mentor" means a certified administrator who holds a Continuing License, is currently employed as an administrator, performs the duties and responsibilities in the State's administrator mentor program, and is rated as satisfactory on the State's current evaluation system or the equivalent thereof on a state-approved alternative educator evaluation system. A certified administrator is an Educator who holds at least one of the following Standard Certificates: School Principal and Assistant School Principal Standard Certificate (14 **DE Admin. Code** 1591), Certified Central Office Personnel Standard Certificate (14 **DE Admin. Code** 1592), Superintendent and Assistant Superintendent Standard Certificate (14 **DE Admin. Code** 1593), and Special Education Director Standard Certificate (14 **DE Admin. Code** 1594).

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

"Department" means the Delaware Department of Education.

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

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

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

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

"Teacher or Specialist Lead Mentor" means a teacher or specialist who holds a Continuing or Advanced License, has participated in the training approved by the Department for Teacher or Specialist Lead Mentors, is employed by an employing authority as a Teacher or Specialist Lead Mentor, and performs the duties and responsibilities assigned to that position. Educators serving as Teacher or Specialist Lead Mentors must have all satisfactory evaluations on the State's current evaluation system, or the equivalent thereof on a state-approved alternative educator evaluation system, during the school year in which they are mentors and may not be on an improvement plan, or the equivalent therefore in a state-approved alternative educator evaluation system. Teacher or Specialist Lead Mentors oversee the comprehensive induction program at the building level, train Teacher or Specialist Mentors, and provide support to teachers or specialists in years 3 and 4 of the program. Teacher or Specialist Lead Mentors may mentor an Educator in years 1 and 2 of the program.

"Teacher or Specialist Mentor" means an Educator who holds a Continuing or Advanced License and has participated in the training for mentors of teachers and specialists specified by the Department and the employing authority. Educators serving as Teacher or Specialist Mentors must have satisfactory evaluations on the State's current evaluation system, or the equivalent thereof on a state-approved alternative educator evaluation system, during the school year in which they are mentors and may not be on an improvement plan, or the equivalent therefore in a state-approved alternative educator evaluation system. Teacher or Specialist Mentors provide 1 to 1 support for Educators in years 1 and 2 of the program.

3.0 Knowledge and Skills Salary Supplements

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

4.0 National Certification

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

- 4.1.1 National Board Certification from the National Board for Professional Teaching Standards;
- 4.1.2 Certificate of Clinical Competence in Audiology (CCC-A) or Certificate of Clinical Competence Speech-Language Pathology (CCC-SLP) from the American Speech-Language-Hearing Association;
- 4.1.3 National Certified School Counselor from the National Board for Certified Counselors;
- 4.1.4 Music Therapist – Board Certified (MT-BC) from the Certification Board for Music Therapists;
- 4.1.5 Nationally Certified School Psychologist (NCSP) from the National Association of School Psychologists;
- 4.1.6 Nationally Certified School Nurse (NCSN) from the National Board for Certification of School Nurses;
- 4.1.7 ~~Nationally Certified Physical Therapy Specialist in any specialty area from the American Board of Physical Therapy Specialists.~~ School-based physical therapists who have passed the National

Physical Therapy Exam (NPTE) as administered by the Federation of State Boards of Physical Therapy (FSBPT); or

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

5.0 Additional Responsibility Assignments

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

6.0 Educators' Eligibility for Salary Supplements

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

7.0 Payment of Salary Supplements

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

8.0 Limits on Salary Supplements

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

PROFESSIONAL STANDARDS BOARD

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

14 DE Admin. Code 1517

PUBLIC NOTICE

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

1517 Paraeducator Permit**A. TYPE OF REGULATORY ACTION REQUIRED**

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del.C. §§1203 and 1205(b), the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1517 Paraeducator Permit. The regulation concerns paraprofessional qualifications and training for issuance and renewal of a Paraeducator Permit. The proposed amendments include clarifying Section 1.0; adding, striking, and revising terms in Section 2.0; revising Section 3.0, which concerns issuing a Paraeducator Permit; revising the requirements for an Instructional Paraeducator Permit in Section 4.0; revising the requirements for a Service Paraeducator Permit in Section 5.0; adding the requirements for reissuance of an expired permit to Section 6.0; revising the application requirements in Section 7.0; adding Section 8.0, which concerns renewal of a Paraeducator Permit; revising the professional development activities for renewal in Section 9.0; adding Section 10.0, which concerns validity of a Paraeducator Permit; adding Section 11.0, which concerns the requirements for retaining a Paraeducator Permit; adding Section 12.0, which concerns disciplinary action; adding Section 13.0, which concerns applicants' and paraeducators' contact information; and adding Section 14.0, which concerns recognizing Title I Paraeducator Permits that are proposed to no longer be issued.

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 November 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 requirements in Sections 4.0, 5.0, and 6.0 are designed to improve the quality of the paraeducator workforce, which will help to improve student achievement.

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

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses a permit for paraeducators and is not designed to help ensure students' legal rights are respected.

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

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

reporting or administrative requirements or mandates upon decision makers at the local board and school levels. The application requirements in Sections 7.0 and 8.0 apply to individual applicants.

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

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

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

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

***Please Note:**

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

<https://regulations.delaware.gov/register/october2023/proposed/27 DE Reg 230RFA 10-01-23.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/october2023/proposed/27 DE Reg 230 10-01-23.htm>

PROFESSIONAL STANDARDS BOARD

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

14 **DE Admin. Code** 1552

PUBLIC NOTICE

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

1552 Junior Reserve Officers' Training Corps (JROTC) Teacher

A. TYPE OF REGULATORY ACTION REQUIRED

Adoption of a New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed 14 **DE Admin. Code** 1552 Junior Reserve Officers' Training Corps (JROTC) Teacher. The proposed regulation concerns the requirements for a Junior Reserve Officers' Training Corps (JROTC) Teacher Standard Certificate in accordance with 14 **Del.C.** §1220. Proposed Section 1.0 provides who would be required to hold the Junior Reserve Officers' Training Corps (JROTC) Teacher Standard Certificate; Section 2.0 provides definitions for the proposed regulation; Section 3.0 concerns the issuance of a Junior Reserve Officers' Training Corps (JROTC) Teacher Standard Certificate; Section 4.0 provides the prescribed education, knowledge, and skill requirements for the issuance of a Junior Reserve Officers' Training Corps (JROTC) Teacher Standard Certificate; Section 5.0 provides the application requirements; Section 6.0 concerns Secretary of Education review; Section 7.0 concerns the validity of a Junior Reserve Officers' Training Corps (JROTC) Teacher Standard Certificate; Section 8.0 concerns the requirements to retain the Junior Reserve Officers' Training Corps (JROTC) Teacher Standard

Certificate; Section 9.0 concerns disciplinary actions; and Section 10.0 concerns applicants' and Educators' contact information with the Department and specifies how they can change their name or address.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/governance/regulations-code/post-a-comment/> by the close of business (4:30 p.m. EST) on or before November 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 new regulation help improve student achievement as measured against state achievement standards? The education, knowledge, and skill requirements in proposed Section 4.0 are designed to improve the quality of the educator workforce, which will help to improve student achievement.

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

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

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

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

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

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

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

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

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

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

[https://regulations.delaware.gov/register/october2023/proposed/27 DE Reg 231RFA 10-01-23.pdf](https://regulations.delaware.gov/register/october2023/proposed/27%20DE%20Reg%20231RFA%2010-01-23.pdf)

1552 Junior Reserve Officers' Training Corps (JROTC) Teacher

1.0 Content

This regulation shall apply to the issuance of a JROTC Teacher Standard Certificate pursuant to 14 Del.C. §1220(a). The JROTC Teacher Standard Certificate is required for JROTC instructors in Delaware public schools.

2.0 Definitions

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

"Department" means the Delaware Department of Education.

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

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

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

"JROTC" means a Junior Reserve Officers' Training Corps program that is conducted at a Delaware public school by instructors who are retired Air Force, Army, Coast Guard, Marine Corps, or Navy officers and enlisted personnel.

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

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

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

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

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

3.0 Issuance of a Standard Certificate

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

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

3.1.2 Has met the requirements for an educator's license in Delaware and holds a Valid and Current License or Certificate as a JROTC teacher issued by another state or jurisdiction.

3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for a JROTC Teacher Standard Certificate if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department

PROPOSED REGULATIONS

shall not act where the allegations include but are not limited to conduct such as Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials, until the applicant provides evidence of the investigation's resolution.

4.0 Prescribed Education, Knowledge, and Skill Requirements

4.1 The applicant shall have satisfied the education requirement in subsection 4.1.1.

4.1.1 The applicant shall have obtained and currently maintain certification as a JROTC instructor issued by the Secretary of the applicable military department pursuant to 10 U.S.C. §2033.

5.0 Application Requirements

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

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

5.3 For applicants who are applying for the JROTC Teacher Standard Certificate under subsection 3.1.1, the following documentation is required with the application:

5.3.1 Proof the applicant obtained and currently maintains certification as a JROTC instructor issued by the Secretary of the applicable military department pursuant to 10 U.S.C. §2033; and

5.3.2 Additional documentation as required by the Department.

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

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

5.4.2 Additional documentation as required by the Department.

6.0 Secretary of Education Review

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

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

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

7.0 Validity of a Standard Certificate

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

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

8.0 Requirements Related to the Retention of a JROTC Teacher Standard Certificate

8.1 In order to retain a JROTC Teacher Standard Certificate, the Educator shall:

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

8.1.2 Maintain certification as a JROTC instructor issued by the Secretary of the applicable military department pursuant to 10 U.S.C. §2033.

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

8.3 The requirements set forth in subsections 8.1.1 and 8.1.2 apply to all Educators regardless of the date the JROTC Teacher Standard Certificate was issued.

9.0 Disciplinary Action

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

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

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

10.0 Contact Information and Change of Name or Address

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

10.2 An Educator who legally changes the Educator's name and wishes to change the name on the JROTC Teacher Standard Certificate shall provide a notarized copy of evidence of the name change such as a marriage license or court action.

10.3 An applicant or Educator whose mailing address, email address, or phone number changes shall provide the Department with the new mailing address, email address, or phone number within 14 calendar days of the change.

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

Doula Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of 31 Del.C. §512, Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DHSS/DMMA) is proposing to amend Title XIX Medicaid State Plan regarding Doula Services, specifically, to provide Doula services as separately reimbursed pregnancy-related services.

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

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

SUMMARY OF PROPOSAL

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

Statutory Authority

- 42 CFR §440.130 (c), Diagnostic, screening, preventive, and rehabilitative services
- 42 CFR §440.170, Any other medical care or remedial care recognized under State law and specified by the Secretary
- 42 CFR §447, Payments for services

Background

Effective January 1, 2024, Delaware proposes to provide doula services for pregnant individuals during pregnancy, childbirth, and the postpartum period. Community based doulas are non-medical professionals who provide emotional, physical, and informational support and guidance in different aspects of reproductive health. Doulas do not provide medical care and do not replace medical providers. Rather, doulas provide additional non-medical support in places and at times where medical providers cannot or do not. Doulas typically come from the same community as the pregnant and postpartum individuals they serve. Service components include Perinatal support services, Labor support, Postpartum support services, and coordination with community-based services, to improve beneficiary outcomes.

Summary of Proposal*Purpose*

The purpose of this proposed regulation is to provide Doula services as separately reimbursed pregnancy-related services.

Summary of Proposed Changes

Effective January 1, 2024, the DHSS/DMMA proposes to amend Title XIX Medicaid State Plan to enroll doulas as non-medical providers in Diamond State Health Plan (DSHP) and reimburse for doula services.

Public Notice

In accordance with the *federal* public notice requirements established in Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 440.386 and the *state* public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA gives public notice and provides an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on October 31, 2023.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact

Actuarially confirmed no anticipated fiscal impact on the rates because of the small program. Therefore, the State will not spend any additional funds.

***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/october2023/proposed/27 DE Reg 235RFA 10-01-23.pdf>

Doula Services

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

<http://regulations.delaware.gov/register/october2023/proposed/3.1-A page 3 Amended.pdf>

<http://regulations.delaware.gov/register/october2023/proposed/4.19-B page 8 Amended.pdf>

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Pharmacy Value Based Purchasing (VBP)

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of 31 **Del.C.** §512, Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DHSS/DMMA) is proposing to amend Title XIX Medicaid State Plan regarding Value Based Purchasing, specifically, to participate in the Pharmacy Value Based Purchasing Program.

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

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

SUMMARY OF PROPOSAL

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

Statutory Authority

- 42 CFR 447.502

Background

CMS has implemented Value Based Purchasing that has manufacturers reporting to the agency multiple best prices for a drug that is connected to a VBP arrangement (as defined at 42 CFR 447.502) and is made available to all states. The VBP arrangements will hold manufacturers more accountable for the clinical outcomes of their medications, while giving states the opportunity to earn additional rebates depending on how a drug works for patients. Delaware currently does not have a SPA that will allow participation in the VBP process.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to add language to the state Medicaid plan allowing Delaware to

participate in the Pharmacy Value Based Purchasing program.

Summary of Proposed Changes

Effective October 1, 2023, the DHSS/DMMA proposes to amend Title XIX Medicaid State Plan to allow Pharmacy Value Based Purchasing.

Public Notice

In accordance with the *federal* public notice requirements established in Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 440.386 and the *state* public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA gives public notice and provides an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments must be received by 4:30 p.m. on October 31, 2023.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact

Projected impact is not available at this time. There is currently only one VBP offer available in the CMS MDRP Portal at the present and Delaware does not have plans to accept this offer at the present.

***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/october2023/proposed/27 DE Reg 237RFA 10-01-23.pdf>

Pharmacy Value Based Purchasing (VBP)

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

<http://regulations.delaware.gov/register/october2023/proposed/Attachment 3.1-A page 5 Addendum 1-2 Amended.pdf>

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)u.1. (16 **Del.C.** §122(3)u.1.)
16 **DE Admin. Code** 4458A

PUBLIC NOTICE

4458A Cottage Food Regulations

Pursuant to 16 **Del.C.** §122(3)u.1., the Health Systems Protection section within the Division of Public Health,

Department of Health and Social Services, is proposing revisions to the Cottage Food Regulations. The revisions include:

- Addition of "sesame" to the list of major food allergens; and
- Removal of the gross annual sales cap for cottage food establishments; and
- Removal of the owner's name and full home address of cottage food establishments on product labels, and in its place requiring the product label list the cottage food establishment's town/city in Delaware; and
- Exclusion of cannabis products; and
- Technical corrections.

Copies of the proposed regulations are available for review in the October 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 Tuesday, October 31, 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/october2023/proposed/27 DE Reg 238RFA 10-01-23.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/october2023/proposed/27 DE Reg 238 10-01-23.htm>

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

Board of Nursing

Statutory Authority: 24 Delaware Code, Section 1904(c) (24 Del.C. §1904(c))
24 DE Admin. Code 1900

PUBLIC NOTICE

1900 Board of Nursing

The Delaware Board of Nursing, pursuant to 24 Del.C. §1904(c), proposes to revise its regulations to remove the requirement for nursing employer reference forms, clarify the process for CE providers to renew their approval, and correct minor errors.

The Board will hold a public hearing on the proposed regulation changes on November 8, 2023 at 9:00 a.m. in the Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Dr. Pamela Zickafoose, Executive Director of the Delaware Board of Nursing, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until November 27, 2023 pursuant to 29 Del.C. §10118(a).

***Please Note:**

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

<https://regulations.delaware.gov/register/october2023/proposed/27 DE Reg 239RFA 10-01-23.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/october2023/proposed/27 DE Reg 239 10-01-23.htm>

DIVISION OF SMALL BUSINESS

Statutory Authority: 29 Delaware Code, Section 8705A (29 Del.C. §8705A)

PUBLIC NOTICE**The Delaware Sports Tourism Capital Investment Fund**

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 29 Del.C. §8705A, the Division of Small Business ("Division") proposes to promulgate new regulations regarding criteria and procedures governing The Delaware Sports Tourism Capital Investment Fund.

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:

Jessica Welch
Delaware Tourism Office
Division of Small Business
99 Kings Highway
Dover, DE 19901

Comments may also be directed via electronic mail to Jessica.Welch@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 Division of Small Business no later than 4 p.m. EST, November 1, 2023.

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

Statutory Authority 29 Del.C. §8705A.

29 Del.C. §8705A enables the Division of Small Business to establish and promulgate such rules and regulations governing the administration and operation of the Division as may be deemed necessary by the Director and which are not inconsistent with the laws of the State of Delaware.

Background

Senate Bill 160 of the 152nd General Assembly created The Delaware Sports Tourism Capital Investment Fund. The purpose of the fund is to provide grants in support of sports facilities (arenas, courts, fields, aquatics facilities, track and field, etc.) that will drive regional and national events to Delaware that will have a broad impact on the state and local economy. It is the intent of the General Assembly and the Administration that said funds are to be leveraged by other sources including privately sourced debt, privately sourced equity, local, and county government funding. The fund will be administered by the Division of Small Business, a division within the Department of State. 29 Del.C. §8703A.

*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/october2023/proposed/27 DE Reg 240RFA 10-01-23.pdf>

The Delaware Sports Tourism Capital Investment Fund

1.0 Enabling Legislation

- 1.1 The Delaware Sports Tourism Capital Investment Fund was established pursuant to Senate Bill 160 of the Bond and Capital Improvements Act of the State of Delaware and Certain of its Authorities for the Fiscal Year ending June 30, 2024; Authorizing the Issuance of General Obligations of the Bonds of the State; Appropriating Funds from the Transportation Trust Fund; Authorizing the issuance of Revenue Bonds of the Delaware Transportation Authority; Appropriating Special Funds of the Delaware Transportation Authority; Appropriating General Funds of the State; Reprogramming Certain Funds of the State; Specifying Certain Procedures, Conditions and Limitations for the Expenditure of Such Funds; and Amending Certain Statutory Provisions and appropriated to the Department of State.
- 1.2 The fund will be administered by the Division of Small Business.
- 1.3 The Division is responsible for the promulgation of regulations of the fund by December 31, 2023.
- 1.4 The following regulations have been adopted by the Division pursuant to its authority in 29 Del.C. §8705A and Section 69 of Senate Bill 160.

2.0 Purpose and Intent

- 2.1 The purpose of the fund is to provide grants in support of sports facilities (arenas, courts, fields, aquatics facilities, track and field, etc.) that will drive regional and national events to Delaware that will have a broad impact on the state and local economy. The purpose of these regulations is to establish clear criteria and processes for the administration of the fund and for eligibility.
- 2.2 It is the intent that said funds are to be leveraged by other sources including privately sourced debt, privately sourced equity, local, and county government funding.
- 2.3 The regulations contain procedures governing the process for applying to the Division for a grant under the fund, pre-closing and post-closing procedures and criteria for the Division's approval or disapproval of an application for a grant under the fund.

3.0 Definitions

The terms defined in Sections 1.0 and 2.0 of this regulation shall have the meanings set forth for such terms therein.

The following words and terms shall have the following respective meanings:

"Applicant" means any person, including individuals, associations, firms, not-for-profit corporations, partnerships, public or private corporations, or other legal entities, including public or governmental bodies as well as natural persons that own or ground lease property of a facility as defined in this Section 3.0 and for which a project is undertaken or proposed to be undertaken, and all subsidiaries, parents, and associated entities of such applicant.

"Application" means a certified application made to the Division of Small Business on such form or forms, together with all relevant attachments, and signed by an authorized officer or representative of the applicant, as the Division may, in its sole discretion, require in connection with administration of the fund.

"Department" means the Department of State.

"Division" means the Division of Small Business.

"Division review panel" or "panel" means the group of individuals designated by the Division and Department consisting of representatives from the Delaware Tourism Office, the General Assembly of the State of Delaware, the Greater Wilmington Convention and Visitors Bureau, Kent County Tourism Office, and Southern Delaware Tourism Office.

PROPOSED REGULATIONS

"Facility" means a high school, collegiate, or recreational venue located in the State of Delaware that generates positive incremental state tax benefits to the State, is used for public purposes, and regularly hosts sports tourism events as defined in this Section 3.0.

"Fund" means The Delaware Sports Tourism Capital Investment Fund.

"Grant" or "grants" shall have the meaning set forth in Section 9.0 of this regulation.

"Office" means the Delaware Tourism Office.

"Positive incremental state tax benefit" means, for the purposes of this program, a tax benefit demonstrated by either a feasibility study or other evidence satisfactory to the Division review panel in its sole discretion.

"Program" means the plan and process related to the administration of the fund.

"Project" means the specific intended use of proceeds from program funding for a sports facility.

"Sports facility" means an arena, court, field, aquatics facility, track and field facility, etc. located on the grounds of a facility which has the specific intended use of the proceeds from the fund.

"Sports tourism event" means tournaments, championships, or other sports-related event that brings out-of-state participants and visitors to Delaware and has a direct economic impact on tourism in the State.

"State" means the State of Delaware.

4.0 Division of Small Business Review Panel

- 4.1 The fund is administered by the Division. To facilitate with administering, the Division designates a Division review panel that will consist of the following members or the member's designee: the Director of the Office, the Sports Sales Leader of the Office, the Chair and Vice-Chair of the Joint Committee on Capital Improvement, the Executive Director of the Greater Wilmington Convention and Visitors Bureau, the President of the Kent County Tourism Office, and the Executive Director of Southern Delaware Tourism Office.
- 4.2 The panel shall consider criteria and factors as it may deem appropriate including those set forth in the regulations as well as facts relevant to the criteria and factors.
- 4.3 The panel will utilize a rubric process during its consideration of an application. The rubric process will evaluate the criteria outlined in subsection 7.2 of these regulations.
- 4.4 The panel may request documents or information from an applicant, in its sole discretion, in addition to the application.
- 4.5 If an application or requested document or information is incomplete, inaccurate, or provided untimely, the Division will inform the applicant and further consideration of the application will be stayed and taken out of the order in which the application was originally received, if and until the requested documents or information are received by the Division.
- 4.6 Upon preliminary approval by the Director of the Division, an application and an applicant evaluation report shall be submitted to the panel for review, and the panel shall make a recommendation with respect to the application to the Director of the Division.
- 4.7 Upon recommendation by the panel, the application shall be submitted to the Director of the Division for consideration and final approval or disapproval. If approved, such approval shall be final. The panel will issue its determination to approve or not approve an application, in whole or in part, and the Division will notify an applicant in writing about the determination.

5.0 Facility Eligibility

- 5.1 An applicant must satisfy the following criteria:
 - 5.1.1 Be a facility within the definition set forth in Section 3.0, specifically a high school, collegiate, or recreational venue that generates positive incremental state tax benefits to the State, is used for public purposes, and regularly hosts sports tourism events;
 - 5.1.2 Own the property on which the sports facility is to be constructed or renovated or be under a ground lease acceptable to the Division review panel;

- 5.1.3 Possess sufficient committed funds, including funding from this program if approved, to achieve successful completion of the project;
 - 5.1.4 Have a useful life of a length satisfactory to the panel with a detailed maintenance plan and a funding source for maintenance;
 - 5.1.5 Promote the Office to visitors attending sporting events at their sports facility; and
 - 5.1.6 Indicate tourism-based events it intends to target for their sports facility in program application.
- 5.2 An applicant will provide documents and information determined by the panel, in its sole discretion, to satisfy the above criteria.

6.0 Application

- 6.1 An application must contain the following:
- 6.1.1 Show at least a 1-to-1 match of funds. The panel may, in its sole discretion, waive the 1-to-1 match in specific circumstances.
 - 6.1.2 A description of anticipated use and any feasibility or economic studies or reports completed in the past 2 years; and
 - 6.1.3 At least 1 letter of support from a State or local government official representing the area in which the sports facility will be constructed. The letter of support cannot be from a member of the panel. Refer to subsection 4.1 for the list of panel members.
- 6.2 Requested funds can be used for sports facility equipment, however they cannot be used for supplies.
- 6.3 Applicant shall submit a completed original application concerning the project to the Division for review, together with 10 printed copies and an electronic copy included on a thumb drive. All applications must be signed by persons authorized to bind the applicant. Requests for confidential treatment for applicant information may be made pursuant to The Policies and Procedures Regarding FOIA Requests, 8 DE Admin. Code 1500, Section 6.0, <https://regulations.delaware.gov/AdminCode/title8/1500.shtml#TopOfPage>. No application will be reviewed by the Division until it is complete to the satisfaction of the Division. Applicants may obtain application forms by contacting Jessica Welch, Delaware Tourism Office, Division of Small Business, 99 Kings Highway, Dover, DE 19901. Phone (302) 739-4271 / Fax (302) 739-5749, or through the Office's website at <https://www.visitdelaware.com/sports>.

7.0 Evaluation Process

- 7.1 Upon determination that the application is complete, the panel will evaluate the project based upon some or all of the following criteria outlined in the application rubric.
- 7.2 The application rubric includes the following criteria:
- 7.2.1 The project's support of the mission of The Delaware Sports Tourism Capital Investment Fund as outlined in Section 2.0 of these regulations.
 - 7.2.3 The geographic area where the facility is located, including if there are other sports facilities in the area.
 - 7.2.3 The potential economic impact on the state and local economy if the facility is provided funding.
 - 7.2.4 Other sources of funding secured by the applicant for the facility, including private, state, and local investment committed to the project.
 - 7.2.5 For applications requesting funding for facility improvements, a thorough and substantiated explanation of how funding would enhance their facility and its ability to attract more sports tourism events or increase their current sports tourism event offerings. Facilities must indicate existing tourism-based events or targeted events in the application.
 - 7.2.6 How the applicant will recognize the fund's investment in the facility (e.g.: signage on the property; banners; etc.). Recognition will be mutually agreed-upon following approval of the application.

PROPOSED REGULATIONS

8.0 Additional Considerations for Project Funding

- 8.1 The panel shall consider such factors as it may deem appropriate when reviewing an application for project funding.
- 8.2 Some of the factors deemed appropriate include:
 - 8.2.1 The need in the geographic region within which the project is to be located, including other similar sports facilities;
 - 8.2.2 General geographic diversity of projects under consideration for or already-approved for funding;
 - 8.2.3 Facility's readiness to proceed with construction or renovation;
 - 8.2.4 Economic feasibility of the project to support ongoing projected maintenance and operation requirements;
 - 8.2.5 Local support for the project;
 - 8.2.6 Sources and level of funding commitments other than support from the fund;
 - 8.2.7 Owner, operator and manager of the project; and
 - 8.2.8 Economic impact on the local economy and overall economic benefit to the State.

9.0 Grants

- 9.1 The fund has been appropriated to the Department and is administered by the Division.
- 9.2 Grant proceeds can be used for renovation, construction, or any other type of improvements to a facility within the definition set forth in Section 3.0, specifically a high school, collegiate, or recreational venue that generates positive incremental state tax benefits to the State, is used for public purposes, and regularly hosts sports tourism events;
- 9.3 Recapture Provision: The Division shall determine, in its sole discretion, those circumstances in which a grantee must repay all or part of a grant (i.e.: grant recapture). Recapture may include substantial or complete cessation of operations by the applicant, or failure to reach completion of the project in a timely manner. The recapture obligation shall be consistent with the fund purposes and should extend for the number of years necessary to realize the objectives of the grant, which is considered as the recapture period. Should an applicant fail to start construction on the sports facility within a certain period of time (e.g. 2 years), the Division has the right to recapture grant funds.
- 9.4 Post-Grant Period and Annual Reporting: The applicant shall, for a period equal to the recapture period of the grant, submit to the Division on an annual basis in a form acceptable to the Division a progress report on the status of the project, including, but not limited to: an update on construction or renovation of the facility, total number of sporting events held at the facility, attendance at sporting events held at the facility, number of hotel rooms booked for sporting events held at the facility, any economic impact information acquired by the applicant for the facility, and any other information required by the Division. This reporting period may be extended or reduced, as appropriate, by the Division in its sole discretion. Annual reports should be submitted to the Division no later than June 30 of each of the term years of the grant.
- 9.5 Before grant funds are issued, the facility must enter into a written grant agreement in the form required by the Division. Failure to enter into a timely grant agreement may result in the Division rescinding its approval.
- 9.6 Facility must provide data to the Office on sports tourism events held at the facility, including, but not limited to: data on attendance at events, hotel rooms booked for events, estimated economic impact of the event, etc., for the duration of the grant agreement.
- 9.7 Facility must display onsite a plaque, sign, or other recognition that states, "This project was supported by The Delaware Sports Tourism Capital Investment Fund."

10.0 Approval Process

- 10.1 Timing: The Division shall use its reasonable best efforts to complete its review of the application within 60 days from the date it deems an application complete.

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- 10.2 Final approval will be effective for a period not to exceed 1 year from the last date of the Division review panel meetings to review the project prior to such final approval, and all funds committed for a project must be completely dispersed by the Division within that time. The Division, in its sole discretion, may make limitations or grant extensions with respect to this 1-year period.
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Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF AGRICULTURE**OFFICE OF THE SECRETARY**

Statutory Authority: 3 Delaware Code, Chapter 29 (3 **Del.C.** Ch. 29)
3 **DE Admin. Code** 806

ORDER**806 Regulations for Invasive Plants**

This Order relates to the proposed regulation amendments ("Amendments") to 3 **DE Admin. Code** 806: Regulations for Invasive Plants. The purpose of the amended regulations is to establish exemptions to the Invasive Plant List to match research efforts taken in establishing the sterility of these cultivars. The Delaware Department of Agriculture is approving these exemptions in order to allow the import, export, purchase, sale, transport, distribution, and/or propagation of these cultivars as they have been conditionally determined as noninvasive as they will not propagate and spread throughout the state. The Delaware Department of Agriculture has presented these exemptions to the Delaware Nursery and Landscapers Association (DNLA) and Delaware Native Species Commission (DNSC). These regulatory amendments will additionally assist the Nursery Industry and small business within the state to increase sales.

The Department of Agriculture is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code

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

Summary of the Evidence and Information Submitted

The Department received one written comment in support of the language and further, no public hearing was held.

Findings of Fact and Conclusions

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

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

Having received one supportive public comment, the Department finds no reason to amend the regulations as proposed.

Decision and Effective Date

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

IT IS SO ORDERED this 9th day of September 2023.

Michael T. Scuse, Delaware Secretary of Agriculture

***Please note that no changes were made to the regulation as originally proposed and published in the August 2023 issue of the *Register* at page 80 (27 DE Reg. 80). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/october2023/final/27 DE Reg 246 10-01-23.htm>

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 235

REGULATORY IMPLEMENTING ORDER

235 Teacher of the Year Award

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §122(b), the Secretary of Education intends to amend 14 **DE Admin. Code** 235 Teacher of the Year Award. This regulation is being amended pursuant to 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years. The amendments include corrections to grammar and style in order to comply with the *Delaware Administrative Code Drafting and Style Manual*.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on August 1, 2023. The Department of Education did not receive any written comments concerning the proposed amendments.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 235 Teacher of the Year Award pursuant to 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years. The

amendments include corrections to grammar and style in order to comply with the *Delaware Administrative Code Drafting and Style Manual*.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 235 Teacher of the Year Award. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 235 Teacher of the Year Award attached hereto as *Exhibit "A"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 235 Teacher of the Year Award hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 235 Teacher of the Year Award amended hereby shall be in the form attached hereto as *Exhibit "A"*, and said regulation shall be cited as 14 **DE Admin. Code** 235 Teacher of the Year Award in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on September 7, 2023. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 8th day of September 2023.

Department of Education

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

Approved this 8th day of September 2023

235 Teacher of the Year Award

1.0 Purpose

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

2.0 Definitions

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

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

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

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

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

3.0 Qualifications for a local Teacher of the Year Award

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

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

4.0 Nomination Procedure for state Teacher of the Year Award

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

5.0 Requirements for state Teacher of the Year Award nominees

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

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

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

7.0 Funding and Use of Funds

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

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

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

ORDER

2023 Quality Strategy

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding 2023 Quality Strategy, specifically, to serve as a roadmap for Delaware on our contracted health plans and assessing the quality of care that beneficiaries receive while setting forth measurable goals and targets for improvement. 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 June 2023 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 3, 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 amend the Diamond State Health Plan Medicaid Managed Care Strategy regarding 2023 Quality Strategy, specifically, to serve as a roadmap for Delaware on our contracted health plans and assessing the quality of care that beneficiaries receive while setting forth measurable goals and targets for improvement.

Background

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

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

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

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

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

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

Statutory Authority

42 CFR 438.340(b)

Purpose

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

Summary of Proposed Changes

Effective for services provided on and after August 1, 2023, Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend the Diamond State Health Plan Medicaid Managed Care Strategy to serve as a roadmap for Delaware on our contracted health plans and assessing the

quality of care that beneficiaries receive while setting forth measurable goals and targets for improvement, regarding 2023 Quality Strategy.

Public Notice

In accordance with the federal public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 440.386 and the state public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA 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 July 3, 2023.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact Statement

There is no anticipated fiscal impact.

Summary of Comments Received with Agency Response and Explanation of Changes

The following comments were received:

Comment: DMMA should more aggressively address areas with an insufficient provider network and require the managed care organizations (MCOs) to provide the required services.

Agency Response: Per page 15 of the Quality Strategy document, DMMA requires that each MCO develop a Provider Network Development and Management Plan that outlines the MCO's process to develop, maintain, and monitor an adequate provider network that is supported by written agreements and is sufficient to provide access to all services under its contract. As displayed on page 27 of the document, DMMA has adopted an Early Alert System that includes review of monthly and quarterly Quality Care Management and Monitoring Report data and geo-spatial analysis. DMMA also reviews Consumer Assessment of Healthcare Providers and Systems (CAHPS®) and National Core Indicators Aging and Disabilities (NCI-AD) surveys to assess the member experience of care which includes provider access and availability to required services. DMMA is also preparing for compliance with CMS proposed rules for increased access in Medicaid managed care programs.

Comment: DMMA should use both prongs of the Balanced Quality Model and require any MCO that is not in compliance to submit a Corrective Action Plan (CAP) to address the deficiencies.

Agency response: We appreciate the support for our commitment in the Quality Strategy to use both prongs of the Balanced Quality Model. Any MCO that is not in compliance with federal regulation, contractual requirements, or the Quality Strategy expectations will be subject to the need for corrective actions and may be required to submit a CAP.

Comment: Individualized plans should be promoted for all consumer groups.

Agency response: DMMA agrees that the MCOs should develop individualized care plans as needed for all consumer groups. As noted in the tables of Goals and Performance Measures (pages 33-41) of the Quality

Strategy document, the MCOs are required to develop an individualized plan of care for waiver populations. Compliance with this expectation is assessed by external quality review as well as ongoing monitoring and oversight by DMMA.

Comment: To ensure that individuals with disabilities are receiving the services they should, it is recommended that DMMA require the MCOs to provide claims denial data to DMMA, and that they track the claims denials to determine whether the MCOs are providing the required services.

Agency response: Per page 8 of the Quality Strategy document, the External Quality Review Organization (EQRO) assesses compliance with federal regulation, contractual requirements, and the Quality Strategy expectations for appropriate application of clinical practice guidelines, management of prior authorization requests, denials and appeals to ensure members receive medically necessary services and appropriate supports. Additionally, claims management (including claim denials) is assessed during an Information Systems Capabilities Assessment.

Comment: DMMA should formulate a questionnaire that the MCO's should be required to use to gauge satisfaction with the services and quality of care.

Agency response: Per page 31 of the Quality Strategy document, DMMA requires the MCOs to annually conduct the CAHPS survey to assess member experience of care. The CAHPS survey asks members (or in some cases their families) about their experiences with, and ratings of, their health care providers and plans, including hospitals, home health care agencies, doctors, and health and drug plans, among others. The CAHPS survey focuses on matters that members themselves say are important to them and for which members are the best and/or only source of information. Additionally, DMMA conducts the NCI-AD survey which utilizes core indicators that are standard measures used across states to assess the outcomes of services provided to members and families. These core indicators address key areas of concern including service planning, rights, community inclusion, choice, health and care coordination, safety, and relationships. DMMA is also preparing for compliance with the proposed CMS rules for access in Medicaid managed care. CMS proposed additional survey requirements, including state-administered surveys and "secret shopper" surveys.

Comment: To improve transparency, it is recommended that DMMA should, at the very least, put on its website the results of the EQRO's assessments and findings for each MCO, as well as post any CAPs on its website for each MCO.

Agency response: The External Quality Review Technical report is posted annually to the following website: https://www.dhss.delaware.gov/dhss/dmma/info_stats.html. This report includes items evaluated, findings from the review, and recommendations for improvement. As a part of ongoing oversight and monitoring for improvement, each MCO is required to submit a CAP to DMMA for each EQR finding and recommendation. At this time, DMMA does not intend to post CAPs on DMMA's website.

Comment: There was a comment asking if there's anything they should be aware of in relation to this proposed change in strategy or that they can help with.

Agency response: Thank you for reviewing the Diamond State Health Plan Draft Quality Strategy. DMMA appreciates your willingness to support DMMA's ongoing quality improvement initiatives and will request assistance as issues arise.

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)
- Delaware Association for Home & Community Care (DAHCC)

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Diamond State Health Plan Medicaid Managed Care Strategy regarding 2023 Quality Strategy, specifically, to serve as a roadmap for Delaware on our contracted health plans and assessing the quality of care that beneficiaries receive while setting

forth measurable goals and targets for improvement and shall be final effective October 11, 2023.

9/15/2023 | 3:45 PM EDT

Date of Signature

Josette D. Manning Esq., Secretary, DHSS

2023 Quality Strategy

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

[https://regulations.delaware.gov/register/october2023/final/2023 Delaware Quality Strategy_2023.04.25.pdf](https://regulations.delaware.gov/register/october2023/final/2023%20Delaware%20Quality%20Strategy_2023.04.25.pdf)

DEPARTMENT OF JUSTICE FRAUD AND CONSUMER PROTECTION DIVISION

Statutory Authority: 29 Delaware Code, Section 2521 (29 Del.C. §2521)

ORDER

106 Home Improvement Services

Background, Summary of Evidence and Information Submitted, and Findings of Fact

The Consumer Protection Unit of the Delaware Department of Justice ("the Consumer Protection Unit") has the authority to enforce the Consumer Fraud Act (6 Del. C. § 2511 *et seq.*) and to promulgate regulations that implement or clarify it. The Fraud and Consumer Protection Division receives a large number of complaints about home improvement related issues each year. Specifically, the Fraud and Consumer Protection Division received approximately 80 complaints about home improvement related issues in 2021, approximately 200 complaints in 2022, and approximately 120 complaints in the first 7 months of the 2023. Additionally, the Consumer Protection Unit has undertaken several investigations into the conduct of home improvement contractors. Through the complaints and investigations, the Consumer Protection Unit has been able to identify practices that frequently harm consumers. Accordingly, on April 1, 2023, the Consumer Protection Unit published notice of a proposed regulation to the Consumer Fraud Act regarding home improvement services in the April 2023 edition of the Delaware Register of Regulations (the "proposed Regulation").

The Consumer Protection Unit held a public hearing on this regulation on May 24, 2023. Notice of this public hearing was published in the Delaware Public Meeting Calendar on April 12, 2023. Notice of this hearing was also posted in both *The News Journal* and *The Delaware State News* on April 21, 2023. From April 21 to April 26, 2023, the Consumer Protection Unit emailed the roughly 5000 contractors who were registered as Construction Contractors with the Department of Labor, in addition to several contractor groups and consumer groups, to give notice of the public hearing. A transcript of the public hearing can be found on the Consumer Protection Unit's website. The transcript includes the following exhibits: (1) the text of the proposed regulation; (2) the Regulatory Flexibility Analysis and Regulatory Impact Statement; (3) the verifications of publication; (4) the Notice of Public Hearing; and (5) the pre-hearing comment. The deadline to submit written comments to be considered at the public hearing was May 1st, and the general deadline to submit written comments to be considered for this regulation was on June 9, 2023. The Consumer Protection Unit thus satisfied all proper notice provisions.

The Consumer Protection Unit received one written comment about this regulation prior to the May 1st deadline for comments to be considered at the public hearing. The written comment came from a consumer who detailed their negative experience with a home improvement contractor.

The Consumer Protection Unit received four comments at the public hearing on May 24, 2023. The first speaker was a consumer, who described their experience with a home improvement contractor who attempted to defraud them. The next speaker was an emergency restoration services contractor. That speaker expressed general support for the regulation but requested that the Consumer Protection Unit consider the unique challenges

facing emergency restoration services, especially regarding the three day right of rescission that is required for certain contracts. While Consumer Protection Unit understands the concerns highlighted by the contractor, this regulation does not expand the right of rescission in any way. Rather, Section 3.1.6 of the regulation merely requires a right to rescission to be disclosed *when such a right exists*. The next speaker was another consumer who described an experience in which they were deceived into entering into a contract and eventually were sued for collection even though no work had been done on their home. The final speaker was the Executive Director of a community advocacy group that expressed their support for the regulations, stating that the unscrupulous practices that this regulation seems to prevent can strip away the wealth that the consumers have built.

The Consumer Protection Unit received one comment after the May 1st deadline for comments to be considered at the public hearing. The written comment came from a home improvement contractor. In this comment, the contractor expressed concern about being bound by an estimated completion date that could be difficult to comply with due to their reliance on third parties. While this concern is noted, this regulation as proposed already accounted for such concerns in at least two different ways. First, this regulation does not require a completion date, as Section 3.1.2 allows a contractor to clearly and conspicuously disclose that there is no estimated completion date in lieu of putting an estimated completion date. Additionally, pursuant to Section 3.1.14, even if a contractor does not finish the home improvement by the estimated completion, it is still not unlawful as long as the delay is caused by events beyond the home improvement contractor's control or if the buyer agrees to the new date in writing. These exceptions address the concerns raised by the contractor.

Decision to Adopt the Regulation, Citation, and Effective Date

The public was given notice and an opportunity to provide the Consumer Protection Unit with comments on the proposed Regulation, both at a public hearing and in writing. The transcript of the public hearing, which is posted on the Consumer Protection Unit website, shall be considered part of the record. As detailed above, the proposed Regulation addresses the concerns raised by the contractors to the extent possible. Additionally, the proposed Regulation helps address the problems experienced by the consumers who offered public comments.

THEREFORE, IT IS ORDERED, that the proposed Regulation to the Consumer Fraud Act is adopted and shall be final effective November 1, 2023. This regulation shall be cited as 106 Home Improvement Services Regulation.

September 15, 2023
Date of signature

Marion Quirk
Director, Consumer Protection Unit

106 Home Improvement Services

1.0 Authority

- 1.1 Authority. The Director of the Division of Consumer Protection enforces the Consumer Fraud Act pursuant to the authority granted to that Director through 29 Del.C. §2520, and has the authority to promulgate rules and regulations to implement or clarify the statutes that the Division of Consumer Protection is charged to enforce or otherwise to carry out the purposes of those statutes pursuant to 29 Del.C. §§2520(6) and 2521. The Division of Consumer Protection has designated the Director of the Consumer Protection Unit to promulgate this regulation.
- 1.2 Scope. This regulation of the Consumer Fraud Act covers certain unlawful practices covering home improvement transactions but shall not cover new construction of single-family dwellings or rebuilding all or substantially all of an existing or preexisting single-family dwelling.
- 1.3 Construction. This regulation shall be liberally construed to effectuate the purposes of the Consumer Fraud Act, 6 Del.C. §2511, et seq.
- 1.4 Severability. If, for any reason, any section, subsection, sentence, clause, phrase, or provision of this regulation or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other sections, subsections, sentences, clauses, phrases, or provisions of its application to any other person or circumstance, and to this end each and every section, subsection, sentence, clause, phrase, or provision of this regulation is hereby declared severable.

2.0 Definitions

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

"Buyer" means the buyer of home improvement merchandise from a home improvement contractor.

"Clearly and conspicuously" has the meaning set forth in 6 Del.C. §2731.

"Consumer Protection Unit" means the Consumer Protection Unit of the Department of Justice

"Home improvement" means any alteration, repair, addition, modification or improvement to any dwelling or the property on which it is situated, including but not limited to the construction, painting or coating, installation, replacement or repair of driveways, sidewalks, swimming pools, unattached structures, porches, kitchens, bathrooms, chimneys, fireplaces, stoves, air conditioning or heating systems, hot water heaters, water treatment systems, electrical wiring or systems, plumbing fixtures or systems, doors or windows, roofs, gutters, downspouts and siding.

"Home improvement contract" means a written agreement, including all amendments, modifications, and addenda thereto, between a home improvement contractor and a buyer and includes all agreements under which the home improvement contractor is to perform labor or render services for home improvements, or furnish materials in connection therewith.

"Home improvement contractor" means all persons, firms, partnerships, joint ventures, limited liability companies, and companies, their officers, representatives, agents, and employees, engaged in the trade or commerce of home improvement.

"Merchandise" has the meaning set forth in 6 Del.C. §2511.

"Person" has the meaning set forth in 6 Del.C. §2511.

3.0 Home Improvement Transactions

3.1 In connection with any home improvement transaction, it is an unlawful practice, as set forth in 6 Del.C. §2513(a) for any person to:

- 3.1.1 Fail to provide the buyer with a home improvement contract that describes, in a meaningful way, the merchandise purchased, the contract price together with all financing information or credit terms required by applicable law, any other terms required by this regulation, and any other material terms agreed by the parties, by the time performance is due from either party;
- 3.1.2 Fail to provide to the buyer in writing an approximate completion date for all home improvements in a home improvement contract unless the home improvement contract clearly and conspicuously discloses that no completion date is provided;
- 3.1.3 Fail to fill in all the relevant final terms in a home improvement contract before it is signed by the buyer;
- 3.1.4 Structure a home improvement contract in such a way as to require the buyer to sign or signify assent to a proposal before it is binding on the home improvement contractor;
- 3.1.5 Fail to include the home improvement contractor's name, address, telephone number, website (if any), and e-mail address in a home improvement contract;
- 3.1.6 Fail to include in a home improvement contract proper notification of the buyer's right to cancel the home improvement contract if required pursuant to 6 Del.C. §4404(2);
- 3.1.7 Fail to include in a home improvement contract all affirmations of fact, promises, or descriptions which constitute express warranties under 6 Del.C. §2-313 or would so constitute express warranties if the sale of goods only were involved;
- 3.1.8 Fail to disclose in a home improvement contract all delivery and installment charges;
- 3.1.9 Fail to clearly and conspicuously disclose in a home improvement contract that a warranty only covers a product and does not cover the installation or delivery of the product, when such is the case;
- 3.1.10 Fail to disclaim on a separate page of a home improvement contract that the home improvement contractor is not responsible for their oral representations, promises, or assurances, when it is the

- intent of the home improvement contractor that their oral representations, promises, or assurances not be binding;
- 3.1.11 Fail to provide the buyer with a summary of these regulations, as prepared by the Consumer Protection Unit, as published on the Consumer Protection Unit website, prior to the buyer signing a home improvement contract;
- 3.1.12 Include a liquidated damages provision in a home improvement contract that would provide the home improvement contractor with the same amount of liquidated damages regardless of the amount of work completed;
- 3.1.13 Misrepresent the binding nature of a home improvement contract, such as by representing that a home improvement contract is an estimate;
- 3.1.14 Fail to complete the home improvement by the completion date as stated in a home improvement contract unless such home improvement is delayed by events beyond the home improvement contractor's control or the buyer has agreed in writing to a later date;
- 3.1.15 Where the contract price is to be calculated on a "cost plus" basis, fail to clearly and conspicuously state this fact along with the method of calculating additions to cost and a good faith estimate of the final contract price;
- 3.1.16 Disclaim, exclude, modify or otherwise attempt to limit any warranty, including the warranties of merchantability and fitness for a particular purpose, or to exclude, modify or attempt to limit any remedy provided by law, including the measure of damages available, for a breach of warranty, express or implied, except in a clear and conspicuous manner accompanied by the buyer's initials;
- 3.1.17 Represent that the buyer or prospective buyer has been specially selected to receive a bargain, discount, or other advantage that will reduce the cost of the merchandise, when the offer is available to all customers similarly situated or is otherwise not the case;
- 3.1.18 Represent to a prospective buyer that their dwelling or building is to serve as a lure for prospective buyers, "model home," "advertising job," or other similar inducement, and that a reduced price is offered for that reason, if such is not the case;
- 3.1.19 Represent to a prospective buyer that the buyer is being given an introductory, confidential, closeout, going-out-of-business, factory, or wholesale price discount, if such is not the case;
- 3.1.20 Represent to a prospective buyer that a price discount is being made due to materials left over from another job, if such is not the case;
- 3.1.21 Represent to a prospective buyer that the offer is a test of the local market or a market survey if such is not the case;
- 3.1.22 Represent to a prospective buyer that the prices offered are discounted, if such is not the case;
- 3.1.23 Where models or other exemplars are used to show the merchandise to be provided or services to be offered, represent that such models or exemplars are current when they are not current or are discontinued;
- 3.1.24 Represent that the merchandise being offered are current or state of the art, when, in fact, they are not current or state of the art, or are discontinued;
- 3.1.25 Misrepresent the quality, capacity, character, nature, manufacturer, or composition of any merchandise;
- 3.1.26 Misrepresent or falsely state that the buyer's present equipment, materials, goods, fixtures, or property are dangerous, defective, or in need of repair or replacement;
- 3.1.27 Present to a buyer for signature, or otherwise attempt to induce a buyer to sign, any certificate of completion before the relevant home improvement is actually completed;
- 3.1.28 Induce or persuade a buyer or prospective buyer to sign any writing when the home improvement contractor knows or has reason to know that the buyer or prospective buyer is unable to read or write, cannot read the language in which the instrument is written, or, after reading the instrument, does not understand the terms of the instrument;
- 3.1.29 Mislead the prospective buyer or buyer into believing that the down payment or some other figure constitutes the full amount they will be obligated to pay, or to omit or exclude any other obligations, fees, charges or costs to the buyer;

- 3.1.30 Gain entry or access to a prospective buyer's home or property under the false guise of performing a governmental, public utility or other official inspection, or to falsely represent that the home improvement contractor is acting on behalf of or as an employee of any governmental entity or public utility:
- 3.1.31 Represent that the home improvement contractor is an employee, officer or representative of a manufacturer, importer, or any other person, firm, organization, or that such person, firm, or organization will assume some obligation in fulfilling the terms of the contract, when such is not the case.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
Board of Pharmacy

Statutory Authority: 24 Delaware Code, Section 2506(a)(1) (24 **Del.C.** §2506(a)(1))
24 **DE Admin. Code** 2500

ORDER

2500 Board of Pharmacy

After due notice in the Delaware Register of Regulations and two Delaware newspapers, a public hearing was held on June 21, 2023 at a scheduled meeting of the Delaware Board of Pharmacy ("Board") to receive comments regarding proposed amendments to the Board's rules and regulations. The new subsection 5.1.5.1 prohibits the delivery of drugs to a patient's residence where such drugs are intended to be later transported to another location for administration and that require special storage, reconstitution or compounding. An exception is made for patients with bleeding disorders. The new subsection 5.1.5.2 prohibits delivery of a patient-specific compounded preparation to a practitioner's office or infusion center unless there is a written agreement between the dispensing pharmacist and the ordering physician or facility.

The proposed changes to the rules and regulations were published in the *Delaware Register of Regulations*, Volume 26, Issue 11, on May 1, 2023. Notice of the June 21, 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 6, 2023. The Board deliberated on the proposed revisions at its regularly scheduled meeting on August 16, 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: June 6, 2023 letter from Lisa Le Gette of the Cigna Group.
- Board Exhibit 4: July 2, 2023 letter from John Long of CVS Health.
- Board Exhibit 5: July 6, 2023 letter from Kris Hathaway of AHIP.
- Board Exhibit 6: July 6, 2023 letter from Scott Brunner of Alliance for Pharmacy Compounding.

In her letter, Board Exhibit 3, Ms. Le Gette commented on behalf of the Cigna Group, and, specifically, Accredo, a Cigna company and specialty pharmacy. Ms. Le Gette stated that Cigna was opposed to regulatory restrictions on white bagging, including "burdensome requirements for pharmacy contracts as included in 5.1.5.2." She stated that the Cigna Group "employs a comprehensive set of guardrails to ensure patient safety and continuity of care when health plans utilize white bagging." She continued that health plans and specialty pharmacies work with health care providers to ensure that the specific prescription is delivered to the provider at the appropriate time for administration to the patient. Ms. Le Gette commented that "white bagging is a financial

issue that preserves and can even enhance patient access to quality care while addressing the high costs of provider markups under the buy and bill model."

In Board Exhibit 4, a letter from John Long of CVS Health, Mr. Long proposed revisions to subsection 5.1.5.2 on the basis that a "contracting" requirements would create a delay in patient care and negatively affect patient safety. With respect to subsection 5.1.5.1, Mr. Long objected to the prohibition on delivering dispensed drugs to a patient's residence on the basis that patient outcomes could be adversely impacted.

Kris Hathaway of AHIP submitted a letter to the Board (Exhibit 5) expressing objection to the Board's proposed regulatory changes. Ms. Hathaway commented that hospitals charge more for drugs than specialty pharmacies. "Using lower-cost specialty pharmacies saves money for patients and plan sponsors, helping to make premiums more affordable." Ms. Hathaway objected to the prohibition on white bagging on the basis that it would "[minimize] a patient's choice to take a more active role in their care and potentially lower their health care costs." Ms. Hathaway also stated that written agreements between pharmacists and providers are not standard industry practice.

Scott Brunner of Alliance for Pharmacy Compounding submitted correspondence to the Board objecting to the proposed regulatory revisions. (Exhibit 6). Mr. Brunner stated that additional regulation "simply imposes a burden without benefit." Subsection 5.1.5.1 would add barriers to the timely delivery of medication and serve to hinder patient access. With respect to subsection 5.1.5.2, Mr. Brunner commented that the written agreement requirement would create an "unnecessary burden on pharmacies and practitioners" and possibly create a delay patient access to medications.

In addition, at the hearing on June 21 2023, two members of the public addressed the Board.

Jennifer Pugh, advanced practice registered nurse and Executive Director at Medical Oncology Hematology Consultants ("MOHC") in Newark, Delaware spoke in support of the proposed regulation change. She stated: "Through my role at MOHC, I spend a significant amount of time working with our care delivery team to ensure that our patients have safe and timely access to critical anti-cancer medications. For as long as I have been in this field, patient treatment administration from the practice's own infusion drug inventory has been the standard delivery mechanism for community-based cancer care." MOHC firmly supports the language prohibiting brown bagging, and they are in support of the language placing guardrails around the practice of white bagging. "Brown bagging comes with obvious safety concerns that are critical to address; however, white bagging can be damaging in a more insidious and quiet way." Commonly they find out patients have white bagging policies attached to their plan after the treatment for them has already been ordered which can result in extreme delays to handle situations such as processing denial appeals or waiting for delivery to the clinic. Disease progression can occur during these delays resulting in possible diminishing treatment outcomes or having to start the process of ordering a new drug or dosage. MOHC supports the finalization of this rule.

Kim Robbins, of the Delaware Pharmacist Society (DPS), stated that DPS is in full support of the new proposed rules and regulations.

Findings of Fact and Conclusions

Pursuant to 24 **Del.C.** § 2506(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 both written comments and testimony presented by various stakeholders.

The Board observed pharmacy benefit managers, and specialty pharmacies, do not see the logistical and patient safety issues presented by brown bagging and white bagging. For example, if a change in patient weight or renal function is detected at the infusion center, the medication provided through the specialty pharmacy cannot be administered and will be wasted. Specialty pharmacies do not have up-to-date information on the patients, including side effects and needed follow up. Rather than attempting to limit patient access to care, the Board's goal is to ensure the safety of patients who need these medications. In contrast, the stakeholders objecting to the regulatory changes are focused on minimizing their costs.

The Board concluded that concerns regarding patient safety and access to care, as articulated by Ms. Pugh, outweighed objections forwarded by certain stakeholders. Therefore, the Board finds no reason to revise the amendments as proposed.

Decision and Effective Date

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

IT IS SO ORDERED this 13th day of September 2023.

DELAWARE BOARD OF PHARMACY

/s/ Ruth Dixon, R.Ph., President

/s/ Solomon Ezembakwe, PharmD

/s/ Mark Freebery, PharmD, Vice President

/s/ Gayle MacAfee

Joshua Coffield, PharmD (ABSENT)

Lakeisha Cunningham (ABSENT)

/s/ Lisa Flaherty, PharmD

Nicholas Juliano, PharmD (ABSENT)

***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 May 2023 issue of the *Register* at page 934 (26 DE Reg. 934). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/october2023/final/27 DE Reg 258 10-01-23.htm>

DIVISION OF PROFESSIONAL REGULATION

Board of Geologists

Statutory Authority: 24 Delaware Code, Section 3606(a)(1) (24 Del.C. §3606(a)(1))
24 DE Admin. Code 3600

ORDER

3600 Board of Geologists

After due notice in the Delaware Register of Regulations and two Delaware newspapers, a public hearing was held on August 11, 2023 at a scheduled meeting of the Delaware Board of Geologists ("Board") to receive comments regarding proposed amendments to the Board's rules and regulations. The proposed revisions amend the standards for continuing education. Specifically, the subsection pertaining to credit for specialty certification is amended to provide that credit may be obtained for specialty training or certification classes, such as OSHA, MSHA and HAZWOPER classes. In addition, a subsection is added to set forth the process whereby course providers may renew course approval.

The proposed changes to the rules and regulations were published in the *Delaware Register of Regulations*, Volume 27, Issue 1, on July 1, 2023. Notice of the August 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 August 28, 2023. The Board deliberated on the proposed revisions at its regularly scheduled meeting on September 8, 2023.

Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

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

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

There were no comments presented by testimony at the public hearing on August 11, 2023. Further, no written comments were submitted.

Findings of Fact and Conclusions

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

Pursuant to 24 Del.C. § 3606(a)(1), the Board has the statutory authority to promulgate rules and regulations. Having received no comments, either by testimony or in writing, the Board finds no reason to make substantive changes to the regulations as proposed. However, the Board decided to make a non-substantive amendment to clarify that a HAZWOPER class falls within the scope of OSHA. Subsection 6.9.5.1 has been revised accordingly.

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 8th day of September 2023.

DELAWARE BOARD OF GEOLOGISTS

/s/ David Wunsch, President	Wesley Stefanick (ABSENT)
/s/ Steven Smailer, Vice President	/s/ Joseph Wagner
/s/ Douglas Rambo, Secretary	/s/ Hansel Fuller, Jr.
/s/ David Reinhold	

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

3600 Board of Geologists (Break in Continuity of Sections)

6.0 Continuing Education

(Break in Continuity Within Section)

6.9 Categories of Continuing Education & Maximum Credit Allowed:

(Break in Continuity Within Section)

6.9.5 Specialty Training or Certifications – 12 CEUs Total

6.9.5.1 Specialty Training or Certification includes, but is not limited to, OSHA, [for example HAZWOPER, and] MSHA [and HAZWOPER] classes.

6.9.5.2 Documentation – Proof of Completion

***Please note that no additional changes were made to the regulation as originally proposed and published in the July 2023 issue of the *Register* at page 31 (27 DE Reg. 31). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/october2023/final/27 DE Reg 260 10-01-23.htm>

FINAL REGULATIONS

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Sections 209 and 1014(e) (26 **Del.C.** §§209(a)(1) & 1014(e))
26 **DE Admin. Code** 3001

ORDER

3001 Rules for Certification and Regulation of Electric Suppliers, Net Metering, and Community Energy Facilities

IN THE MATTER OF THE ADOPTION OF RULES
AND REGULATIONS TO
IMPLEMENT THE PROVISIONS OF 26 **Del. C.**
CH. 10 RELATING TO THE CREATION OF A
COMPETITIVE MARKET FOR RETAIL ELECTRIC
SUPPLY SERVICE (OPENED APRIL 27, 1999;
RE-OPENED JANUARY 7, 2003; SEPTEMBER
22, 2009; SEPTEMBER 7, 2010; JULY 17, 2012;
JULY 14, 2021; AND OCTOBER 12, 2022)

PSC REGULATION DOCKET
NO. 49

ORDER NO. 10291

AND NOW, this 23rd day of August 2023, the Delaware Public Service Commission ("Commission") determines and orders as follows:

WHEREAS, on July 22, 2022, the Governor of the State of Delaware signed into law Senate Bill 298, which amended provisions in 26 **Del.C.** § 1014 relating to net energy metering, including: (1) increasing the cap at which an electric utility may elect not to provide net metering services from the current 5% of its peak demand to 8%; (2) providing that the Commission's net energy metering rules must consider the reliability, safety, and capacity of the electric distribution system; (3) defining "Excess kWh Credit" as any excess production in kWh of a net energy metering customer's generating facility that exceeds the customer's on-site consumption of kWh in a billing period; (4) removing the charges for societal benefits programs from those charges against which a commission-regulated utility applies a net energy metering customer's "Excess kWh Credits" in subsequent monthly billing periods (and to define "societal benefits programs"); (5) providing that electric utilities shall not reimburse or credit net energy metering customers for any "Excess kWh Credits" at the end of the annualized billing period, and that "Excess kWh Credits" shall revert to the electric distribution company at the end of the annualized billing period; (6) providing that, if a net metering customer abandons the property where the generating equipment is located, the equipment may remain connected to the electric distribution system unless the equipment presents a risk to the safety and reliability of the system; and (7) providing that non-residential customers shall be responsible for the reasonable cost of meters that are installed or modified for net-metering purposes and caps such costs for residential customers at \$200; and

WHEREAS, on October 12, 2022, Commission Staff ("Staff") petitioned the Commission to re-open Regulation Docket No. 49, as Staff found that amendments to the *Rules for Certification and Regulation of Electric Suppliers, Net Metering and Community Energy Facilities Rules*, 26 **Del.C.** § 3001 et seq. ("Rules") were necessary for compliance with the new requirements set forth by Senate Bill 298, which are specifically detailed as follows: (1) to update the definition of "Annualized Billing Period" in subsection 1.0 to be effective January 1, 2023 and that a Net Metering Customer may elect to change the end of the Annualized Billing Period on one occasion; (2) to include a definition for "Excess kWh Credit" in subsection 1.0; (3) to include a definition for "Societal Benefits Program" in subsection 1.0; (4) to update subsection 14.0 by removing "Disclosure of Fuel Resource Mix" and reserving the subsection; (5) to update subsection 15.1.2.1.3 by changing "the Delaware Energy Office" to DNREC; (6) to update subsection 15.2 to state that net metering shall be accomplished through a single meter that measures net energy flow during a billing period; (7) to update subsection 15.2.1 to reflect that meters to monitor the flow of electricity

may be installed with the consent of the Customer and that consent may be waived by the customer; (8) to update subsection 15.2.2 to remove language that when required a Customer shall pay the Electric Supplier the difference between the larger capacity meter investment and the metering investment normally provided under the Customer's service classification; (9) to update subsection 15.2.3 to remove the language and to state that non-residential customers shall be responsible for paying the reasonable cost of any new, replacement, or modified meter or meters installed for net-metering purposes, and that residential customers shall not be responsible for paying more than \$200.00 toward the reasonable costs of any new, replacement, or modified meter or meters installed for net-metering purposes, and to include that Non-residential and residential customers shall not own the meter or meters; (10) to update subsection 15.3 to state that Electric Suppliers and EDCs shall credit Excess kWh Credits to the customer's subsequent monthly billing periods to offset the customer's consumption in those billing periods; (11) to update subsection 15.3.1 to state that Excess kWh Credits at the end of the Annualized Billing Period shall revert to the EDC providing electric distribution to the Customer; (12) to update subsection 15.3.2 to state that for existing and future Net Energy Metering Customers, both residential and nonresidential, the monthly Excess kWh Credit shall be valued at the sum of the volumetric (kWh) components of the supply service charges and the distribution service charges, not including the charges for Societal Benefits Programs, according to each participating Customer account's rate schedule; (13) to update subsection 15.3.3 to include the defined "Excess kWh Credits" and to replace "Electric Supplier" with "EDC;" (14) to update subsection 15.3.4 to include "or by other means;" (15) to update subsection 15.3.5 to state that "Subsections 15.3 through 15.3.4 shall not apply to Community Energy Facilities, which are addressed in Section 16 of these Regulations;" (16) to update subsection 15.3.6 to state that "Excess kWh Credits for supply service are the responsibility of the entity providing supply to the Customer rather than solely the responsibility of the EDC;" (17) to update subsection 15.3.7 to state that if a Net Energy Metering Customer abandons the property where the energy generating equipment is located, the equipment may remain connected to the electric distribution system, unless the equipment presents a risk to the safety and reliability of the electric distribution system; (18) to update subsection 15.3.8, which in part was previously subsection 15.3.5, to include EDCs; (19) to add subsection 15.3.9, which in part was previously subsection 15.3.6, to state that if a Net Metering Customer terminates its service with the EDC or changes Electric Supplier, the Electric Supplier terminating service shall treat the end of service period as if it were the end of the Annualized Billing Period for any excess kWh credits; (20) to add subsection 15.3.10, which in part was previously subsection 15.3.6, to state that if the total generating capacity, measured in megawatts (MW) of alternating current (AC), of all Customer generation using net metering systems served by an electric utility exceeds 8% of the capacity necessary to meet the EDC's average Delaware transmission peak demand for the preceding 3 years, the EDC may elect not to provide Net Metering services to additional customers; (21) to add subsection 15.3.11, which in part was previously subsection 15.3.11, to state that where applicable, the requirements established in subsection 15.6 of these Regulations shall apply to this subsection 15.3; and (22) to update the statutory citation in subsection 17.1 to Delaware's Freedom of Information Act ("FOIA") and to provide additional requirements to qualify as a non-public records filing; and

WHEREAS, on October 12, 2022, by Order No. 10109, the Commission reopened this docket, approved publication of the Proposed Amendments, directed the Secretary of the Commission ("Secretary") to transmit the amended Rules to the Registrar of Regulations ("Registrar") for publication in the November edition of the *Delaware Registrar*, as required by 29 **Del.C.** § 10113, and in accordance with 26 **Del.C.** § 209(a) and 29 **Del.C.** § 10118(a), stated that the Commission would hold a public hearing on the proposed amendments on December 14, 2022, with the public comment period remaining open until December 29, 2022; and

WHEREAS, on November 28, 2022, the Division of the Public Advocate (the "DPA") submitted written comments regarding the Proposed Amendments to be considered at the December 14, 2022 hearing, which questioned whether net metering customers who have already made the election to change the end of the Annualized Billing Period on one occasion in order to better utilize excess generation will be permitted to make it a second time; and

WHEREAS, on November 28, 2022, Delmarva Power & Light Company ("Delmarva"), submitted written comments regarding Staff's proposed Amendments ("Proposed Amendments") to be considered at the December 14, 2022 hearing, which, in summary, supported the proposed regulations, but raised an issue with Delmarva's ability to implement billing system upgrades as relevant in subsection 15.3.1 and 15.3.2 before the end of 2023. (See Delmarva Initial Comments, November 28, 2022 for the complete proposed language to Subsections 15.3.1 and 15.3.2.) Because of Delmarva's inability to implement according to Senate Bill 298, Delmarva proposed language to subsection 15.3.1 to reflect that through December 31, 2023 a customer may request payment for any

excess kWh credits and also proposed that subsection 15.3.2 shall take effect on January 1, 2024; and

WHEREAS, pursuant to 26 **Del.C.** § 209(a), on December 14, 2022, the Commission conducted a public hearing to consider written comments submitted by November 28, 2022; (Pursuant to 29 **Del.C.** § 10118(a), the opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. The Proposed Amendments were published on October 1, 2022.) and

WHEREAS, on December 14, 2022, Delmarva provided oral comments, which first stated its general support for the proposed regulations. Second, Delmarva again commented on its issue pertaining to the implementation of billing system upgrades required by Senate Bill 298, and stated that, "due to the long lead time for complex IT projects that are already in the queue at Delmarva, such changes would only be feasible at the end of 2023." (December 14, 2022 Transcript at 1096, lines 10-13 ("Tr. at ____").) Delmarva stated that this "practical constraint" was raised several times during Energy Stakeholders Meeting and in email exchanges thereafter. (Tr. at 1096, lines 14-16.) Delmarva then stated that its proposed language would expressly memorialize that certain facets of Senate Bill 298 would be effectuated at the end of 2023, which would pertain to subsections 15.3.1 and 15.3.2. (Tr. at 1096-97.) Delmarva then requested that its proposed language be included in the Regulations so that legislative change and or a "request for a waiver" to the Commission would not be needed by Delmarva; (Tr. at 1097, lines 4-10.) and

WHEREAS, on December 14, 2022, DPA provided oral comments. The DPA first stated the question the DPA submitted in its November 28, 2022 written comments was answered to the DPA's satisfaction. (Tr. at 1098, lines 5-7.) The DPA requested that the Commission approve the Proposed Amendments as final. (Tr. at 1098, lines 8-10.) The DPA then made comment regarding Delmarva's written and oral comments. The DPA first stated that Delmarva seeks to add language to the Regulations which would change what the General Assembly intended because the language Delmarva proposed would postpone when the General Assembly intended Section 1014 to become operative. (Tr. at 1097, lines 11-16.) The DPA directed the Commission's attention to Senate Bill 298, and specifically to subsection § 1014(e)(1)(b). (Tr. at 1098-99.) The DPA stated that the Commission should note that in Senate Bill 298, the calculation does not include any discussion of weighted averages or a number of billing periods, as one of Delmarva's proposed changes does; and there is no postponement until the end of 2023, or the beginning of 2024, as to when these requirements are to take effect. The DPA stated that the Commission cannot make changes to the statute through its own Regulations. (Tr. at 1100, lines 6-10.) Additionally, the DPA stated that with respect to Senator Hansen's forums (where Delmarva stated it voiced its inability to implement the billing system upgrades), the Commission has not considered what happened in the forums happenings to be part of the record before the Commission. (Tr. at 1100-1101 (quoting March 16, 2022 Tr. at 1062-1063).) The DPA accordingly argued that if what happened in the forums was not a part of the record in past matters, then it is not relevant in the instant matter. (Tr. at 1101, lines 4-9.) Second, the DPA then stated its concerns with Delmarva's proposed changes to the Regulations. The DPA noted that case law holds that an administrative agency may not adopt or promulgate rules and regulations that are inconsistent with the provisions of the statute which created it. (See *Wilmington Country Club v. Delaware Liquor Com'n.*, 91 A.2d 250, 254 (Del. Sup. Ct. 1952).) The DPA noted that while subsection 15.3.1 as drafted by Staff restates the statutory language from Senate Bill 298, Delmarva's proposed additions to that subsection would add language to the regulations that is not in the statute. (Tr. at 1103, lines 13-17.) Next, the DPA cited to Delaware case law which states that "[w]here there exists no controlling constitutional or general statutory provision, as is true in Delaware, the authorities support the proposition that an Act takes effect immediately upon its approval by the Governor unless the Legislature has manifested a contrary intention in the Act itself." (See *Conway v. Wolf Liquor Co.*, 200 A.2d, 831, 834 (Del. 1964).) Accordingly, the DPA argued that the effective date of Senate Bill 298 was July 22, 2022 when the Governor signed it into law. (Tr. at 1103, lines 15-16.) Additionally, the DPA stated that because the General Assembly did not specify a different operative date for Senate Bill 298, the effective date and operative date of the amendments are the same and that the Commission is bound by that in promulgating its own regulations. (Tr. at 1103, lines 17-21. See also *Id.* at 1104-05 (The DPA citing other examples where General Assembly postponed operative date of amendments to statutes).) The DPA further stated that the Commission has itself recognized that it cannot go beyond what the statute authorizes it to do. (Tr. at 1105, lines 15-17. See Docket Nos. 21-0408 and 21-0409 (the Commission rejected both of Delmarva's requests, stating that the statutory language did not allow the Commission to do so).) The DPA stated that if Delmarva wants to change the operative date of the statute, Delmarva should seek legislative change; (Tr. at 1106, lines 13-14.) and

WHEREAS, on December 14, 2022, Staff made oral comments regarding Delmarva's proposed changes. Staff first noted that it agreed with the DPA's comments. (Tr. at 1109, lines 8-10.) Staff cited to the recent decision in

State ex rel. Jennings v. City of Seaford, 278 A.3d 1149, 1161 (Del. Ch. 2022), which provides that "[t]he Court's goal, in construing statutes and regulations, is to ascertain and give effect to the intent of the legislative body". (Citing *Garrison v. Red Clay Consol. Sch. Distr.*, 3 A.3d 264, 267 (Del. 2010).) Staff stated that it does not agree with Delmarva's proposed amendments to 15.3.1 and 15.3.2 because as proposed, Delmarva's changes would conflict with the statute. (Tr. at 1110, lines 3-9.) Staff's position is that because there is no explicit mention as to when the date and provisions in Senate Bill 298 went into effect, and that because Staff is unaware of any source which permits a statute's effective date to become effective at another date, that the effective date of Senate Bill 298 is July 22, 2022. Staff then stated that to adopt a regulation which stated otherwise would conflict with a state statute. (Tr. at 1111, lines 2-5.) Finally, Staff stated that the issue of billing system upgrades and how to proceed should be decided at a later date, in a separate matter; (Tr. at 1111-12.) and

WHEREAS, in accordance with the Administrative Procedures Act ("APA"), public comment remained open until December 29, 2022; (29 Del.C. § 10118(a) requires that the opportunity for public written comment shall be extended for a minimum of 15 days after the final public hearing on a proposed regulation) and

WHEREAS, on December 29, 2022, the DPA submitted public comment directed at Delmarva's written comments and its oral argument pertaining to subsection 15.3.1 and 15.3.2. (See DPA Post-Hearing NEM Comments, December 29, 2022.) Again, the DPA commented that Delmarva's proposed, changes to subsections 15.3.1 15.3.2 change the operative date of when the amendments enacted by the General Assembly through the Commission's Regulations. Accordingly, the DPA noted that the proposed changes should be rejected because the Commission does not have the authority to add language to the regulations that is not in the statute. (*Id.* at 4 (citing *Wilmington Country Club v. Delaware Liquor Commission*, 91 A.2d 250, 254 (Del. Super. 1952) ("a public administrative agency such as the Commission may not adopt and promulgate rules and regulations which are inconsistent with the provisions of a statute, particularly with a statute which it is administering or which created the agency.")) Additionally, the DPA argued that the Commission should reject Delmarva's proposed postponement of SB 298's operative date to December 2023 and January 2024 because the General Assembly did not see fit to postpone the operative date of SB 298. The DPA cited *Conway v. Wolf Liquor Co.*, 200 A.2d 831, 834 (Del. 1964), which states "[w]here there exists no controlling constitutional or general statutory provision, as is true in Delaware, the authorities support the proposition that an Act takes effect immediately upon its approval by the Governor unless the Legislature has manifested a contrary intention in the Act itself." Accordingly, the DPA argues that the effective date of SB 298 was July 22, 2022, when the Governor signed it into law as there was no specification of a different operative date, and to accept otherwise would be an "end run around the statute." (*Id.* at 5-6. The DPA also cited to other statutes in which the General Assembly did postpone operative date.) The DPA then reiterated its oral comments made on December 14, 2022 regarding Senator Hansen's forums and argued that because the Commission stated that Senator Hansen's forums were not part of the record then, the forums should not be considered by the Commission in this matter. (*Id.* at 7.) The DPA requested that the Commission approve as final the Proposed Rules as initially published; and

WHEREAS, the Commission has considered all comments received by December 29, 2022; and

WHEREAS, the Commission has considered all comments received by Delmarva, Staff and the DPA, and notes that just three (3) subsections (subsections 15.3.1 and 15.3.2, and the definition of "Annualized Billing Period") were the only subsections to garner comments. The Commission finds that the remaining Proposed Amendments were uncontested. The Commission therefore finds that the uncontested subsections of the Proposed Amendments, specifically: the amendments in subsection 1.0 to "Excess kWh" and "Societal Benefits Program", and the amendments to subsections 14.0; 15.1.2.1.3; 15.2; 15.2.1; 15.2.1; 15.2.2; 15.2.3; 15.3; 15.3.3; 15.3.4; 15.3.5; 15.3.6; 15.3.7; 15.3.8; 15.3.9; 15.3.10; 15.3.11; and 17.1 should be adopted; and

WHEREAS, the Commission finds that the DPA's comments to the definition of "Annualized Billing Period" were resolved and accordingly finds that the Proposed Amendments to the definition of "Annualized Billing Period" as proposed by Staff should be adopted; and

WHEREAS, on March 1, 2023, Senate Bill 54 was introduced in the Delaware Senate and was signed into law by the Governor on March 30, 2023. Senate Bill 54 extended the effective date of certain provisions of Section 1014 of Title 26 of the Delaware Code which impact Staff's proposed amendments to subsection 15.3.1 and 15.3.2. First, Senate Bill 54 provided that excess kWh Credits at the end of the annualized billing period shall revert to the EDC providing electric distribution to the customer on May 31, 2023, and that a commission-regulated utility may continue to make payments for Annual Excess kWh until May 31, 2023. Senate Bill 54 directly impacts the proposed amendments and the comments received to subsection 15.3.1. Second, Senate Bill 54 provided that effective January 1, 2024, for commission-regulated utilities for existing and future Net Energy Metering

Customers, both residential and nonresidential, the monthly Excess kWh Credit shall be valued at the sum of the volumetric (kWh) components of the supply service charges and the distribution service charges, not including the charges for Societal Benefits Programs, according to each participating Customer account's rate schedule. Senate Bill 54 also directly impacts the proposed amendments and the comments the Commission received to subsection 15.3.2. Accordingly, the Commission rejects Staff's proposed amendments to subsection 15.3.1 and 15.3.2. Instead, the Commission may consider a petition to propose amendments to subsections 15.3.1 and 15.3.2 to so to align with Senate Bill 54 at a future time; and

WHEREAS, pursuant to 29 Del.C. § 10118(c), if changes to the amended rules are not substantive, (See 29 Del.C. § 10102(9) (which defines substantive as "when used in connection with regulations, those regulations allowing, requiring or forbidding conduct in which private persons are otherwise free or prohibited to engage, or regulations which state requirements, other than procedural, for obtaining, retaining or renewing a license or any kind of benefit or recompense.")) the agency shall *not* be required to republish the regulation change (*emphasis added*); and

WHEREAS, pursuant to 29 Del.C. § 10113(b)(4), any changes in existing regulations to alter style or form or to correct technical errors are exempted from the procedural requirements of Title 29 Chapter 101 and may be adopted informally; and

WHEREAS, the Commission finds that seven (7) nonsubstantive changes to subsections 2.2.3; 2.2.16.2; 2.3.2; 2.6; 10.1; 11.8.9; and 16.2.3.1.4 are also necessary; and

WHEREAS, the Commission finds that subsection 2.2.3, which relates to the Authorization of Certification of Electric Suppliers, should be amended to clarify that documentation from the Delaware Secretary of State should be issued within ninety (90) days of filing. In comparison, the unamended version requires that documentation issued within ninety (90) days of filing from both the Delaware Secretary of State and the Delaware Division of Revenue should be provided. The Commission finds that this nonsubstantive clarification is beneficial to applicants and corrects the form of the subsection. Accordingly, the nonsubstantive amendment to subsection 2.2.3 should be adopted; and

WHEREAS, the Commission finds that subsection 2.2.16.2, which relates to a non-publicly traded applicant's financial information for the Certification of Electric Suppliers, should be amended to clarify that if applicable, the certified financial statements of a publicly-traded parent should be current within twelve (12) months of the filing. The Commission believes that this amended language clarifies the language and requirements. Accordingly, the nonsubstantive amendments to subsection 2.2.16.2 should be adopted; and

WHEREAS, the Commission finds that subsection 2.3.2, which specifies the requirements of financial security for electric suppliers, should be amended to clarify that an Applicant for an Electric Supplier Certificate must maintain financial security that complies with the subsection as long as its Electric Supplier Certificate to provide Electric Supply Service to Residential and Small Commercial Customers is valid. The Commission finds that this nonsubstantive amendment serves to clarify the length of time financial security must be maintained and accordingly, finds that this amendment to 2.3.2 should be adopted; and

WHEREAS, the Commission finds that subsection 2.6, which relates to the notice requirements Electric Supplier Applicants must follow, should be amended to clarify that each Applicant shall publish notice of the filing of its application in one (1) newspaper of general circulation throughout the State in a Commission-approved form, as opposed to two (2) newspapers. The Commission finds that this nonsubstantive amendment serves to reduce the requirement of newspaper print, which today is not as widely read or circulated as when these Rules were first adopted. As such, the Commission believes that this nonsubstantive amendment to 2.6 should be adopted; and

WHEREAS, the Commission finds that subsection 10.1, which relates to General Customer Protections, should be amended to correct the subsection citation so as to reflect the current subsection. The Commission finds that pursuant to 29 Del.C. § 10113(b)(4), this is a change to correct technical errors and accordingly, is exempted from the procedural requirements of Title 29 Chapter 101 and may be adopted informally; and

WHEREAS, the Commission finds that subsection 11.8.9.1, which relates to the notification requirements of Electric Suppliers of door-to-door sales activities, should be amended to clarify that notification to the Staff and the DPA of the same should be completed by e-mail. The Commission believes that this amendment will serve to provide Staff and the DPA with current knowledge of door-to-door sales activities, and accordingly, finds that the nonsubstantive amendment to subsection 11.8.9.1 should be adopted; and

WHEREAS, the Commission finds that subsection 16.2.3.1.4, which relates to the authorization documentation requirements of community energy facilities, should be amended to clarify that documentation from the Delaware Secretary of State should be issued within ninety (90) days of filing. In comparison, the unamended version

requires that documentation issued within ninety (90) days of filing from both the Delaware Secretary of State and the Delaware Division of Revenue should be provided. The Commission finds that this nonsubstantive clarification is beneficial to applicants, and corrects the form of the subsection. Accordingly, the nonsubstantive amendment to subsection 16.2.3.1.4 should be adopted;

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

1. That, for the reasons set forth above, the Commission hereby approves as final the attached *Rules for Certification and Regulation of Electric Suppliers, Net Metering and Community Energy Facilities Rules, 26 Del.C. § 3001 et seq.* A marked-up version of the *Rules* reflecting only the amended sections is attached as Exhibit "A."

2. Pursuant to 26 **Del.C.** §§ 10113 and 10118, the Secretary of the Commission shall transmit a copy of this Order (with the attached Amended Rules) to the Registrar of Regulations for publication in the October 1, 2023 edition of the *Delaware Register of Regulations*. An exact copy of the Amended Rules shall be published as the current official regulations in the *Delaware Register*.

3. That, pursuant to 29 **Del.C.** § 10118(g), the effective date of the amendments shall be later of October 11, 2023, or ten (10) days after publication in the *Delaware Register of Regulations*.

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

BY ORDER OF THE COMMISSION:

	Dallas Winslow, Chairman (ABSENT)
	Joann Conaway, Commissioner
	/s/ Harold B. Gray, Commissioner
	(Voted via Teleconference pursuant to 29 Del.C. §10006(A)(d))
	Manubhai "Mike" Karia, Commissioner (ABSENT)
ATTEST: Malika Davis, Acting Secretary	/s/ K. F. Drexler, Commissioner
	(Voted via Teleconference pursuant to 29 Del.C. §10006(A)(d))

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

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

<https://regulations.delaware.gov/register/october2023/final/27 DE Reg 262 10-01-23.htm>

**DEPARTMENT OF TRANSPORTATION
DIVISION OF MOTOR VEHICLES
Vehicle Services**

Statutory Authority: 30 Delaware Code, Section 3003, and 21 Delaware Code, Section 2102 (30 **Del.C.** §3003 & 21 **Del.C.** §2102)
2 **DE Admin. Code** 2266

ORDER

2266 Vehicle Document Fees

Pursuant to the authority provided by 30 *Del. C.* §3003 and 21 *Del. C.* §2102, the Delaware Division of Motor Vehicles (DMV) promulgates this regulation establishing a document fee exception for active duty, reserve, or national guard military members and their immediate family members when registering a vehicle in the State of

Delaware.

Findings of Fact and Conclusions of Law

1. The public was given notice and the opportunity to provide comments in writing concerning the proposed regulation.
2. The proposed regulations are useful and proper, and the Department believes that the adoption of these regulations is appropriate.

Decision and Effective Date

Based on the provision of Delaware law and the record of this docket, I hereby adopt the Vehicle Document Fees as set forth in the version attached, to be effective October 11, 2023.

It is ordered on this 14 day of September 2023.

Nicole Majeski, Secretary
Delaware Department of Transportation

2266 Vehicle Document Fees

1.0 Authority

Pursuant to Title 30, Chapter 30, Section 3003, and Title 21, Chapter 21, Section 2102, the following ~~Regulation~~ regulation is promulgated, ~~effective immediately~~.

2.0 Exceptions

In addition to the waivers of the vehicle document fee as specified in Section 3002(a), Chapter 30, Title 30, and Title 21, Chapter 21, Section 2102, the document fee shall not be imposed on the sale, transfer or registration of motor vehicles or trailers in the following circumstances.

- 2.1 Transfer of a motor vehicle, vehicle, or trailer by way of a gift ~~between a husband and wife, parent and child, grandparent and child, or brother and sister~~ from an immediate family member including spouse, parent, child, sibling, and grandparent, to include step and in-laws. This exemption only applies ~~on~~ to the transfer of Delaware title.
- 2.2 Transfer between joint owners, provided that for the preceding 30 days the vehicle was previously titled in the name of the joint owners and ~~subsequently~~ transferred without monetary consideration to one or more of the joint owners.
- 2.3 Transfer resulting from inheritance from or bequest of a descendant. However, purchases from an estate are subject to the vehicle document fee.
- 2.4 Change of name only because of marriage, adoption, or other court order.
- 2.5 Transfer of a motor vehicle, vehicle, or trailer from a lessor to a lessee pursuant to a ~~lease-purchase~~ lease-purchase agreement, provided that the lessee has been in continuous possession of the vehicle for at least one year. Lessee must provide a letter from the lessor stating lessee paid the original document fee".
- 2.6 Lien change but only when such a change of a lien on a motor vehicle, vehicle, or trailer when the registered owner has not changed.
- 2.7 If such vehicle was previously registered in Delaware by the same owner who already paid a vehicle document fee, was then registered in another state, and is being ~~re-registered~~ re-registered in Delaware by the same owner.
- 2.8 Transfer of a motor vehicle, vehicle or trailer if such transfer is accompanied by an agreement of substitution which is equal in value to the net purchase price of the original motor vehicle, vehicle or trailer.

2.9 Registration of a motor vehicle by a member of the military (active, reserve or national guard) and their dependent family members who are stationed, on either a temporary or permanent basis, within the State, whose vehicles are registered in their state of residence or at their previous duty assignment (to include an overseas assignment). Military member or their dependent family member must provide documentation acceptable to the Division of Motor Vehicles indicating a temporary or permanent change of duty station within 90 days of relocating to the State or within 90 days of vehicle purchase.

3.0 Determination of Document Fees

When a gross purchase price discrepancy exists between the title application and the lien contract vehicle purchase price (Block #1 of the lien contract), the highest price will be used in determining document fees. ~~Trade-in~~ Trade-in allowance will be deducted from the gross purchase price.

4.0 Trade-in Allowance

4.1 Trade-in allowance for document fee computations will only be allowed for vehicles currently titled in Delaware. The following two exceptions are authorized provided positive proof (receipts, old title, etc.) are provided by vehicle owners or can be established by DMV ~~records-~~ records:

4.1.1 Vehicle was previously registered in Delaware by the same owner who already paid a vehicle document fee, was then registered in another state, and vehicle is being used as a trade-in for a vehicle to be registered and titled in Delaware.

4.1.2 Vehicles bought by the owner and registered outside the state and then used for a trade-in for a vehicle to be registered and titled in this state; provided, such owner had paid to such other state a sales tax, transfer ~~tax~~ tax, or some similar levy on the purchase of such motor vehicle within 90 days prior to registration and titling in this state.

4.2 Trade-in allowance credit is not applicable if no documentation fee was paid at the time of registration.

4.3 Trade-in allowance credit against document fees may not exceed the actual document fees paid on the trade-in vehicle at the time the trade-in vehicle was registered.

5.0 Licensed Dealer

A certificate of title issued in the name of a licensed dealer, which has a lien or encumbrance entered against such title, shall not be considered for the sole purpose of resale and shall not be exempt from the vehicle document fee unless the vehicle is part of a manufacturer's warranty program such as a loaner vehicle and the manufacturer is the lien holder.

19 DE Reg. 1030 (05/01/16)

6.0 Transfer of Motor Vehicle

If a transfer of a motor vehicle, vehicle or trailer is accompanied by a transfer of equity document, the document fee imposed shall be assessed on the amount of such equity.

7.0 Gift of Motor Vehicle

If the motor vehicle, vehicle, trailer or motorcycle is a gift and does not qualify for exemption pursuant to subsection 2.1 of this regulation, the vehicle document fee shall be assessed based upon the current average trade-in value indicated in the most recent N.A.D.A. Guide. However, the owner may obtain an appraisal from a Delaware licensed vehicle dealer and such appraisal may also be considered in determining vehicle document fee.

8.0 Amount of Purchase Price

If the amount of purchase price indicated on a non-dealer bill of sale is less than the average trade-in value as listed in the most recent N.A.D.A. Guide, the document fee is to be assessed on the current average ~~trade-in~~ trade-in value as listed in the N.A.D.A. Guide. However, the owner may obtain an appraisal from a Delaware ~~license~~ licensed vehicle dealer and such appraisal may also be considered in determining vehicle document fee.

9.0 Computation of Document Fee

9.1 The document fee for a current model year used vehicle for which no dealer's invoice is available or that has no wholesale price listed in the N.A.D.A. Guide will be computed by using one of the following procedures:

9.1.1 Use the current year manufacturer's suggested retail price, if one exists, or the M.S. R. P. from the prior year's model. Depreciate that price using the following formula.

Vehicle Price	Amount Depreciation
\$0 - \$10,000	10%
\$10,001 - \$20,000	15%
\$20,001 - \$100,000 ±	20%
Example:	1989 Oldsmobile 88, Royale, 4D Sedan
1988 M.S.R.P.	\$14,498
	<u>x .15% Depreciation</u>
	\$2,174 Depreciation
	Document fee will be based on \$14,498 - \$2,174 = \$12,324

9.1.2 If the buyer has a bill of sale from a licensed dealer, use that price.

9.1.3 The owner may obtain an appraisal from a Delaware licensed dealer and such appraisal may also be considered in determining vehicle document fee.

10.0 Wrecked or Damaged Vehicles

Applicants claiming to have purchased wrecked or dismantled vehicles and restored or rebuilt such vehicles must present such ~~vehicle~~ vehicles to the Auto Theft Unit for verification of vehicle identification numbers, along with sales slips, etc. Vehicle document fees are to be assessed based upon the average trade-in value as listed in the most recent N.A.D.A. Guide or based upon an appraisal obtained from a licensed vehicle dealer.

11.0 Transfer

The word "transfer" as utilized in Section 3002, Title 30, shall include the following:

11.1 ~~change~~ Change of business entity status

Examples: Haven Trucks **to** Fast Express
John Doe Trucks, Inc. **to** John Doe, Inc.
Joe Smith Buses **to** Smith Buses, Inc.
Joe Smith **to** Smith Buses

11.2 ~~change~~ Change of ownership between private individuals

Examples: Joe Smith **to** Tom Jones
Joe Smith **to** Harry Smith & or Tom Smith
Helen Jones **to** Ralph Jones

11.3 The above-listed types of transfers must be accompanied by a Bill of Sale pursuant to Section 3002(b) or an affidavit. If neither a Bill of Sale ~~or~~ nor an affidavit is available, the document fee shall be based on the current N.A.D.A. average trade-in value. If the Bill of Sale or affidavit indicates no money was exchanged for the transfer of ownership and the same person signed the title for both buyer and seller, then no document fee shall be assessed.

12.0 Use of NADA Appraisal Guide

- 12.1 The N.A.D.A. Appraisal Guide for older models is only to be used in the following instances:
- 12.1.1 If a vehicle, which has been titled in another state, is being titled in Delaware and there has been no sales tax or similar titling tax paid on the vehicle in the other state within the last 90 days, use the current N.A.D.A. Official Used Car Guide OR the N.A.D.A. Appraisal Guide for OLDER Vehicles (whichever guide the vehicle is listed in) to determine the current average ~~trade-in~~ trade-in value and assess the vehicle document fee.
 - 12.1.2 If a Delaware title is being presented for transfer and the applicant has no Bill of Sale or the reverse side of the Delaware title does not indicate the purchase price, the document fee is to be based on the current average trade-in value as listed in the current N.A.D.A. Guide.
- 12.2 However, the owner may elect to obtain an appraisal from a licensed Delaware dealer, and such appraisal may also be considered in determining the vehicle document fee.

13.0 Prorated Document Fee

If an individual received a part-interest in a vehicle whether by gift or purchase, the amount of the document fee shall be prorated in ~~accord~~ accordance with the number of persons named as owners on the new certificate of title.

GENERAL NOTICES

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

Statutory Authority: 42 C.F.R. §402, Subpart A

PUBLIC NOTICE AND NOTICE OF PUBLIC HEARINGS

TANF State Plan

Delaware Health and Social Services (DHSS)/Division of Social Services is providing a public notice related to the State's plan to comply with Federal regulations governing the Temporary Assistance for Needy Families (TANF) program.

Purpose

The purpose of this posting is to provide public notice and receive public input for consideration regarding Delaware's TANF State Plan, which will be effective from October 1, 2023 to September 30, 2026.

Overview

The TANF State Plan is a comprehensive statement submitted by the Delaware Division of Social Services describing the nature and scope of its program and giving assurance that it will be administered in conformity with the specific requirements stipulated in the pertinent title of the Social Security Act, the regulations in subtitle A of §402 of this title, and other applicable official issuances of the U.S. Department of Health and Human Services. The State Plan contains all information necessary for the Administration for Children and Families (ACF) to determine whether the plan can be approved as a basis for Federal financial participation in the TANF program.

A copy of the plan can be found at <https://www.dhss.delaware.gov/dhss/dss/pubs.html>.

Public Comment Submission Process

DHSS gives public notice and provides an open comment period for forty-five (45) days to allow all stakeholders an opportunity to provide input on the TANF State Plan Amendment. The comment period begins on October 1, 2023 and ends on November 15, 2023.

Comments and input may be submitted in the following ways:

By email: tony.watson@delaware.gov

By fax: 302-255-4425 to the attention of Tony Watson

By mail: Tony Watson
Division of Social Services
Policy & Program Development Unit
1901 North DuPont Highway
P.O. Box 906
New Castle, Delaware 19720-0906

Please identify in the subject line: TANF State Plan

This notice shall appear for one (1) day only in the following newspapers:

- *The News Journal*
- *Delaware State News*

August 30, 2023

Date

Thomas Hall
Director
Division of Social Services

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

<http://regulations.delaware.gov/register/october2023/general/DELAWARE STATE PLAN FOR TANF October 2023 Draft 9-12-23.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 - Benge Road (N253)

September 5, 2023

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

Ms. Smallwood,

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

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

§4505. Traffic control devices.

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

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

"No Trucks Over 2 Axles Except Local Services" on Benge Road (N253) from Old Wilmington Road (N275) to Creek Road (N247).

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

Thank you,
Peter Haag
Chief of Traffic Engineering

GENERAL NOTICES

DIVISION OF TRANSPORTATION SOLUTIONS

Traffic Operations 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 - Marrows Road Extension (N130530)

August 24, 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 Operations Section, as approved and ordered by the Secretary of the Department of Transportation pursuant to 21 *Del. C.* §4505(c), for the following permanent traffic control devices for the safe movement of traffic in the area:

“Trailers, semi-trailers, and recreational trailers unattached to a motor vehicle, shall be prohibited from stopping, standing, or parking” on Marrows Road Extension (N130530) between DE4 E Chestnut Hill Road (N366) and Scottfield Drive

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

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

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 Thursday, 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 links to live streams of these events, please visit the DRBC website at www.drbc.gov or contact Patricia Hausler at patricia.hausler@drbc.gov.

Pamela M. Bush, Esq.

Commission Secretary and Assistant General Counsel

DELAWARE RIVER BASIN COMMISSION**PUBLIC NOTICE****Amendments to Rules of Practice and Procedure**

SUMMARY: The Commission proposes to amend its Rules of Practice and Procedure to: resolve ambiguities around the automatic termination of project approvals issued by the Commission; make conforming amendments to related provisions as appropriate; update the Commission's Water Resources Program and Project Review procedures to better conform them to current practice; remove references to the Federal Freedom of Information Act that create confusion about the regulations applicable to requests for Commission public records; and align pronouns with the Commission's policies regarding diversity, inclusion, and belonging.

DATES: *Written comments:* Written comments will be accepted through 5 p.m. on November 30, 2023.

Public hearings: Public hearings will be held remotely via Zoom on the following dates at the noted times. Details about accessing the hearings are available on the Commission's website, www.drbc.gov.

1. November 13, 2023, 1:30 p.m. to no later than 4:00 p.m.
2. November 13, 2023, 6:30 p.m. to no later than 9:00 p.m.

A notice including these public hearing dates, times and locations was posted on the Commission's website on September 29, 2023, and circulated that day directly to Commission notice subscribers interested in this subject matter. Members of the public may sign up through the Commission's website to receive direct notice via email of additions or changes to the information provided above.

ADDRESSES: *To submit written comments:* Written comments will be accepted until 5 p.m. on November 30, 2023 through the Commission's online public comment collection system at: <https://hearing.drbc.commentinput.com?id=T95htQGAg>. To request an exception from use of the online system based on lack of access to the Internet, please contact: Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628.

To register to speak at public hearings: Although attendance at the hearings is not limited and requires no registration, those who wish to provide oral comment at a hearing must register in advance to do so. Registration will be through Zoom. Links to the Zoom registration for each of the public hearing dates and times are posted at www.drbc.gov. Online registration will remain open until 5 p.m. on the day prior to the hearing date or until all available speaking slots have been filled, whichever is earlier. Each person who wishes to provide oral comment may do so at only one public hearing. Registrations will be monitored, and if capacity is not adequate to accommodate all who wish to speak, additional opportunities may be added.

FOR FURTHER INFORMATION CONTACT: For information regarding the public hearings and submission of written comments, contact Kate Schmidt, Communications Specialist, at kate.schmidt@drbc.gov (preferred) or 609-883-9500, ext. 205. For information concerning the proposed amendments, contact Pamela Bush, Commission Secretary and Assistant General Counsel, at pam.bush@drbc.gov (preferred) or 609-477-7203.

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 MEDICAID AND MEDICAL ASSISTANCE
PUBLIC NOTICE
Doula Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of 31 **Del.C.** §512, Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DHSS/DMMA) is proposing to amend Title XIX Medicaid State Plan regarding Doula Services, specifically, to provide Doula services as separately reimbursed pregnancy-related services.

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

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
PUBLIC NOTICE
Pharmacy Value Based Purchasing (VBP)

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of 31 **Del.C.** §512, Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DHSS/DMMA) is proposing to amend Title XIX Medicaid State Plan regarding Value Based Purchasing, specifically, to participate in the Pharmacy Value Based Purchasing Program.

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

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

DIVISION OF PUBLIC HEALTH
PUBLIC NOTICE
4458A Cottage Food Regulations

Pursuant to 16 **Del.C.** §122(3)u.1., the Health Systems Protection section within the Division of Public Health, Department of Health and Social Services, is proposing revisions to the Cottage Food Regulations. The revisions

include:

- Addition of "sesame" to the list of major food allergens; and
- Removal of the gross annual sales cap for cottage food establishments; and
- Removal of the owner's name and full home address of cottage food establishments on product labels, and in its place requiring the product label list the cottage food establishment's town/city in Delaware; and
- Exclusion of cannabis products; and
- Technical corrections.

Copies of the proposed regulations are available for review in the October 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 Tuesday, October 31, 2023, at:

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

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
PUBLIC NOTICE
1900 Board of Nursing

The Delaware Board of Nursing, pursuant to 24 **Del.C.** §1904(c), proposes to revise its regulations to remove the requirement for nursing employer reference forms, clarify the process for CE providers to renew their approval, and correct minor errors.

The Board will hold a public hearing on the proposed regulation changes on November 8, 2023 at 9:00 a.m. in the Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Dr. Pamela Zickafoose, Executive Director of the Delaware Board of Nursing, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until November 27, 2023 pursuant to 29 **Del.C.** §10118(a).

DIVISION OF SMALL BUSINESS
PUBLIC NOTICE
The Delaware Sports Tourism Capital Investment Fund

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 29 **Del.C.** §8705A, the Division of Small Business ("Division") proposes to promulgate new regulations regarding criteria and procedures governing The Delaware Sports Tourism Capital Investment Fund.

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:

Jessica Welch
Delaware Tourism Office
Division of Small Business
99 Kings Highway
Dover, DE 19901

Comments may also be directed via electronic mail to Jessica.Welch@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 Division of Small Business no later than 4 p.m. EST, November 1, 2023.

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