
Delaware Register of Regulations

Issue Date: September 1, 2021

Volume 25 - Issue 3, Pages 212 - 308



IN THIS ISSUE:

Regulations:

Errata

Emergency

Proposed

Final

General Notices

Calendar of Events &
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before August 15, 2021.

*Photo by Dolores Michels
Fifer Orchards
Camden Wyoming, Delaware*

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

213

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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
October 1	September 15	4:30 p.m.
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 17	4:30 p.m.
March 1	February 15	4:30 p.m.

DIVISION OF RESEARCH STAFF

Mark Brainard, Joint Legislative Oversight Sunset Committee Analyst; **Amy Burke**, Administrative Specialist II; **Mark J. Cutrona**, Director; **Deborah Gottschalk**, Sr. Legislative Attorney; **Robert Lupo**, Graphics and Printing Technician IV; **Colinda Marker**, Executive Assistant; **Amanda McAtee**, Joint Legislative Oversight Sunset Committee Analyst; **Kathleen Morris**, Office Manager; **Nathan Poore**, Graphics and Printing Technician III; **Joel Rudnick**, Legislative Librarian; **Erika Schrader**, Assistant Registrar of Regulations; **Victoria Schultes**, Administrative Specialist III; **Don Sellers**, Print Shop Supervisor; **Yvette W. Smallwood**, Registrar of Regulations; **Holly Vaughn Wagner**, Deputy Director; **Cara Wilson**, Legislative Attorney; **Natalie White**, Administrative Specialist III.

TABLE OF CONTENTS

215

Cumulative Tables	217
-------------------------	-----

ERRATA

DEPT. OF AGRICULTURE, Standardbred Breeders' Fund	
502 Delaware Standardbred Breeders' Fund Regulations.....	220

EMERGENCY

DEPT. OF AGRICULTURE, Thoroughbred Racing Commission	
1001 Thoroughbred Racing Rules and Regulations.....	221

DEPT. OF EDUCATION, Office of the Secretary	
105 Residential Child Care Facilities and Day Treatment Programs.....	223
105 Residential Child Care Facilities and Day Treatment Programs.....	225
815 Health Examinations and Screening.....	227
815 Health Examinations and Screening.....	229
933 DELACARE: Regulations for Early Care and Education and School-Age Centers.....	233
933 DELACARE: Regulations for Early Care and Education and School-Age Centers.....	235
934 Regulations for Family and Large Family Child Care Homes.....	237
934 Regulations for Family and Large Family Child Care Homes.....	239
938 Regulations for Youth Camps.....	242
938 Regulations for Youth Camps.....	244

DEPT. OF HEALTH AND SOCIAL SERVICES, Division of Public Health	
4202 Control of Communicable and Other Disease Conditions.....	246
4202 Control of Communicable and Other Disease Conditions.....	248

PROPOSED

DELAWARE HEALTH INFORMATION NETWORK	
101 Delaware Health Information Network Regulations.....	252
102 Delaware Health Information Network Regulations on Participation.....	257
104 Delaware Health Care Claims Database Data Access Regulation.....	259

DEPT. OF AGRICULTURE, Thoroughbred Racing Commission	
1001 Thoroughbred Racing Rules and Regulations.....	260

DEPT. OF HEALTH AND SOCIAL SERVICES, Division of Public Health	
4202 Control of Communicable and Other Disease Conditions.....	262

DEPT. OF INSURANCE, Office of the Commissioner	
1003 Credit for Reinsurance.....	263

DEPT. OF JUSTICE, Fraud and Consumer Protection Division	
105 Health Spa Act Regulation.....	264

DEPT. OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL	
Division of Watershed Stewardship	
7402 Shellfish Sanitation Regulations.....	268

TABLE OF CONTENTS

FINAL

DELAWARE CRIMINAL JUSTICE INFORMATION SYSTEM

1301 Delaware Criminal Justice Information System Rules and Regulations.....	270
--	-----

DELAWARE PUBLIC EMPLOYEE'S RETIREMENT SYSTEM, Delaware Board of Pension Trustees

2002 State Employees' Pension Plan.....	272
2003 State Judiciary Pension Plan.....	272
2004 State Police Pension Plan.....	272
2005 County and Municipal Employees' Pension Plan.....	272
2006 County and Municipal Police/Firefighter Pension Plan.....	272

DEPT. OF AGRICULTURE, Standardbred Breeders' Fund

502 Delaware Standardbred Breeders' Fund Regulations.....	273
---	-----

DEPT. OF EDUCATION, Office of the Secretary

505 High School Graduation Requirements and Diplomas.....	274
701 Unit Count.....	275

DEPT. OF HEALTH AND SOCIAL SERVICES, Division of Social Services

Processing Applications for Child Care: DSSM 11004.....	280
---	-----

DEPARTMENT OF INSURANCE, Office of the Commissioner

1409 Insurance Coverage for Telemedicine and Telehealth.....	285
--	-----

DEPT. OF LABOR, Division of Industrial Affairs

1326 Workplace Fraud Act Regulations.....	287
1329 Delaware Contractor Registration Act Regulations.....	288

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Fish and Wildlife

3541 Atlantic Sharks.....	290
3542 Tilefish.....	295
3550 Cobia (<i>Rachycentron canadum</i>).....	297

DEPT. OF SAFETY AND HOMELAND SECURITY, Delaware Sex Offender Management Board

1100 Delaware Sex Offender Management Board.....	301
--	-----

GENERAL NOTICES

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Watershed Stewardship

Regulatory Guidance Documents Supporting Regulation 5101 Sediment and Stormwater Regulations.....	303
---	-----

CALENDAR OF EVENTS/HEARING NOTICES

Delaware Health Information Network, Notices of Public Comment Periods.....	304
Delaware River Basin Commission - Notice of Quarterly Business Meeting.....	305
Dept. of Agriculture; Thoroughbred Racing Commission, Notice of Public Comment Period.....	305
Dept. of Education, Notice of Monthly Meeting.....	305
Dept. of Health and Social Services; Div. of Public Health; Notice of Public Comment Period.....	306
Dept. of Insurance, Office of the Commissioner, Notice of Public Comment Period.....	306
Dept. of Justice, Fraud and Consumer Protection Division, Notice of Public Comment Period.....	307
Dept. of Natural Resources and Environmental Control; Div. of Watershed Stewardship; Notice of Public Hearing and Public Comment Period.....	308

The table printed below lists the regulations that have been proposed, adopted, amended or repealed in the preceding issues of the current volume of the *Delaware Register of Regulations*.

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

DELAWARE STATE FIRE PREVENTION COMMISSION

701 Administration and Enforcement.....	25 DE Reg. 71 (Final)
702 Fire Protection in Building Construction.....	25 DE Reg. 74 (Final)
703 Installation, Operation, Maintenance, Testing and Sales of Signaling Systems, Fire Protection Systems and Fire Extinguishers	25 DE Reg. 77 (Final)
704 Hazardous Processes and Operations	25 DE Reg. 79 (Final)
705 General Fire Safety.....	25 DE Reg. 80 (Final)

DEPARTMENT OF AGRICULTURE

Food Products Inspection

302 Produce Safety Regulations.....	25 DE Reg. 166 (Final)
-------------------------------------	-------------------------------

Harness Racing Commission

Harness Racing Rules and Regulations.....	25 DE Reg. 119 (Prop.)
---	-------------------------------

Standardbred Breeders' Fund

502 Delaware Standardbred Breeders' Fund Regulations.....	25 DE Reg. 169 (Final)
---	-------------------------------

DEPARTMENT OF EDUCATION

Office of the Secretary

239 Behavioral Health Professional of the Year.....	25 DE Reg. 120 (Prop.)
525 Requirements for Career and Technical Education Programs	25 DE Reg. 40 (Prop.)
701 Unit Count	25 DE Reg. 41 (Prop.)
716 Maintenance of Local School District and Charter School Personnel Records	25 DE Reg. 118 (Errata)
	25 DE Reg. 170 (Final)
815 Health Examinations and Screening.....	25 DE Reg. 123 (Prop.)
938 Regulations for Youth Camps.....	25 DE Reg. 172 (Final)
1011 Interscholastic Athletics during the COVID-19 Pandemic.....	25 DE Reg. 173 (Final)
	25 DE Reg. 175 (Final)

Professional Standards Board

1503 Educator Mentoring	25 DE Reg. 82 (Final)
1542 Secondary Mathematics Teacher.....	25 DE Reg. 127 (Prop.)
1543 Secondary Science Teacher.....	25 DE Reg. 84 (Final)
1534 Middle Level Social Studies Teacher.....	25 DE Reg. 46 (Prop.)
1544 Secondary Social Studies Teacher.....	25 DE Reg. 51 (Prop.)
1556 School To Work Transition Teacher.....	25 DE Reg. 55 (Prop.)
1559 Skilled and Technical Sciences Teacher.....	25 DE Reg. 177 (Final)
1561 Bilingual Teacher	25 DE Reg. 90 (Final)
1562 Teacher of English Learners.....	25 DE Reg. 96 (Final)
1574 Teacher of Students Who Are Deaf or Hard of Hearing.....	25 DE Reg. 178 (Final)
1583 School Psychologist.....	25 DE Reg. 131 (Prop.)

DEPARTMENT OF ELECTIONS

Office of the State Election Commissioner

101 Procedures for Addressing Post-Election Voting Machine Audit Discrepancies	25 DE Reg. 101 (Final)
--	-------------------------------

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Health Care Quality

3201 Skilled and Intermediate Care Nursing Facilities.....	25 DE Reg. 6 (Emer.)
3210 Nursing Homes Admitting Pediatric Residents.....	25 DE Reg. 9 (Emer.)
3225 Assisted Living Facilities	25 DE Reg. 11 (Emer.)
3305 Group Homes for Persons with Mental Illness	25 DE Reg. 13 (Emer.)
3310 Neighborhood Homes for Individuals with Intellectual and/or Develop- mental Disabilities	25 DE Reg. 15 (Emer.)
3315 Family Care Homes.....	25 DE Reg. 17 (Emer.)
3320 Intensive Behavioral Support and Educational Residence.....	25 DE Reg. 19 (Emer.)
3345 Personal Assistance Services Agencies.....	25 DE Reg. 21 (Emer.)
4406 Home Health Agencies--Aide Only (Licensure).....	25 DE Reg. 137 (Prop.)
4410 Skilled Home Health Agencies (Licensure).....	25 DE Reg. 137 (Prop.)
Division of Medicaid and Medical Assistance	
Title XIX Medicaid State Plan - Adult Dental.....	25 DE Reg. 139 (Prop.)
Title XIX Medicaid State Plan - Ambulatory Surgical Center Services	25 DE Reg. 141 (Prop.)
Title XIX Medicaid State Plan - Medication-Assisted Treatment (MAT)	25 DE Reg. 184 (Final)
Title XIX Medicaid State Plan: Drug Utilization Review (DUR) - Opioid Provisions.....	25 DE Reg. 190 (Final)
Division of Public Health	
4402 Regulations for Adult Day Care Facilities.....	25 DE Reg. 23 (Emer.)
4403 Free Standing Birthing Centers	25 DE Reg. 25 (Emer.)
4406 Home Health Agencies--Aide Only (Licensure).....	25 DE Reg. 27 (Emer.)
4407 Hospital Standards (Construction, Maintenance, and Operation)	25 DE Reg. 29 (Emer.)
4409 Prescribed Pediatric Extended Care Centers (PPECC).....	25 DE Reg. 33 (Emer.)
4410 Skilled Home Health Agencies (Licensure)	25 DE Reg. 35 (Emer.)
4468 Delivery of Hospice Services.....	25 DE Reg. 37 (Emer.)
Division of Social Services	
Child Care for Families Receiving Temporary Assistance for Needy Families (TANF): DSSM 11003.....	25 DE Reg. 192 (Final)
Temporary Assistance for Needy Families (TANF) - Definition: DSSM 3000.... Funding: DSSM 3000.1.....	25 DE Reg. 144 (Prop.) 25 DE Reg. 144 (Prop.)
DSSM 11002.5 Responsibility For The Administration Of Delaware's Child Care Subsidy Program.....	25 DE Reg. 147 (Prop.)
DSSM 11002.5.1 Responsibility for Direct Administration of Delaware's Child Care Subsidy Program.....	25 DE Reg. 147 (Prop.)
DSSM 11002.10 Establishing Program Integrity in Child Care.....	25 DE Reg. 147 (Prop.)
DSSM 11006.4.8 Completing Correct Transactions.....	25 DE Reg. 153 (Prop.)
DSSM 11006.4.9 Completing Manual Adjustments.....	25 DE Reg. 153 (Prop.)
DEPARTMENT OF INSURANCE	
Office of the Commissioner	
902 Prohibited Unfair Claim Settlement Practices [Formerly Regulation 26]	25 DE Reg. 156 (Prop.)
1404 Long-Term Care Insurance	25 DE Reg. 60 (Prop.)
DEPARTMENT OF LABOR	
Division of Industrial Affairs	
1326 Workplace Fraud Act Regulations.....	25 DE Reg. 61 (Prop.)
1329 Delaware Contractor Registration Act Regulations	25 DE Reg. 62 (Prop.)
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL	
Division of Air Quality	
1124 Control of Volatile Organic Compound Emissions: Section 33.0 Solvent Cleaning and Drying.....	25 DE Reg. 196 (Final)
Division of Climate, Coastal and Energy	
2103 Regulations for the Green Energy Program	25 DE Reg. 63 (Prop.)

Division of Fish and Wildlife

3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit.....	25 DE Reg.	103 (Final)
3542 Tilefish.....	25 DE Reg.	64 (Prop.)
3550 Cobia (<i>Rachycentron canadum</i>).....	25 DE Reg.	66 (Prop.)

DEPARTMENT OF STATE**Division of Professional Regulation**

100 Board of Accountancy.....	25 DE Reg.	160 (Prop.)
1700 Board of Medical Licensure and Discipline.....	25 DE Reg.	161 (Prop.)
1900 Board of Nursing.....	25 DE Reg.	199 (Final)
2700 Board of Registration for Professional Land Surveyors.....	25 DE Reg.	69 (Prop.)
2930 Council on Real Estate Appraisers.....	25 DE Reg.	163 (Prop.)
3800 State Board of Dietetics/Nutrition.....	25 DE Reg.	201 (Final)

**DEPARTMENT OF AGRICULTURE
DELAWARE STANDARDBRED BREEDERS' FUND**

Statutory Authority: 29 Delaware Code, Section 4815(b)(4)b. (29 **Del.C.** §4815(b)(4)b.)
3 DE Admin. Code 502

ERRATA

502 Delaware Standardbred Breeders' Fund Regulations

***Please Note:** The final regulation for 502 Delaware Standardbred Breeders' Fund Regulations was originally submitted for publication in the August 1, 2021 issue of the *Register of Regulations*. The final order contained a clerical error that misstated the citation providing the Standardbred Breeders' Fund's statutory authority to promulgate regulations. This part of the final order is reprinted below with the error corrected. The effective date for the final order and regulation appearing in the August *Register* remains the same.

I. NATURE OF PROCEEDINGS

Pursuant to its authority under ~~29 Del. C. §4815(b)(3)D.2~~ 29 Del.C. §4815(b)(4)b. and 3 Del.C. §10081(b). the State of Delaware, Department of Agriculture's Standardbred Breeders' Fund (herein "the Fund") proposed to amend its regulations to eliminate the restriction on private treaty breeding and allow for later payment of registration fees for the Funds' program pertaining to the registration of stallions. All of these changes were proposed to address the fiduciary responsibility of the Fund to sustain the program into the future while maintaining the current status.

Notice of a public comment period of thirty (30) days on the Fund's proposed amended regulations was published in the Delaware Register of Regulations for June 1, 2021 in accordance with ~~29 Del. C. §4815(b)(4)b.2.D~~ 29 Del.C. §4815(b)(4)b. and 3 Del.C. §10081(b). This is the Fund's Decision and Order adopting the proposed amended regulations.

II. FINDINGS AND CONCLUSIONS

3. Pursuant to ~~29 Del.C. §4815(b)(3)b.2.D and 3 DE Admin. Code 502~~ 29 Del.C. §4815(b)(4)b. and 3 Del.C. §10081(b), the Fund has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.

Symbol Key

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

Emergency Regulations

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

§ 10119. Emergency regulations.

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

- (1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable;
- (2) The order adopting, amending or repealing a regulation shall state, in writing, the reasons for the agency's determination that such emergency action is necessary;
- (3) The order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days;
- (4) When such an order is issued without any of the public procedures otherwise required or authorized by this chapter, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and
- (5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the

**DEPARTMENT OF AGRICULTURE
THOROUGHBRED RACING COMMISSION**

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

In Re: EMERGENCY RULE FOR THOROUGHBRED RACING COMMISSION - Final Order

1001 Thoroughbred Racing Rules and Regulations

WHEREAS, the Thoroughbred Racing Commission (the "Commission") has been charged by the Delaware legislature pursuant to 3 Del. C. § 10103(c) with the powers and duties to regulate the conduct of all participants in any thoroughbred and/or Arabian racing meet authorized by the Commission within this State and to promulgate and prescribe such rules and regulations as it may deem proper and necessary; and

WHEREAS, the Commission is developing proposed regulations (the "Proposed Regulations") for publication in the Register of Regulations to amend Rule 13.1.3 to change the existing open claiming rule, to amend Rule 13.12.4 to provide that a claim may be voided if a horse is vanned off the racetrack at the direction of the commission veterinarian; or is observed by the Commission Veterinarian to be lame or unsound while still on the racetrack and as such the Commission Veterinarian places that horse on the Vets list, and to amend Rule 15.14 Shock Wave Therapy/Instruments to add a new Rule 15.14.4; and

WHEREAS, the Commission finds that adoption of an emergency regulation to regulate the conduct of participants in the current thoroughbred racing meet authorized by the Commission must occur on an emergency basis in order to provide consistency between the Commission's rules and the rules of other racing jurisdictions until such time as the Proposed Regulations become effective; and

WHEREAS, the Commission will accept, consider and respond to petitions by any interested person for the reconsideration or revision of this regulation by addressing the same to the attention of Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804; and

WHEREAS, in accordance with the provisions of 29 Del. C. § 10119(3), this Order shall be effective for 120 days from the date of execution and may be renewed once for a period not exceeding 60 days; and

WHEREAS, a copy of this Order will be submitted to the Registrar for publication in the next issue of the Delaware Register of Regulations.

NOW, THEREFORE, IT IS ORDERED this 6th day of August, 2021 that the following "Amendment to Thoroughbred Racing Commission Rules" shall take effect immediately.

Delaware Thoroughbred Racing Commission

Sarah A. Crane, Executive Director

1001 Thoroughbred Racing Rules and Regulations
(Break in Continuity of Sections)

13.0 Claiming Races

13.1 Owners Entitled:

(Break in Continuity Within Section)

13.1.3 A new Owner, i.e., an individual, partnership, corporation or any other authorized racing interest who has not held an Owner's license ~~in any racing jurisdiction during the prior year, from the Commission or a previously licensed owner that has no current ownership~~ is eligible to claim by obtaining an "Open Claiming License" from the Commission.

(Break in Continuity Within Section)

13.12 Nature and Effect of a Claim:

(Break in Continuity Within Section)

13.12.3 ~~In the event a horse dies during a claiming race or is euthanized on the racetrack during a claiming race, any claim on that horse will be declared void.~~ A claim shall be voided if a horse is starter as determined by the Commission, and the horse:

13.12.3.1 Dies on the racetrack;

13.12.3.2 Suffers an injury which requires euthanasia of the horse as determined by the Commission Veterinarian while the horse is still on the racetrack;

13.12.3.3 Is vanned off the racetrack at the direction of the Commission Veterinarian; or

13.12.3.4 Is observed by the Commission Veterinarian to be lame or unsound while still on the racetrack and as such the Commission Veterinarian places that horse on the Vets List.

(Break in Continuity of Sections)

15.0 Medication; Testing Procedures

(Break in Continuity Within Section)

15.14 Shock Wave Therapy/Instruments

(Break in Continuity Within Section)

15.14.4 Once a horse is entered to race, no horse shall be permitted to leave the racetrack prior to racing. Any horse that leaves the racetrack after the time of entry shall be scratched by the Stewards.

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

1001 Thoroughbred Racing Rules and Regulations

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 3003A and 29 Delaware Code, Section 10119
(14 **Del.C.** §3003A & 29 **Del.C.** §10119)
9 **DE Admin. Code** 105

EMERGENCY ORDER

105 Residential Child Care Facilities and Day Treatment Programs

AUTHORITY

Pursuant to 14 **Del. C.** § 3003A and 29 **Del. C.** § 10119, the Department of Education (“Department”) is adopting emergency regulatory amendments to 9 **DE Admin. C.** § 105 Residential Child Care Facilities and Day Treatment Programs. Additionally, 29 **Del. C.** § 10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del. C.** § 10115. Also, 14 **Del. C.** § 3003A(c), authorizes the Department’s Office of Child Care Licensing to prescribe, by regulation or otherwise, any reasonable standards for the conduct of child care as defined in 14 **Del. C.** § 3002A(1).

REASON FOR THE EMERGENCY ORDER

Evidence has shown that children do better when they are able to attend school full time, in person. While the youngest students in Delaware are unable to get vaccinated against COVID-19, the best way to mitigate the spread of the virus is through a tiered strategy that combines encouraging vaccination with additional steps including continued mask usage.

Delaware’s tiered approach is a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Controls and Prevention. Effective implementation of multiple strategies is imperative to prevent or significantly decrease transmission of COVID-19 and other infections within schools and child care facilities. The Centers for Disease Control and Prevention have recently issued guidance that mask usage should be universal in K-12 schools, for all students, staff, and visitors. The Centers for Disease Control and Prevention have recently issued guidance for operating early care and education programs, or child care programs, which states in part masks should be worn indoors by all individuals (ages 2 and older) who are not fully vaccinated.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue, especially for those who are unable to be vaccinated. The addition of mask use and other steps, while continuing to work towards increasing the vaccinated population in Delaware is imperative to mitigate this public health risk.

EFFECTIVE DATE OF ORDER

Accordingly, it is hereby ordered, that 9 **DE Admin. C.** § 105 Residential Child Care Facilities and Day Treatment Programs is amended by adding Section 3.7 which requires certain facilities to require masks. The regulation is temporarily modified by making deletions as shown by strike through and insertions as shown by underline as follows:

3.0. General Provisions

3.7 COVID-19 Mitigation and Prevention in Residential Child Care Facilities and Day Treatment Programs

3.7.1. All persons or associations conducting child care as defined in 14 Del.C. § 3002A(1), shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, staff, family members, and visitors inside the child care facility, regardless of vaccination status.

3.7.2 Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the child care facility.

3.7.3 Masks are not required in child care facilities:

3.7.3.1 When seated at a table to eat or drink.

3.7.3.2 When asleep

3.7.3.3 When engaged in any activity that makes wearing a mask not feasible, such as swimming.

3.7.3.4 When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.

3.7.3.5 When outdoors.

3.7.3.6 When children are not in the building.

3.7.4. All child care facilities that provide bus service to and from the child care facility shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, faculty, staff, and visitors riding school buses, regardless of vaccination status.

3.7.5 In addition to mask requirements in subsection 3.7.1, all child care facilities shall follow CDC Guidelines for COVID-19 Prevention in early care and education programs or child care programs.

This Emergency Order shall take effect on August 15, 2021 and shall remain in effect for 120 days. At the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 Del.C. § 10119(3).

PETITION FOR RECOMMENDATIONS

In accordance with 29 Del. C. § 10119(4), the Department of Education will receive, consider, and respond to petitions by any interested persons for reconsideration or revision of the amendments to the Emergency Regulation by addressing the petitions to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us.

ORDER

It is hereby ordered, this 12th day of August, 2021, that the above referenced amendment to 9 DE Admin. C. § 105 Residential Child Care Facilities and Day Treatment Programs, a copy of which is hereby attached, is adopted, pursuant to 14 Del.C. § 3003A and 29 Del.C. § 10119, as referenced above, and supported by the evidence contained herein.

IT IS SO ORDERED the 12th day of August, 2021.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 3003A and 29 Delaware Code, Section 10119
(14 Del.C. §3003A & 29 Del.C. §10119)
9 DE Admin. Code 105

EMERGENCY ORDER

105 Residential Child Care Facilities and Day Treatment Programs

AUTHORITY

Pursuant to 14 Del. C. §3003A and 29 Del. C. §10119, the Department of Education ("Department") is adopting emergency regulatory amendments to 9 DE Admin. Code 105 Residential Child Care Facilities and Day Treatment Programs. Additionally, 29 Del. C. §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 Del. C. §10115. Also, 14 Del. C. §3003A(c), authorizes the Department's Office of Child Care Licensing to prescribe, by regulation or otherwise, any reasonable standards for the conduct of child care as defined in 14 Del. C. §3002A(1).

REASON FOR THE EMERGENCY ORDER

Evidence has shown that children do better when they are able to attend school full time, in person. While the youngest students in Delaware are unable to get vaccinated against COVID-19, the best way to mitigate the spread of the virus is through a tiered strategy that combines encouraging vaccination with additional steps including continued mask usage.

Delaware's tiered approach is a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Controls and Prevention. Effective implementation of multiple strategies is imperative to prevent or significantly decrease transmission of COVID-19 and other infections within schools and child care facilities. The Centers for Disease Control and Prevention have recently issued guidance that mask usage should be universal in K-12 schools, for all students, staff, and visitors. The Centers for Disease Control and Prevention have recently issued guidance for operating early care and education programs, or child care programs, which states in part masks should be worn indoors by all individuals (ages 2 and older) who are not fully vaccinated.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue, especially for those who are unable to be vaccinated. The addition of mask use and other steps, while continuing to work towards increasing the vaccinated population in Delaware is imperative to mitigate this public health risk.

The August 12, 2021 Emergency Order contained language that was inadvertently broad and resulted in requirements that were not intended. For that reason, the Emergency Order dated August 12, 2021 is hereby repealed in its entirety and replaced with this Emergency Order.

EFFECTIVE DATE OF ORDER

Accordingly, it is hereby ordered, that 9 DE Admin. C. 105 Residential Child Care Facilities and Day Treatment Programs is amended by adding Section 3.7 which requires certain facilities to require masks. The regulation is temporarily modified by making deletions as shown by strike through and insertions as shown by underline as follows:

3.0. General Provisions

3.7 COVID-19 Mitigation and Prevention in Residential Child Care Facilities and Day Treatment Programs

3.7.1. All persons or associations conducting child care as defined in 14 Del.C. § 3002A(1) shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, staff, family members, and visitors inside the child care facility, regardless of vaccination status.

3.7.2 Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the child care facility.

3.7.3 Masks are not required in child care facilities:

3.7.3.1 When seated at a table to eat or drink.

3.7.3.2 When asleep.

3.7.3.3 When engaged in any activity that makes wearing a mask not feasible, such as swimming.

3.7.3.4 When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.

3.7.3.5 When outdoors.

3.7.3.6 When children are not in the building.

3.7.4. All child care facilities that provide bus service to and from the child care facility shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, faculty, staff, and visitors riding school buses, regardless of vaccination status.

This Emergency Order shall take effect on August 16, 2021 and shall remain in effect for 120 days. At the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 Del.C. § 10119(3).

PETITION FOR RECOMMENDATIONS

In accordance with 29 Del. C. § 10119(4), the Department of Education will receive, consider, and respond to petitions by any interested persons for reconsideration or revision of the amendments to the Emergency Regulation by addressing the petitions to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us.

ORDER

It is hereby ordered, this 13th day of August, 2021, that the above referenced amendment to 9 DE Admin. C. 105 Residential Child Care Facilities and Day Treatment Programs, a copy of which is hereby attached, is adopted, pursuant to 14 Del.C. § 3003A and 29 Del.C. § 10119, as referenced above, and supported by the evidence contained herein.

IT IS SO ORDERED the 13th day of August, 2021.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

105 Residential Child Care Facilities and Day Treatment Programs
(Break in Continuity of Sections)

3.0 General Provisions

(Break in Continuity Within Section)

- 3.7 COVID-19 Mitigation and Prevention in Residential Child Care Facilities and Day Treatment Programs
- 3.7.1 All persons or associations conducting child care as defined in 14 Del.C. §3002A(1) shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, staff, family members, and visitors inside the child care facility, regardless of vaccination status.
- 3.7.2 Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the child care facility.
- 3.7.3 Masks are not required in child care facilities:
- 3.7.3.1 When seated at a table to eat or drink.
- 3.7.3.2 When asleep.
- 3.7.3.3 When engaged in any activity that makes wearing a mask not feasible, such as swimming.
- 3.7.3.4 When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.
- 3.7.3.5 When outdoors.
- 3.7.3.6 When children are not in the building.
- 3.7.4 All child care facilities that provide bus service to and from the child care facility shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, faculty, staff, and visitors riding school buses, regardless of vaccination status.

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

105 Residential Child Care Facilities and Day Treatment Programs

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(2) and 3003A, 29 Delaware Code, Section 10119 (14 **Del.C.** §§122(b)(2) & 3003A & 29 **Del.C.** §10119)
14 **DE Admin. Code** 815

EMERGENCY ORDER

815 Health Examinations and Screening

AUTHORITY

Pursuant to 14 **Del. C.** § 122(b)(2), 14 **Del. C.** § 3003A, and 29 **Del. C.** § 10119, the Department of Education ("Department") is adopting emergency regulatory amendments to 14 **DE Admin. C.** § 815 Health Examinations and Screening. Additionally, 29 **Del. C.** § 10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del. C.** § 10115. Moreover, 14 **Del. C.** § 122(b)(2) authorizes the Department to prescribe rules and regulations governing the physical inspection of and the protection of the health and physical welfare of public school students in the State. Also, 14 **Del. C.** § 3003A(c), authorizes the Department's Office of Child Care Licensing to prescribe, by regulation or otherwise, any reasonable standards for the conduct of child care as defined in 14 **Del. C.** § 3002A(1).

REASON FOR THE EMERGENCY ORDER

Evidence has shown that children do better when they are able to attend school full time, in person. While the youngest students in Delaware are unable to get vaccinated against COVID-19, the best way to mitigate the

spread of the virus is through a tiered strategy that combines encouraging vaccination with additional steps including continued mask usage.

Delaware's tiered approach is a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Controls and Prevention. Effective implementation of multiple strategies is imperative to prevent or significantly decrease transmission of COVID-19 and other infections within schools and child care facilities. The Centers for Disease Control and Prevention have recently issued guidance that mask usage should be universal in K-12 schools, for all students, staff, and visitors. The Centers for Disease Control and Prevention have recently issued guidance for operating early care and education programs, or child care programs, which states in part masks should be worn indoors by all individuals (ages 2 and older) who are not fully vaccinated.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue, especially for those who are unable to be vaccinated. The addition of mask use and other steps, while continuing to work towards increasing the vaccinated population in Delaware is imperative to mitigate this public health risk.

EFFECTIVE DATE OF ORDER

Accordingly, it is hereby ordered, that 14 **DE Admin. C.** § 815 Health Examinations and Screening, is amended by adding Section 6.0 which requires certain facilities to require masks. The regulation is temporarily modified by making deletions as shown by strikethrough and insertions as shown by underline as follows:

6.0 COVID-19 Mitigation and Prevention

6.1.1 Schools

6.1.1.1. All schools that serve students kindergarten through twelfth grade shall require mask use by all students, faculty, staff, and visitors inside school buildings, regardless of vaccination status.

6.1.1.2 Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the school.

6.1.1.3 Masks are not required in school buildings:

6.1.1.3.1 When seated at a table to eat or drink.

6.1.1.3.2 When asleep

6.1.1.3.3 When engaged in any activity that makes wearing a mask not feasible, such as swimming.

6.1.1.3.4 When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.

6.1.1.3.5 When outdoors.

6.1.1.3.6 When students are not in the building, except when students travel on school buses.

6.1.1.4. All schools that provide bus service to and from school shall require mask use by all students, faculty, staff, and visitors riding school buses, regardless of vaccination status.

6.1.1.5 In addition to mask requirements in subsection 6.1.1 all schools shall follow CDC Guidelines for COVID-19 Prevention in K-12 Schools.

6.1.2 Child Care Facilities

6.1.2.1. All persons or associations conducting child care as defined in 14 Del.C. § 3002A(1). shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, staff, family members, and visitors inside the child care facility, regardless of vaccination status.

6.1.2.2 Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the child care facility.

6.1.2.3 Masks are not required in child care facilities:

6.1.2.3.1When seated at a table to eat or drink.

6.1.2.3.2When asleep.

6.1.2.3.3 When engaged in any activity that makes wearing a mask not feasible, such as swimming.

6.1.2.3.4 When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.

6.1.2.3.5 When outdoors.

6.1.2.3.6 When children are not in the building.

6.1.2.4. All child care facilities that provide bus service to and from the child care facility shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, faculty, staff, and visitors riding school buses, regardless of vaccination status.

6.1.2.5 In addition to mask requirements in subsection 6.1.2, all child care facilities shall follow CDC Guidelines for COVID-19 Prevention in early care and education programs or child care programs.

This Emergency Order shall take effect on August 15, 2021 and shall remain in effect for 120 days. At the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 **Del.C.** § 10119(3).

PETITION FOR RECOMMENDATIONS

In accordance with 29 **Del. C.** § 10119(4), the Department of Education will receive, consider, and respond to petitions by any interested persons for reconsideration or revision of the amendments to the Emergency Regulation by addressing the petitions to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us.

ORDER

It is hereby ordered, this 12th day of August, 2021, that the above referenced amendment to 14 **DE Admin. C.** § 815 Health Examinations and Screening, a copy of which is hereby attached, is adopted, pursuant to 14 **Del.C.** § 122(b)(2), 14 **Del.C.** § 3003A, and 29 **Del.C.** § 10119, as referenced above, and supported by the evidence contained herein.

IT IS SO ORDERED the 12th day of August, 2021.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(2) and 3003A, 29 Delaware Code, Section 10119 (14 **Del.C.** §§122(b)(2) & 3003A & 29 **Del.C.** §10119)
14 **DE Admin. Code** 815

EMERGENCY ORDER

815 Health Examinations and Screening

AUTHORITY

Pursuant to 14 **Del. C.** § 122(b)(2), 14 **Del. C.** §3003A, and 29 **Del. C.** §10119, the Department of Education ("Department") is adopting emergency regulatory amendments to 14 **DE Admin. Code** 815 Health Examinations

and Screening. Additionally, 29 **Del. C.** §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del. C.** §10115. Moreover, 14 **Del. C.** §122(b)(2) authorizes the Department to prescribe rules and regulations governing the physical inspection of and the protection of the health and physical welfare of public school students in the State. Also, 14 **Del. C.** §3003A(c), authorizes the Department's Office of Child Care Licensing to prescribe, by regulation or otherwise, any reasonable standards for the conduct of child care as defined in 14 **Del. C.** §3002A(1).

REASON FOR THE EMERGENCY ORDER

Evidence has shown that children do better when they are able to attend school full time, in person. While the youngest students in Delaware are unable to get vaccinated against COVID-19, the best way to mitigate the spread of the virus is through a tiered strategy that combines encouraging vaccination with additional steps including continued mask usage.

Delaware's tiered approach is a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Controls and Prevention. Effective implementation of multiple strategies is imperative to prevent or significantly decrease transmission of COVID-19 and other infections within schools and child care facilities. The Centers for Disease Control and Prevention have recently issued guidance that mask usage should be universal in K-12 schools, for all students, staff, and visitors. The Centers for Disease Control and Prevention have recently issued guidance for operating early care and education programs, or child care programs, which states in part masks should be worn indoors by all individuals (ages 2 and older) who are not fully vaccinated.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue, especially for those who are unable to be vaccinated. The addition of mask use and other steps, while continuing to work towards increasing the vaccinated population in Delaware is imperative to mitigate this public health risk.

The August 12, 2021 Emergency Order contained language that was inadvertently broad and resulted in requirements that were not intended. For that reason, the Emergency Order dated August 12, 2021 is hereby repealed in its entirety and replaced with this Emergency Order.

EFFECTIVE DATE OF ORDER

Accordingly, it is hereby ordered, that 14 **DE Admin. Code** 815 Health Examinations and Screening, is amended by adding Section 6.0 which requires certain facilities to require masks. The regulation is temporarily modified by making deletions as shown by strikethrough and insertions as shown by underline as follows:

4.0 Reserved.

5.0 Reserved.

6.0 COVID-19 Mitigation and Prevention

6.1 Schools

6.1.1 All schools that serve students kindergarten through twelfth grade shall require mask use by all students, faculty, staff, and visitors inside school buildings, regardless of vaccination status.

6.1.2 Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the school.

6.1.3 Masks are not required in school buildings:

6.1.3.1 When seated at a table to eat or drink.

6.1.3.2 When asleep.

6.1.3.3 When engaged in any activity that makes wearing a mask not feasible, such as swimming.

6.1.3.4 When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.

6.1.3.5 When outdoors.

6.1.3.6 When students are not in the building, except when students travel on school buses.

6.1.4 All schools that provide bus service to and from school shall require mask use by all students, faculty, staff, and visitors riding school buses, regardless of vaccination status.

6.2 Child Care Facilities

6.2.1 All persons or associations conducting child care as defined in 14 Del.C. §3002A(1) shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, staff, family members, and visitors inside the child care facility, regardless of vaccination status.

6.2.2 Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the child care facility.

6.2.3 Masks are not required in child care facilities:

6.2.3.1 When seated at a table to eat or drink.

6.2.3.2 When asleep.

6.2.3.3 When engaged in any activity that makes wearing a mask not feasible, such as swimming.

6.2.3.4 When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.

6.2.3.5 When outdoors.

6.2.3.6 When children are not in the building.

6.1.2.4 All child care facilities that provide bus service to and from the child care facility shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, faculty, staff, and visitors riding school buses, regardless of vaccination status.

This Emergency Order shall take effect on August 16, 2021 and shall remain in effect for 120 days. At the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 Del.C. §10119(3).

PETITION FOR RECOMMENDATIONS

In accordance with 29 Del. C. § 10119(4), the Department of Education will receive, consider, and respond to petitions by any interested persons for reconsideration or revision of the amendments to the Emergency Regulation by addressing the petitions to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us.

ORDER

It is hereby ordered, this 13th day of August, 2021, that the above referenced amendment to 14 DE Admin. C. § 815 Health Examinations and Screening, a copy of which is hereby attached, is adopted, pursuant to 14 Del.C. § 122(b)(2), 14 Del.C. § 3003A, and 29 Del.C. § 10119, as referenced above, and supported by the evidence contained herein.

IT IS SO ORDERED the 13th day of August, 2021.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

815 Health Examinations and Screening
(Break in Continuity of Sections)

4.0 Reserved.

5.0 Reserved.

6.0 COVID-19 Mitigation and Prevention

6.1 Schools

6.1.1 All schools that serve students kindergarten through twelfth grade shall require mask use by all students, faculty, staff, and visitors inside school buildings, regardless of vaccination status.

6.1.2 Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the school.

6.1.3 Masks are not required in school buildings:

6.1.3.1 When seated at a table to eat or drink.

6.1.3.2 When asleep.

6.1.3.3 When engaged in any activity that makes wearing a mask not feasible, such as swimming.

6.1.3.4 When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.

6.1.3.5 When outdoors.

6.1.3.6 When students are not in the building, except when students travel on school buses.

6.1.4 All schools that provide bus service to and from school shall require mask use by all students, faculty, staff, and visitors riding school buses, regardless of vaccination status.

6.2 Child Care Facilities

6.2.1 All persons or associations conducting child care as defined in 14 Del.C. §3002A(1) shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, staff, family members, and visitors inside the child care facility, regardless of vaccination status.

6.2.2 Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the child care facility.

6.2.3 Masks are not required in child care facilities:

6.2.3.1 When seated at a table to eat or drink.

6.2.3.2 When asleep.

6.2.3.3 When engaged in any activity that makes wearing a mask not feasible, such as swimming.

6.2.3.4 When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.

6.2.3.5 When outdoors.

6.2.3.6 When children are not in the building.

6.2.4 All child care facilities that provide bus service to and from the child care facility shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, faculty, staff, and visitors riding school buses, regardless of vaccination status.

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

815 Health Examinations and Screening

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 3003A and 29 Delaware Code, Section 10119
(14 **Del.C.** §3003A & 29 **Del.C.** §10119)
14 **DE Admin. Code** 933

EMERGENCY ORDER**933 DELACARE: Regulations for Early Care and Education and School-Age Centers****AUTHORITY**

Pursuant to 14 **Del. C.** § 3003A and 29 **Del. C.** § 10119, the Department of Education ("Department") is adopting emergency regulatory amendments to 14 **DE Admin C.** § 933 DELACARE: Regulations for Early Care and Education and School-Age Centers. Additionally, 29 **Del. C.** § 10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del. C.** § 10115. Also, 14 **Del. C.** § 3003A(c), authorizes the Department's Office of Child Care Licensing to prescribe, by regulation or otherwise, any reasonable standards for the conduct of child care as defined in 14 **Del. C.** § 3002A(1).

REASON FOR THE EMERGENCY ORDER

Evidence has shown that children do better when they are able to attend school full time, in person. While the youngest students in Delaware are unable to get vaccinated against COVID-19, the best way to mitigate the spread of the virus is through a tiered strategy that combines encouraging vaccination with additional steps including continued mask usage.

Delaware's tiered approach is a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Controls and Prevention. Effective implementation of multiple strategies is imperative to prevent or significantly decrease transmission of COVID-19 and other infections within schools and child care facilities. The Centers for Disease Control and Prevention have recently issued guidance for operating early care and education programs, or child care programs, which states in part masks should be worn indoors by all individuals (ages 2 and older) who are not fully vaccinated.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue, especially for those who are unable to be vaccinated. The addition of mask use and other steps, while continuing to work towards increasing the vaccinated population in Delaware is imperative to mitigate this public health risk.

EFFECTIVE DATE OF ORDER

Accordingly, it is hereby ordered, that 14 **DE Admin. C.** § 933 DELACARE: Regulations for Early Care and Education and School-Age Centers is amended by adding Section 5.3 which requires certain facilities to recommend or require masks. The regulation is temporarily modified by making deletions as shown by strike through and insertions as shown by underline as follows:

5.0 Authority to Inspect and COVID-19 Mitigation and Prevention

5.3 COVID-19 Mitigation and Prevention in Early Care and Education and School-Age Centers

5.3.1. All persons or associations conducting child care as defined in 14 **Del.C.** § 3002A(1). shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by

EMERGENCY REGULATIONS

children in kindergarten through twelfth grade, staff, family members, and visitors inside the child care facility, regardless of vaccination status.

5.3.2 Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the child care facility.

5.3.3 Masks are not required in child care facilities:

5.3.3.1 When seated at a table to eat or drink.

5.3.3.2 When asleep

5.3.3.3 When engaged in any activity that makes wearing a mask not feasible, such as swimming.

5.3.3.4 When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.

5.3.3.5 When outdoors.

5.3.3.6 When children are not in the building.

5.3.4. All child care facilities that provide bus service to and from the child care facility shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, faculty, staff, and visitors riding school buses, regardless of vaccination status.

5.3.5 In addition to mask requirements in subsection 5.3.1, all child care facilities shall follow CDC Guidelines for COVID-19 Prevention in early care and education programs or child care programs.

This Emergency Order shall take effect on August 15, 2021 and shall remain in effect for 120 days. At the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 **Del.C.** § 10119(3).

PETITION FOR RECOMMENDATIONS

In accordance with 29 **Del. C.** § 10119(4), the Department of Education will receive, consider, and respond to petitions by any interested persons for reconsideration or revision of the amendments to the Emergency Regulation by addressing the petitions to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us.

ORDER

It is hereby ordered, this 12th day of August, 2021, that the above referenced amendment to 14 **DE Admin C.** § 933 DELACARE: Regulations for Early Care and Education and School-Age Centers, a copy of which is hereby attached, is adopted, pursuant to 14 **Del.C.** § 3003A and 29 **Del.C.** § 10119, as referenced above, and supported by the evidence contained herein.

IT IS SO ORDERED the 12th day of August, 2021.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 3003A and 29 Delaware Code, Section 10119
(14 **Del.C.** §3003A & 29 **Del.C.** §10119)
14 **DE Admin. Code** 933

EMERGENCY ORDER**933 DELACARE: Regulations for Early Care and Education and School-Age Centers****AUTHORITY**

Pursuant to 14 **Del. C.** §3003A and 29 **Del. C.** §10119, the Department of Education ("Department") is adopting emergency regulatory amendments to 14 **DE Admin Code** 933 DELACARE: Regulations for Early Care and Education and School-Age Centers. Additionally, 29 **Del. C.** §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del. C.** § 10115. Also, 14 **Del. C.** §3003A(c), authorizes the Department's Office of Child Care Licensing to prescribe, by regulation or otherwise, any reasonable standards for the conduct of child care as defined in 14 **Del. C.** §3002A(1).

REASON FOR THE EMERGENCY ORDER

Evidence has shown that children do better when they are able to attend school full time, in person. While the youngest students in Delaware are unable to get vaccinated against COVID-19, the best way to mitigate the spread of the virus is through a tiered strategy that combines encouraging vaccination with additional steps including continued mask usage.

Delaware's tiered approach is a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Controls and Prevention. Effective implementation of multiple strategies is imperative to prevent or significantly decrease transmission of COVID-19 and other infections within schools and child care facilities. The Centers for Disease Control and Prevention have recently issued guidance for operating early care and education programs, or child care programs, which states in part masks should be worn indoors by all individuals (ages 2 and older) who are not fully vaccinated.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue, especially for those who are unable to be vaccinated. The addition of mask use and other steps, while continuing to work towards increasing the vaccinated population in Delaware is imperative to mitigate this public health risk.

The August 12, 2021 Emergency Order contained language that was inadvertently broad and resulted in requirements that were not intended. For that reason, the Emergency Order dated August 12, 2021 is hereby repealed in its entirety and replaced with this Emergency Order.

EFFECTIVE DATE OF ORDER

Accordingly, it is hereby ordered, that 14 **DE Admin. C.** 933 DELACARE: Regulations for Early Care and Education and School-Age Centers is amended by adding Section 5.3 which requires certain facilities to recommend or require masks. The regulation is temporarily modified by making deletions as shown by strike through and insertions as shown by underline as follows:

5.0 Authority to Inspect and COVID-19 Mitigation and Prevention

5.3 COVID-19 Mitigation and Prevention in Early Care and Education and School-Age Centers

5.3.1. All persons or associations conducting child care as defined in 14 Del.C. §3002A(1) shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, staff, family members, and visitors inside the child care facility, regardless of vaccination status.

5.3.2 Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the child care facility.

5.3.3 Masks are not required in child care facilities:

5.3.3.1 When seated at a table to eat or drink.

5.3.3.2 When asleep.

5.3.3.3 When engaged in any activity that makes wearing a mask not feasible, such as swimming.

5.3.3.4 When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.

5.3.3.5 When outdoors.

5.3.3.6 When children are not in the building.

5.3.4. All child care facilities that provide bus service to and from the child care facility shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, faculty, staff, and visitors riding school buses, regardless of vaccination status.

This Emergency Order shall take effect on August 16, 2021 and shall remain in effect for 120 days. At the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 Del.C. §10119(3).

PETITION FOR RECOMMENDATIONS

In accordance with 29 Del. C. § 10119(4), the Department of Education will receive, consider, and respond to petitions by any interested persons for reconsideration or revision of the amendments to the Emergency Regulation by addressing the petitions to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us.

ORDER

It is hereby ordered, this 13th day of August, 2021, that the above referenced amendment to 14 DE Admin C. 933 DELACARE: Regulations for Early Care and Education and School-Age Centers, a copy of which is hereby attached, is adopted, pursuant to 14 Del.C. § 3003A and 29 Del.C. § 10119, as referenced above, and supported by the evidence contained herein.

IT IS SO ORDERED the 13th day of August, 2021.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

933 DELACARE: Regulations for Early Care and Education and School-Age Centers

INTRODUCTION

(Break in Continuity of Sections)

5.0 Authority to Inspect and COVID-19 Mitigation and Prevention*(Break in Continuity Within Section)***5.3 COVID-19 Mitigation and Prevention in Early Care and Education and School-Age Centers**

- 5.3.1** All persons or associations conducting child care as defined in 14 Del.C. §3002A(1) shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, staff, family members, and visitors inside the child care facility, regardless of vaccination status.
- 5.3.2** Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the child care facility.
- 5.3.3** Masks are not required in child care facilities:
 - 5.3.3.1** When seated at a table to eat or drink.
 - 5.3.3.2** When asleep.
 - 5.3.3.3** When engaged in any activity that makes wearing a mask not feasible, such as swimming.
 - 5.3.3.4** When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.
 - 5.3.3.5** When outdoors.
 - 5.3.3.6** When children are not in the building.
- 5.3.4** All child care facilities that provide bus service to and from the child care facility shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, faculty, staff, and visitors riding school buses, regardless of vaccination status.

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

933 DELACARE: Regulations for Early Care and Education and School-Age Centers

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 3003A and 29 Delaware Code, Section 10119
(14 Del.C. §3003A & 29 Del.C. §10119)
14 DE Admin. Code 934

EMERGENCY ORDER

934 Regulations for Family and Large Family Child Care Homes

AUTHORITY

Pursuant to 14 Del. C. § 3003A and 29 Del. C. § 10119, the Department of Education ("Department") is adopting emergency regulatory amendments to 14 DE Admin C. § 934 DELACARE: Regulations for Family and Large Family Child Care Homes. Additionally, 29 Del. C. § 10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 Del. C. § 10115. Moreover, 14 Del. C. § 122(b)(2) authorizes the Department to prescribe rules and regulations governing the physical inspection of and the protection of the health and physical welfare of public school students in the State. Also, 14 Del. C. § 3003A(c), authorizes the Department's Office of Child Care Licensing to prescribe, by regulation or otherwise, any reasonable standards for the conduct of child care as defined in 14 Del. C. § 3002A(1).

REASON FOR THE EMERGENCY ORDER

Evidence has shown that children do better when they are able to attend school full time, in person. While the youngest students in Delaware are unable to get vaccinated against COVID-19, the best way to mitigate the spread of the virus is through a tiered strategy that combines encouraging vaccination with additional steps including continued mask usage.

Delaware's tiered approach is a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Controls and Prevention. Effective implementation of multiple strategies is imperative to prevent or significantly decrease transmission of COVID-19 and other infections within schools and child care facilities. The Centers for Disease Control and Prevention have recently issued guidance that mask usage should be universal in K-12 schools, for all students, staff, and visitors. The Centers for Disease Control and Prevention have recently issued guidance for operating early care and education programs, or child care programs, which states in part masks should be worn indoors by all individuals (ages 2 and older) who are not fully vaccinated.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue, especially for those who are unable to be vaccinated. The addition of mask use and other steps, while continuing to work towards increasing the vaccinated population in Delaware is imperative to mitigate this public health risk.

EFFECTIVE DATE OF ORDER

Accordingly, it is hereby ordered, that 14 **DE Admin C. § 934 DELACARE: Regulations for Family and Large Family Child Care Homes** amended by adding Section 5.3 which requires certain facilities to recommend or require masks. The regulation is temporarily modified by making deletions as shown by strike through and insertions as shown by underline as follows:

5.0 Authority to Inspect and COVID-19 Mitigation and Prevention

5.3 COVID-19 Mitigation and Prevention in Family and Large Family Child Care Homes**5.3.1 Family and Large Family Child Care Homes**

5.3.1.1. All persons or associations conducting child care as defined in 14 **Del.C. § 3002A(1)**. shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, staff, family members, and visitors inside the child care facility, regardless of vaccination status.

5.3.1.2 Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the child care facility.

5.3.1.3 Masks are not required in child care facilities:

5.3.1.3.1 When seated at a table to eat or drink.

5.3.1.3.2 When asleep

5.3.1.3.3 When engaged in any activity that makes wearing a mask not feasible, such as swimming.

5.3.1.3.4 When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.

5.3.1.3.5 When outdoors.

5.3.1.3.6 When children are not in the building.

5.3.1.4. All child care facilities that provide bus service to and from the child care facility shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, faculty, staff, and visitors riding school buses, regardless of vaccination status.

5.3.1.5 In addition to mask requirements in subsection 5.3.1, all child care facilities shall follow CDC Guidelines for COVID-19 Prevention in early care and education programs or child care programs.

This Emergency Order shall take effect on August 15, 2021 and shall remain in effect for 120 days. At the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 **Del.C.** § 10119(3).

PETITION FOR RECOMMENDATIONS

In accordance with 29 **Del. C.** § 10119(4), the Department of Education will receive, consider, and respond to petitions by any interested persons for reconsideration or revision of the amendments to the Emergency Regulation by addressing the petitions to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOERegulations.comment@doe.k12.de.us.

ORDER

It is hereby ordered, this 12th day of August, 2021, that the above referenced amendment to 14 **DE Admin C.** § 934 DELACARE: Regulations for Family and Large Family Child Care Homes, a copy of which is hereby attached, is adopted, pursuant to 14 **Del.C.** § 3003A, and 29 **Del.C.** § 10119, as referenced above, and supported by the evidence contained herein.

IT IS SO ORDERED the 12th day of August, 2021.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 3003A and 29 Delaware Code, Section 10119
(14 **Del.C.** §3003A & 29 **Del.C.** §10119)
14 **DE Admin. Code** 934

EMERGENCY ORDER

934 Regulations for Family and Large Family Child Care Homes

AUTHORITY

Pursuant to 14 **Del. C.** §3003A and 29 **Del. C.** §10119, the Department of Education ("Department") is adopting emergency regulatory amendments to 14 **DE Admin Code** 934 DELACARE: Regulations for Family and Large Family Child Care Homes. Additionally, 29 **Del. C.** §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del. C.** § 10115. Moreover, 14 **Del. C.** §122(b)(2) authorizes the Department to prescribe rules and regulations governing the physical inspection of and the protection of the health and physical welfare of public school students in the State. Also, 14 **Del. C.** §3003A(c), authorizes the Department's Office of Child Care Licensing to prescribe, by regulation or otherwise, any reasonable standards for the conduct of child care as defined in 14 **Del. C.** §3002A(1).

REASON FOR THE EMERGENCY ORDER

Evidence has shown that children do better when they are able to attend school full time, in person. While the youngest students in Delaware are unable to get vaccinated against COVID-19, the best way to mitigate the spread of the virus is through a tiered strategy that combines encouraging vaccination with additional steps including continued mask usage.

Delaware's tiered approach is a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Controls and Prevention. Effective implementation of multiple strategies is imperative to prevent or significantly decrease transmission of COVID-19 and other infections within schools and child care facilities. The Centers for Disease Control and Prevention have recently issued guidance that mask usage should be universal in K-12 schools, for all students, staff, and visitors. The Centers for Disease Control and Prevention have recently issued guidance for operating early care and education programs, or child care programs, which states in part masks should be worn indoors by all individuals (ages 2 and older) who are not fully vaccinated.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue, especially for those who are unable to be vaccinated. The addition of mask use and other steps, while continuing to work towards increasing the vaccinated population in Delaware is imperative to mitigate this public health risk.

The August 12, 2021 Emergency Order contained language that was inadvertently broad and resulted in requirements that were not intended. For that reason, the Emergency Order dated August 12, 2021 is hereby repealed in its entirety and replaced with this Emergency Order.

EFFECTIVE DATE OF ORDER

Accordingly, it is hereby ordered, that 14 **DE Admin Code** 934 DELACARE: Regulations for Family and Large Family Child Care Homes amended by adding Section 5.3 which requires certain facilities to recommend or require masks. The regulation is temporarily modified by making deletions as shown by strike through and insertions as shown by underline as follows:

5.0 Authority to Inspect and COVID-19 Mitigation and Prevention

5.3 COVID-19 Mitigation and Prevention in Family and Large Family Child Care Homes**5.3.1 Family and Large Family Child Care Homes**

5.3.1.1. All persons or associations conducting child care as defined in 14 **DeI.C.** §3002A(1) shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, staff, family members, and visitors inside the child care facility, regardless of vaccination status.

5.3.1.2 Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the child care facility.

5.3.1.3 Masks are not required in child care facilities:

5.3.1.3.1 When seated at a table to eat or drink.

5.3.1.3.2 When asleep.

5.3.1.3.3 When engaged in any activity that makes wearing a mask not feasible, such as swimming.

5.3.1.3.4 When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.

5.3.1.3.5 When outdoors.

5.3.1.3.6 When children are not in the building.

5.3.1.4. All child care facilities that provide bus service to and from the child care facility shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask

use by children in kindergarten through twelfth grade, faculty, staff, and visitors riding school buses, regardless of vaccination status.

This Emergency Order shall take effect on August 15, 2021 and shall remain in effect for 120 days. At the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 **Del.C.** § 10119(3).

PETITION FOR RECOMMENDATIONS

In accordance with 29 **Del. C.** §10119(4), the Department of Education will receive, consider, and respond to petitions by any interested persons for reconsideration or revision of the amendments to the Emergency Regulation by addressing the petitions to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us.

ORDER

It is hereby ordered, this 13th day of August, 2021, that the above referenced amendment to 14 **DE Admin Code** 934 DELACARE: Regulations for Family and Large Family Child Care Homes, a copy of which is hereby attached, is adopted, pursuant to 14 **Del.C.** §3003A, and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

IT IS SO ORDERED the 13th day of August, 2021.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

934 Regulations for Family and Large Family Child Care Homes (Break in Continuity of Sections)

5.0 Authority to Inspect and COVID-19 Mitigation and Prevention

(Break in Continuity Within Section)

5.3 COVID-19 Mitigation and Prevention in Family and Large Family Child Care Homes

5.3.1 Family and Large Family Child Care Homes

5.3.1.1 All persons or associations conducting child care as defined in 14 **Del.C.** §3002A(1) shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, staff, family members, and visitors inside the child care facility, regardless of vaccination status.

5.3.1.2 Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the child care facility.

5.3.1.3 Masks are not required in child care facilities:

5.3.1.3.1 When seated at a table to eat or drink.

5.3.1.3.2 When asleep.

5.3.1.3.3 When engaged in any activity that makes wearing a mask not feasible, such as swimming.

5.3.1.3.4 When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.

- 5.3.1.3.5 When outdoors.
- 5.3.1.3.6 When children are not in the building.
- 5.3.1.4 All child care facilities that provide bus service to and from the child care facility shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, faculty, staff, and visitors riding school buses, regardless of vaccination status.

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

934 Regulations for Family and Large Family Child Care Homes

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(2) and 3003(A); 29 Delaware Code, Section 10119; (14 **Del.C.** §§122(b)(2) and 3003(A) & 29 **Del.C.** §10119)
14 **DE Admin. Code** 938

EMERGENCY ORDER

938 Regulations for Youth Camps

Pursuant to 14 **Del. C.** §§ 3001A-3005A, and 29 **Del. C.** § 10119, the Department of Education ("Department") is adopting emergency regulatory amendments to 14 **DE Admin. C.** § 938 Regulations for Youth Camps. Additionally, 29 **Del. C.** § 10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del. C.** § 10115. Also, 14 **Del. C.** § 3003A(c), authorizes the Department's Office of Child Care Licensing to prescribe, by regulation or otherwise, any reasonable standards for the conduct of child care as defined in 14 **Del. C.** § 3002A(1).

REASON FOR THE EMERGENCY ORDER

While the youngest students in Delaware are unable to get vaccinated against COVID-19, the best way to mitigate the spread of the virus is through a tiered strategy that combines encouraging vaccination with additional steps including continued mask usage.

Delaware's tiered approach is a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Controls and Prevention. Effective implementation of multiple strategies is imperative to prevent or significantly decrease transmission of COVID-19 and other infections within schools and child care facilities. The Centers for Disease Control and Prevention have recently issued guidance that mask usage should be universal in K-12 schools, for all students, staff, and visitors. The Centers for Disease Control and Prevention have recently issued guidance for operating early care and education programs, or child care programs, which states in part masks should be worn indoors by all individuals (ages 2 and older) who are not fully vaccinated.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue, especially for those who are unable to be vaccinated. The addition of mask use and other steps, while continuing to work towards increasing the vaccinated population in Delaware is imperative to mitigate this public health risk.

EFFECTIVE DATE OF ORDER

Accordingly, it is hereby ordered, that 14 **DE Admin. C.** § 938 Regulations for Youth Camps is amended by adding Section 5.3 which requires certain facilities to recommend or require masks. The regulation is temporarily modified by making deletions as shown by strike through and insertions as shown by underline as follows:

5.0 Authority to Inspect and COVID-19 Mitigation and Prevention

5.3 COVID-19 Mitigation and Prevention in Youth Camps

5.3.1. All persons or associations conducting child care as defined in 14 **Del.C.** § 3002A(1). shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, staff, family members, and visitors inside the child care facility, regardless of vaccination status.

5.3.2 Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the child care facility.

5.3.3 Masks are not required in child care facilities:

5.3.3.1 When seated at a table to eat or drink.

5.3.3.2 When asleep

5.3.3.3 When engaged in any activity that makes wearing a mask not feasible, such as swimming.

5.3.3.4 When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.

5.3.3.5 When outdoors.

5.3.3.6 When children are not in the building.

5.3.4. All child care facilities that provide bus service to and from the child care facility shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, faculty, staff, and visitors riding school buses, regardless of vaccination status.

5.3.5 In addition to mask requirements in subsection 5.3.1, all child care facilities shall follow CDC Guidelines for COVID-19 Prevention in early care and education programs or child care programs.

This Emergency Order shall take effect on August 16, 2021 and shall remain in effect for 120 days. At the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 **Del.C.** § 10119(3).

PETITION FOR RECOMMENDATIONS

In accordance with 29 **Del. C.** § 10119(4), the Department of Education will receive, consider, and respond to petitions by any interested persons for reconsideration or revision of the amendments to the Emergency Regulation by addressing the petitions to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us.

ORDER

It is hereby ordered, this 12th day of August, 2021, that the above referenced amendment to 14 **DE Admin C.** § 938 Regulations for Youth Camps, a copy of which is hereby attached, is adopted, pursuant to 14 **Del.C.** § 3003A and 29 **Del.C.** § 10119, as referenced above, and supported by the evidence contained herein.

IT IS SO ORDERED the 12th day of August, 2021.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(2) and 3003(A); 29 Delaware Code, Section 10119; (14 **Del.C.** §§122(b)(2) and 3003(A) & 29 **Del.C.** §10119)
14 **DE Admin. Code** 938

EMERGENCY ORDER**938 Regulations for Youth Camps**

Pursuant to 14 **Del. C.** §§3001A-3005A, and 29 **Del. C.** §10119, the Department of Education ("Department") is adopting emergency regulatory amendments to 14 **DE Admin. Code** 938 Regulations for Youth Camps. Additionally, 29 **Del. C.** §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del. C.** §10115. Also, 14 **Del. C.** §3003A(c), authorizes the Department's Office of Child Care Licensing to prescribe, by regulation or otherwise, any reasonable standards for the conduct of child care as defined in 14 **Del. C.** §3002A(1).

REASON FOR THE EMERGENCY ORDER

While the youngest students in Delaware are unable to get vaccinated against COVID-19, the best way to mitigate the spread of the virus is through a tiered strategy that combines encouraging vaccination with additional steps including continued mask usage.

Delaware's tiered approach is a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Controls and Prevention. Effective implementation of multiple strategies is imperative to prevent or significantly decrease transmission of COVID-19 and other infections within schools and child care facilities. The Centers for Disease Control and Prevention have recently issued guidance that mask usage should be universal in K-12 schools, for all students, staff, and visitors. The Centers for Disease Control and Prevention have recently issued guidance for operating early care and education programs, or child care programs, which states in part masks should be worn indoors by all individuals (ages 2 and older) who are not fully vaccinated.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue, especially for those who are unable to be vaccinated. The addition of mask use and other steps, while continuing to work towards increasing the vaccinated population in Delaware is imperative to mitigate this public health risk.

The August 12, 2021 Emergency Order contained language that was inadvertently broad and resulted in requirements that were not intended. For that reason, the Emergency Order dated August 12, 2021 is hereby repealed in its entirety and replaced with this Emergency Order.

EFFECTIVE DATE OF ORDER

Accordingly, it is hereby ordered, that 14 **DE Admin. Code** 938 Regulations for Youth Camps is amended by adding Section 5.3 which requires certain facilities to recommend or require masks. The regulation is temporarily modified by making deletions as shown by strike through and insertions as shown by underline as follows:

5.0 Authority to Inspect and COVID-19 Mitigation and Prevention

5.3 COVID-19 Mitigation and Prevention in Youth Camps

5.3.1. All persons or associations conducting child care as defined in 14 Del.C. §3002A(1) shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, staff, family members, and visitors inside the child care facility, regardless of vaccination status.

5.3.2 Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the child care facility.

5.3.3 Masks are not required in child care facilities:

5.3.3.1When seated at a table to eat or drink.

5.3.3.2When asleep.

5.3.3.3When engaged in any activity that makes wearing a mask not feasible, such as swimming.

5.3.3.4When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.

5.3.3.5When outdoors.

5.3.3.6When children are not in the building.

5.3.4. All child care facilities that provide bus service to and from the child care facility shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, faculty, staff, and visitors riding school buses, regardless of vaccination status.

This Emergency Order shall take effect on August 16, 2021 and shall remain in effect for 120 days. At the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 Del.C. §10119(3).

PETITION FOR RECOMMENDATIONS

In accordance with 29 Del. C. §10119(4), the Department of Education will receive, consider, and respond to petitions by any interested persons for reconsideration or revision of the amendments to the Emergency Regulation by addressing the petitions to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to DOEregulations.comment@doe.k12.de.us.

ORDER

It is hereby ordered, this 13th day of August, 2021, that the above referenced amendment to 14 DE Admin Code 938 Regulations for Youth Camps, a copy of which is hereby attached, is adopted, pursuant to 14 Del.C. §3003A and 29 Del.C. §10119, as referenced above, and supported by the evidence contained herein.

IT IS SO ORDERED the 13th day of August, 2021.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

**938 Regulations for Youth Camps
(Break in Continuity of Sections)**

**5.0 Authority to Inspect and COVID-19 Mitigation and Prevention
(Break in Continuity Within Section)**

5.3 COVID-19 Mitigation and Prevention in Youth Camps

- 5.3.1** All persons or associations conducting child care as defined in 14 Del.C. §3002A(1) shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, staff, family members, and visitors inside the child care facility, regardless of vaccination status.
- 5.3.2** Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the child care facility.
- 5.3.3** Masks are not required in child care facilities:
- 5.3.3.1** When seated at a table to eat or drink.
- 5.3.3.2** When asleep.
- 5.3.3.3** When engaged in any activity that makes wearing a mask not feasible, such as swimming.
- 5.3.3.4** When a person is in a personal space (i.e., single office) and others outside of that person's household are not present.
- 5.3.3.5** When outdoors.
- 5.3.3.6** When children are not in the building.
- 5.3.4** All child care facilities that provide bus service to and from the child care facility shall recommend mask use by children ages 2 through pre-kindergarten and shall require mask use by children in kindergarten through twelfth grade, faculty, staff, and visitors riding school buses, regardless of vaccination status.

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

938 Regulations for Youth Camps

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code, Sections 122 and 128, and 29 Delaware Code, Section 10119 (16 Del.C. §§122 and 128 & 29 Del.C. §10119)
16 DE Admin. Code 4202

EMERGENCY SECRETARY'S ORDER

Pursuant to 16 Del. C. §§ 122 & 128 and 29 Del. C. § 10119

16 Del. Admin. C. §4202: *Control of Communicable and Other Disease Conditions*

4202 Control of Communicable and Other Disease Conditions

AUTHORITY

Pursuant to 16 Del.C. §§ 122(3)(a) & 128 and 29 Del.C. § 10119, the Department of Health and Social Services ("Department") is adopting emergency regulatory amendments to 16 Del. Admin. C. § 4202: *Control of*

Communicable and Other Disease Conditions. Additionally, 29 *Del.C.* § 10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 *Del.C.* § 10115. Moreover, 16 *Del.C.* § 122(3)(a) authorizes the Department to adopt, amend, repeal, or issue regulations to prevent and control the spread of all diseases that are dangerous to the public health. Further, 16 *Del.C.* § 128 authorizes the Department, as the advisor to authorities of the State in all matters pertaining to public hygiene, to make such regulations and may adopt such measures, including quarantine, vaccination, etc., as it deems most efficient to eradicate all infectious diseases.

REASON FOR THE EMERGENCY ORDER

Evidence has shown that children do better when they are able to attend school full time, in person. While the youngest students in Delaware are unable to get vaccinated against COVID-19, the best way to mitigate the spread of the virus is through a tiered strategy that combines encouraging vaccination with additional steps including continued mask usage.

Delaware's tiered approach is a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Controls and Prevention. Effective implementation of multiple strategies is imperative to prevent or significantly decrease transmission of COVID-19 and other infections within schools. The Centers for Disease Control and Prevention have recently issued guidance that mask usage should be universal in K-12 schools, for all students, staff, and visitors.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue, especially for those who are unable to be vaccinated. The addition of mask use and other steps, while continuing to work towards increasing the vaccinated population in Delaware is imperative to mitigate this public health risk.

EFFECTIVE DATE OF ORDER

Accordingly, it is hereby ordered, that 16 *Del. Admin. C.* § 4202: *Control of Communicable and Other Disease Conditions*, specifically, Section 7.7 which requires certain facilities to require masks, and Section 12 which adds a severability clause, are temporarily modified by making deletions as shown by strike through and insertions as shown by underline as follows:

7.7 COVID-19 Mitigation and Prevention

7.7.1 Schools

7.7.1.1 All schools that serve students kindergarten through twelfth grade shall require mask use by all students, faculty, staff, and visitors inside school buildings, regardless of vaccination status.

7.7.1.2 Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the school.

7.7.1.3 Masks are not required in school buildings:

7.7.1.3.1 When seated at a table to eat or drink;

7.7.1.3.2 When engaged in any activity that makes wearing a mask not feasible, such as swimming;

7.7.1.3.3 When a person is in a personal space (i.e. single office) and others outside of that person's household are not present;

7.7.1.3.4 When outdoors; or

7.7.1.3.5 When students are not in the building.

7.7.1.4 For schools with student housing, masks are not required inside an individual student's residence hall room.

7.7.1.5 In addition to mask requirements in 7.7.1 all schools shall follow CDC Guidelines for COVID-19 Prevention in K-12 Schools.

7.7.2 Other Authorities of the State and Public Institutions

7.7.2.1 Authorities of the State shall require masks in congregate settings.

12.0 Severability

In the event any particular clause or section of these Regulations should be declared invalid or unconstitutional by any court of competent jurisdiction, the remaining portions shall remain in full force and effect.

This Emergency Order shall take effect on August 16, 2021 and shall remain in effect for 120 days. At the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 *Del.C.* § 10119(3).

PETITION FOR RECOMMENDATIONS

The Department will receive, consider, and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Division of Public Health, 417 Federal St., Dover, DE 19901 or by email to Alanna.Mozeik@Delaware.gov.

ORDER

It is hereby ordered, this 12th day of August, 2021, that the above referenced amendment to 16 *Del. Admin. C.* § 4202: *Control of Communicable and Other Disease Conditions*, a copy of which is hereby attached, is adopted, pursuant to 16 *Del.C.* § §122(3) & 128, and 29 *Del.C.* § 10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Secretary

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Sections 122 and 128, and 29 Delaware Code, Section 10119 (16 **Del.C.** §§122 and 128 & 29 **Del.C.** §10119)
16 **DE Admin. Code** 4202

EMERGENCY SECRETARY'S ORDER

Pursuant to 16 *Del. C.* §§ 122 & 128 and 29 *Del. C.* § 10119

16 *Del. Admin. C.* §4202: *Control of Communicable and Other Disease Conditions*

4202 Control of Communicable and Other Disease Conditions

AUTHORITY

Pursuant to 16 *Del.C.* §§ 122(3)(a) & 128 and 29 *Del.C.* § 10119, the Department of Health and Social Services ("Department") is adopting emergency regulatory amendments to 16 *Del. Admin. C.* § 4202: *Control of Communicable and Other Disease Conditions*. Additionally, 29 *Del.C.* § 10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 *Del.C.* § 10115. Moreover, 16 *Del.C.* § 122(3)(a) authorizes the Department to adopt, amend, repeal, or issue regulations to prevent and control the spread of all diseases that are dangerous to the public health. Further, 16 *Del.C.* § 128 authorizes the

Department, as the advisor to authorities of the State in all matters pertaining to public hygiene, to make such regulations and may adopt such measures, including quarantine, vaccination, etc., as it deems most efficient to eradicate all infectious diseases.

REASON FOR THE EMERGENCY ORDER

Evidence has shown that children do better when they are able to attend school full time, in person. While the youngest students in Delaware are unable to get vaccinated against COVID-19, the best way to mitigate the spread of the virus is through a tiered strategy that combines encouraging vaccination with additional steps including continued mask usage.

Delaware's tiered approach is a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention. Effective implementation of multiple strategies is imperative to prevent or significantly decrease transmission of COVID-19 and other infections within schools. The Centers for Disease Control and Prevention have recently issued guidance that mask usage should be universal in K-12 schools, for all students, staff, and visitors.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue, especially for those who are unable to be vaccinated. The addition of mask use and other steps, while continuing to work towards increasing the vaccinated population in Delaware is imperative to mitigate this public health risk.

The August 12, 2021 Emergency Secretary's Order contained language that was inadvertently broad and resulted in requirements that were not intended. For that reason, the Emergency Secretary's Order dated August 12, 2021 is hereby repealed in its entirety and replaced with this Emergency Order.

EFFECTIVE DATE OF ORDER

Accordingly, it is hereby ordered, that 16 *Del. Admin. C. § 4202: Control of Communicable and Other Disease Conditions*, specifically, Section 7.7 which requires certain facilities to require masks, and Section 12 which adds a severability clause, are temporarily modified by making deletions as shown by strike through and insertions as shown by underline as follows:

7.7 COVID-19 Mitigation and Prevention

7.7.1 Schools

7.7.1.1. All schools that serve students kindergarten through twelfth grade shall require mask use by all students, faculty, staff, and visitors inside school buildings, regardless of vaccination status.

7.7.1.2 Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the school.

7.7.1.3 Masks are not required in school buildings:

7.7.1.3.1 When seated at a table to eat or drink;

7.7.1.3.2 When engaged in any activity that makes wearing a mask not feasible, such as swimming;

7.7.1.3.3 When a person is in a personal space (i.e., single office) and others outside of that person's household are not present;

7.7.1.3.4 When outdoors; or

7.7.1.3.5 When students are not in the building.

7.7.1.4 For schools with student housing, masks are not required inside an individual student's residence hall room.

7.7.2 Other Authorities of the State and Public Institutions

7.7.2.1 Authorities of the State shall require masks in congregate settings.

12.0 Severability

In the event any particular clause or section of these regulations should be declared invalid or unconstitutional by any court of competent jurisdiction, the remaining portions shall remain in full force and effect.

This Emergency Order shall take effect on August 16, 2021 and shall remain in effect for 120 days. At the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 *Del.C.* § 10119(3).

PETITION FOR RECOMMENDATIONS

The Department will receive, consider, and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Division of Public Health, 417 Federal St., Dover, DE 19901 or by email to Alanna.Mozeik@Delaware.gov.

ORDER

It is hereby ordered, this 13th day of August, 2021, that the above referenced amendment to 16 *Del. Admin. C.* § 4202: *Control of Communicable and Other Disease Conditions*, a copy of which is hereby attached, is adopted, pursuant to 16 *Del.C.* §§122(3) & 128, and 29 *Del.C.* § 10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Secretary

**4202 Control of Communicable and Other Disease Conditions
(Break in Continuity of Sections)****7.0 Control of Specific Contagious Diseases
(Break in Continuity Within Section)****7.7 COVID-19 Mitigation and Prevention****7.7.1 Schools**

7.7.1.1 All schools that serve students kindergarten through twelfth grade shall require mask use by all students, faculty, staff, and visitors inside school buildings, regardless of vaccination status.

7.7.1.2 Persons who have a medical condition or disability that prevents that person from wearing a mask can request a reasonable accommodation from the school.

7.7.1.3 Masks are not required in school buildings:

7.7.1.3.1 When seated at a table to eat or drink;

7.7.1.3.2 When engaged in any activity that makes wearing a mask not feasible, such as swimming;

7.7.1.3.3 When a person is in a personal space (i.e., single office) and others outside of that person's household are not present;

7.7.1.3.4 When outdoors; or

7.7.1.3.5 When students are not in the building.

7.7.1.4 For schools with student housing, masks are not required inside an individual student's residence hall room.

7.7.2 Other Authorities of the State and Public Institutions

7.7.2.1 Authorities of the State shall require masks in congregate settings.

(Break in Continuity of Sections)

12.0 Severability

In the event any particular clause or section of these regulations should be declared invalid or unconstitutional by any court of competent jurisdiction, the remaining portions shall remain in full force and effect.

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

4202 Control of Communicable and Other Disease Conditions

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 HEALTH INFORMATION NETWORK

Statutory Authority: 16 Delaware Code, Section 10306 (16 **Del.C.** §10306)
1 **DE Admin. Code** 101

PUBLIC NOTICE**101 Delaware Health Information Network Regulations**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 103, Section 10306 and Senate Bill No. 88 of the 151st General Assembly (2021), the Delaware Health Information Network (DHIN) is proposing an amendment to its existing regulations governing participation in and use of clinical data held by DHIN.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same to, the Scott Perkins, General Counsel, Delaware Health Information Network, 107 Wolf Creek Blvd., Suite 2, Dover, Delaware 19901 or by email to Scott.Perkins@dhin.org by 4:30 p.m. on October 29, 2021. Please identify in the subject line: DHIN Regulations on Participation and Use of Data.

The action concerning the determination of whether to adopt the proposed regulations will be based upon the results of DHIN and DHIN 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 DHIN is proposing amendments to its regulations governing the participation in and use of clinical data held by DHIN.

Statutory Authority

16 **Del.C.** § 10306 and Section 1 of Senate Bill 88 of the 151st General Assembly (2021).

Background

DHIN was formerly governed by regulations promulgated by the Delaware Health Care Commission. DHIN is amending its regulations to align with current and best practices, and to clarify the permissible uses of clinical data held by DHIN both by DHIN and by DHIN Participants.

Summary of Proposal

Summary of Proposed Changes

DHIN plans to publish the proposed amendments to the regulations governing participation in and use of clinical data held by DHIN and to hold them out for public comment per Delaware law. The amendments update the regulatory language to clearly define the permissible access and use of data by DHIN and its Participants, and to align DHIN participation requirements with current and best practices.

Public Notice

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, DHIN gives public notice and provides an open comment period for more than thirty (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 29, 2021.

Fiscal Impact

Not applicable

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

<http://regulations.delaware.gov/register/september2021/proposed/25 DE Reg 252RFA 09-01-21.pdf>

101 Delaware Health Information Network Regulations on Participation and Use of Data

4.0 ~~Board of Governance and Administration~~

~~4.1 Appointment; Terms of Office~~

~~4.1.1 Individuals appointed to the Board of the Delaware Health Information Network (hereafter "Board") shall be appointed in writing by the entity holding the power of appointment pursuant to 16 Del.C. §9921. The appointing entity may remove any of its appointees by appointing another with at least thirty days notice to the Chairperson of the Board.~~

~~4.1.2 Individuals shall be appointed to the Board for a term of three years, except as provided herein. The term for each Board position shall be staggered by thirds, more or less, so that the first term for a Board position may be one, two or three years and shall be determined by lot. The Secretary shall maintain a record of the terms for each Board position. Terms shall commence on January 1 and expire on December 31 of the appropriate year and upon appointment of their successors.~~

~~4.1.3 A member of the Board may be removed for cause by the majority of the members appointed to the Board and confirmed by the Delaware Health Care Commission.~~

~~4.2 Officers of the Board; Duties~~

~~4.2.1 One member of the Board shall be elected to serve as Chairperson by a majority of the members appointed to the Board. The Chairperson shall:~~

~~4.2.1.1 preside over meetings of the Board;~~

~~4.2.1.2 maintain good order;~~

~~4.2.1.3 determine the agenda for meetings~~

~~4.2.1.4 appoint the membership of committees and work groups, except the Executive Committee;~~

~~4.2.1.5 execute documents in the name of the Board; and~~

~~4.2.1.6 perform such other matters as determined by the Board.~~

PROPOSED REGULATIONS

- 1.2.2 ~~One member of the Board shall be elected to serve as Vice Chairperson by a majority of the members appointed to the Board. The Vice Chairperson shall perform the duties of the Chairman when he or she is not able to do so.~~
- 1.2.3 ~~One member of the Board shall be elected to serve as Secretary by a majority of the members appointed to the Board. The Secretary shall maintain the records of the Board and its members, and attest to the official matters of the Board. Additionally, the Secretary shall perform the duties of the Chairman when the Chairperson and Vice Chairperson are not able to do so.~~
- 1.3 ~~Committees, Work Groups~~
- 1.3.1 ~~The Board shall have an Executive Committee and such other committees or work groups as may be desirable from time to time. A member of the Board shall serve as the Chairperson of such committees. The Executive Committee shall be comprised of 7 members, to include the Chairperson, who shall preside, the Vice Chairperson, the Secretary and 4 other members elected by a majority of the Board. The Executive Committee is authorized to act on behalf of the full Board where the full Board can not be reasonably convened to act in a timely manner on a matter, as assigned by the Board.~~
- 1.3.2 ~~No Committee, except the Executive Committee, or work group needs a quorum to conduct business. Nevertheless, such meetings shall be conducted publicly, unless the meeting is determined to be closed to the public.~~
- 1.3.3 ~~Meetings and activities of committees and work groups shall be determined by the committee and group leadership, and in accordance with the direction of the Board.~~
- 1.4 ~~Board Meetings; Notice~~
- 1.4.1 ~~The Chairperson, with the advice of the Board, shall determine the frequency and schedule of Board meetings and with the assistance of the staff provide the required notices pursuant to 29 Del.C., Ch. 100.~~
- 1.4.2 ~~A majority of the members of the Board shall constitute a quorum and shall be sufficient for any action by the Board provided, however, that if the number afterwards should be reduced below a quorum, business is not interrupted unless a member calls attention to the fact.~~
- 1.4.3 ~~The Board may convene special meetings or reschedule meetings as provided by law.~~
- 1.4.4 ~~All meetings of the Board shall be conducted in public unless it is closed to the public in accordance with law.~~
- 1.5 ~~Public Access to Records~~
- 1.5.1 ~~The Board shall permit access to its public records in accordance with the law and as that term is defined in 29 Del.C., Ch. 100. A Delaware citizen that wishes to inspect the Board's public records shall call or write to staff to determine a convenient time and place. The Board may impose a reasonable charge for requested copying of any public records. The Chairperson may request legal advice from the Attorney General and authorize access to public records.~~
- 1.5.2 ~~No access shall be provided to the health information network or data without an order of the Health Care Commission or otherwise in accordance with these rules.~~
- 1.6 ~~Conflict of Interest; Recusal~~
- 1.6.1 ~~The members shall conduct themselves in accordance with the Delaware Code of Ethics, 29 Del.C., Ch. 58.~~
- 1.6.2 ~~If any member has a conflict of interest as defined in the Code of Ethics, they shall recuse themselves from voting in the matter. The conflicted members may participate in discussions on the conflicted matter as long as they have disclosed the nature of the conflict to the other members. If they choose not to disclose the nature of the conflict to the other members, such conflicted members must publicly state at the Board meeting or in writing to the Chairperson they will not be participating in the conflicted matter. The Secretary shall maintain a record of such recusals.~~
- 1.6.3 ~~Members may seek legal advice on purported conflicts from the Attorney General or a determination from Ethics Counsel.~~
- 1.7 ~~Statutory Authority~~

~~1.7.1 The Delaware Health Care Commission is authorized pursuant to 16 Del.C. §9925(a) to promulgate these rules in accordance with 29 Del.C., Ch. 101.~~

1.0 Purpose and Authority

- 1.1 The Delaware Health Information Network ("DHIN") is the sole sanctioned provider of health information exchange services in the State of Delaware. In carrying out this role, among other things authorized by its enabling legislation and Board of Directors, DHIN serves as a primary mechanism for delivering laboratory results and medical information to providers and other authorized entities and individuals throughout the State. DHIN makes clinical information available to patients, their providers, and others permitted by relevant state and federal law - such as health insurance companies and, where appropriate, the Delaware Division of Public Health - in order to improve the quality and lower the cost of health care. DHIN's general operations and use of clinical data for analytics are governed by 1 DE Admin. Code 101 and 102. In addition, since 2018, DHIN has served as the operator of the State of Delaware's Health Care Claims Database, a multi-payer claims database serving to promote the "Triple Aim Plus One" of health care service and delivery in the State of Delaware. Submission of data to and access to data from the Health Care Claims Database are governed by 1 DE Admin. Code 103 and 104. DHIN is a not-for-profit public instrumentality of the State of Delaware.
- 1.2 DHIN has been authorized by statute, 16 Del.C. §10306, to promulgate rules and regulations to carry out its statutory mandate.

2.0 Definitions

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

"Act" means DHIN's enabling legislation, 16 Del.C. Chapter 103.

"Board" means DHIN's Board of Directors, as established by the Act.

"Bylaws" means the Bylaws as approved by the Board.

"Data" means medical or other health care information of or about an individual which is transmitted or available from Data Sending Organizations for transmission to DHIN and included in DHIN's clinical data repositories. The term includes PHI.

"Data Sending Organization" means an organization that contracts with DHIN to provide Data to DHIN for use in its clinical data repositories for purposes consistent with the Act, these regulations, and the contract between DHIN and Data Sending Organization. The term does not include organizations that solely provide claims data to the Health Care Claims Database pursuant to 1 DE Admin. Code 104, or organizations that solely contract with DHIN to receive analytic services or clinical data for approved analytic use cases pursuant to 1 DE Admin. Code 102.

"Data Receiving Organization" means an organization that contracts with DHIN to receive clinical Data for use cases laid out in the Act, these regulations, and the contract between DHIN and Data Receiving Organization. The term does not include organizations that solely contract with DHIN to receive claims data or analytic services from DHIN and the Health Care Claims Database pursuant to 1 DE Admin. Code 104, or organizations that solely contract with DHIN to receive analytic services or clinical data for approved analytic use cases pursuant to 1 DE Admin. Code 102.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996 as amended and associated regulations, including the Privacy Rule (45 CFR Part 160 and Subparts A and E of Part 164) and Security Rule (45 CFR Part 160 and Subparts A and C of Part 164).

"Participant" means an organization contracted to participate in DHIN's health information exchange services, either as a Data Sending Organization, a Data Receiving Organization, or both.

"Protected health information" or "PHI" means individually identifiable health information, as that term is defined in HIPAA.

"User" means an individual approved user of DHIN's clinical data. Each User is an employee or other agent of a Data Receiving Organization.

3.0 Data Submission Requirements

- 3.1 Data Sending Organizations shall comply with such data submission standards as may be required by DHIN. DHIN may adopt minimum requirements for connectivity and shall make such requirements public on its website. To the extent feasible, such standards shall conform to or incorporate national standards generally accepted in the Health IT industry. Data subject to legal disclosure restrictions beyond those identified in HIPAA should not be sent to DHIN prior to the time at which the Data Sending Organization enters into an agreement or agreements with DHIN that legally permit the disclosure of Data to DHIN and adequately identify the Data in question so as to permit any necessary sequestration or restrictions on re-disclosure.
- 3.2 In the course of fulfilling its statutory mandate to improve the interoperability of health care information and provide more streamlined transmission of data to appropriate individuals, DHIN has connected to a national health information exchange network. As the prompt and accurate flow of healthcare information has become more critical to providing quality care to patients, national organizations and federal regulatory agencies have implemented national standards and rules designed to facilitate the sharing of information and prohibit entities from engaging in information blocking activities that are likely to impede the fair flow of such information. In order to maintain its compliance with these legal obligations and industry standards, DHIN requires Data Sending Organizations to, at a minimum, permit DHIN to make the following uses with respect to Data sent to DHIN:
- 3.2.1 Treatment, payment, health care operations, and authorization-based disclosures as all of those terms are defined by HIPAA;
- 3.2.2 Public health activities and reporting as permitted by HIPAA and relevant Delaware law;
- 3.2.3 Providing individuals with access to their own information and the ability to direct that their own information be provided to third parties under such terms and conditions as may be established by DHIN;
- 3.2.4 Research or analytic purposes, in accordance with 1 DE Admin. Code 102 and the Act;
- 3.2.5 Fulfilling DHIN's legal requirements; and
- 3.2.6 Such other uses as are required by law.
- 3.3 DHIN may, if permitted by the Board and its agreements with relevant Data Sending Organizations, make additional uses of Data sent to DHIN if such uses are permitted by the Act and relevant law.

4.0 Restrictions on Use of Data by Data Receiving Organizations and Users

- 4.1 Data Receiving Organizations will use Data received from DHIN and will require that their Users use Data received from DHIN, consistent with the DHIN End User Data Use Agreement.
- 4.2 The DHIN End User Data Use Agreement shall permit the following use cases:
- 4.2.1 Treatment, payment, health care operations, and authorization-based disclosures as all of those terms are defined by HIPAA;
- 4.2.2 Public health activities and reporting as permitted by HIPAA and relevant Delaware law; and
- 4.2.3 To permit Data Receiving Organizations and their Users to fulfill their respective legal requirements.
- 4.3 DHIN may, in its sole discretion and subject to the approval of the Board, enter into contracts with Data Receiving Organizations to permit such additional use cases as are permitted by the Act, HIPAA, other relevant law and DHIN's strategic priorities.

5.0 Patient Access to Information

- 5.1 DHIN may provide individuals with information about them that is held by DHIN in a manner and under terms and conditions that DHIN establishes.
- 5.2 DHIN may, upon receipt of an appropriate authorization (as that term is defined in HIPAA) and subject to such other terms and conditions as may be established by DHIN, provide an individual's health information to such third parties as may be directed by that individual.

5.3 Individuals shall be informed of and may choose to preclude a search of their information in DHIN's clinical data repositories in accordance with any terms or conditions set forth by DHIN (to "opt out"). DHIN shall also provide a means for patients who have previously requested to opt out to re-establish the ability of Users to find their Data through search functionality. DHIN shall publish information regarding the process patients need to undertake in order to opt out and a description of what health information exchange services will be affected by the opt out on its website.

6.0 Dispute Resolution

- 6.1 Unless otherwise provided by the Act, any dispute that involves DHIN or its services shall be subject to dispute resolution under this section. Such disputes may involve Participants, DHIN or members of the public where there is a claim that this or other regulations or statutes were violated by any of the foregoing. A dispute may also be the result of an inquiry or request for information that is not responded to in a reasonable manner.
- 6.2 The Chair of the Board may appoint a number of individuals subject to approval by the Committee to serve on a Dispute Resolution Committee ("DRC"). The DRC shall be comprised of panels of no less than three or more than five members. No member may serve on a case before the DRC where that member has a conflict of interest as set forth in 29 Del.C. Chapter 58. The presiding member of the panel must be a member of the Board. The Board may promulgate rules for procedures for matters to be determined by the DRC. The DRC and the Board are authorized to grant relief to include financial penalties, suspension and termination of an entity or individual's Participation in or use of DHIN and its services.
- 6.3 Any party aggrieved by the decision of the DRC may seek review by filing written exceptions to the Panel's decision within ten days of the decision as would be computed in the Delaware Superior Court. The review shall be presented to the Board who may overturn the Panel's decision by a majority vote of a quorum of the Board.
- 6.4 An aggrieved party may seek legal review on the record only in accordance with 29 Del.C. Ch. 101, Subchapter V, and only to the extent that such legal review is not precluded by the Act or other relevant law.

DELAWARE HEALTH INFORMATION NETWORK

Statutory Authority: 16 Delaware Code, Section 10306 (16 Del.C. § 10306)
1 DE Admin. Code 102

PUBLIC NOTICE

102 Delaware Health Information Network Regulations on Participation

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 103, Section 10306 and Senate Bill No. 88 of the 151st General Assembly (2021), the Delaware Health Information Network (DHIN) is proposing an amendment to its regulations governing access and use of clinical data for approved analytic purposes.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same to, the Scott Perkins, General Counsel, Delaware Health Information Network, 107 Wolf Creek Blvd., Suite 2, Dover, Delaware 19901 or by email to Scott.Perkins@dhin.org by 4:30 p.m. on October 29, 2021. Please identify in the subject line: DHIN Regulations on Use of Clinical Data for Approved Analytic Purposes.

The action concerning the determination of whether to adopt the proposed regulations will be based upon the results of DHIN and DHIN 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 DHIN is proposing amendments to its regulations governing the participation in and use of clinical data held by DHIN.

Statutory Authority

16 Del.C. §10306 and Section 1 of Senate Bill 88 of the 151st General Assembly (2021).

Background

Senate Bill 88 of the 151st General Assembly was passed by the General Assembly and is awaiting action by the Governor. The Senate Bill provides a framework through which approved researchers, health care organizations, and other third parties can access clinical data held by DHIN for approved analytic purposes. The regulations set up the regulatory framework through which applications for data will be processed, reviewed, and acted upon. It also contains protections for members of the public to ensure that patient identifiable data is not used without the explicit permission of the patient. DHIN is amending its regulations to implement the requirements of Senate Bill 88.

Summary of Proposal*Summary of Proposed Changes*

DHIN plans to publish the proposed amendments to the regulations governing the use of clinical data for approved analytic purposes and to hold them out for public comment per Delaware law. The amendments update the regulatory language to clearly define the respective roles and responsibilities of DHIN and data applicants, and to ensure that patient identifiable information remains protected from inappropriate disclosure.

Public Notice

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, DHIN gives public notice and provides an open comment period for more than thirty (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 29, 2021.

Fiscal Impact

Not applicable

***Please Note:**

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

<http://regulations.delaware.gov/register/september2021/proposed/25 DE Reg 257RFA 09-01-21.pdf>

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

[102 Delaware Health Information Network Regulations on Participation](#)

DELAWARE HEALTH INFORMATION NETWORK

Statutory Authority: 16 Delaware Code, Sections 10306 and 10314(d)(16 Del.C. §§10306 & 10314(d))
1 DE Admin. Code 104

PUBLIC NOTICE

104 Delaware Health Care Claims Database Data Access Regulation

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 103, Sections 10306 and 10314(d), the Delaware Health Information Network (DHIN) is proposing an amendment to its regulations governing access and use of clinical data held in the Delaware Health Care Claims Database.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same to, the Scott Perkins, General Counsel, Delaware Health Information Network, 107 Wolf Creek Blvd., Suite 2, Dover, Delaware 19901 or by email to Scott.Perkins@dhin.org by 4:30 p.m. on October 29, 2021. Please identify in the subject line: DHIN Delaware Healthcare Claims Database Data Access Regulation.

The action concerning the determination of whether to adopt the proposed regulations will be based upon the results of DHIN and DHIN 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 DHIN is proposing amendments to its regulations governing the access to claims data contained in the Delaware Healthcare Claims Database.

Statutory Authority

16 Del.C. §§ 10306 and 10314(d).

Background

The Delaware Healthcare Claims Database (HCCD) was established within DHIN in 2016. The HCCD was intended to support the State's ongoing healthcare innovation efforts by supporting researchers, healthcare organizations, and other third parties engaged in activities designed to improve health, health care quality and experience, and affordability for all Delawareans. DHIN promulgated regulations to support these goals and to set up the regulatory framework through which reporting entities would provide data to DHIN and DHIN would review and act upon applications to receive data. The amendments to the regulations are intended to codify certain best practices identified during the first few years of HCCD operations, to reflect changes to the HCCD enabling legislation that have occurred since the regulations were first issued, and to provide additional clarity and confirmation regarding DHIN's treatment and handling of applications that, by statute, do not require review by DHIN's HCCD Access Committee.

Summary of Proposal

Summary of Proposed Changes

DHIN plans to publish the proposed amendments to the regulations governing the access to data contained in the HCCD and to hold them out for public comment per Delaware law. The amendments update the regulatory language to more clearly define the respective roles and responsibilities of DHIN and data applicants, to make technical changes, and to update the regulations to take into account changes to the HCCD statute concerning state agencies that receive access at no charge to data reported by DHIN.

Public Notice

In accordance with the state public notice requirements of Title 29, Chapter 101 of the Delaware Code, DHIN

PROPOSED REGULATIONS

gives public notice and provides an open comment period for more than thirty (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 29, 2021.

Fiscal Impact

Not applicable

*Please Note:

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

[http://regulations.delaware.gov/register/september2021/proposed/25 DE Reg 259RFA 09-01-21.pdf](http://regulations.delaware.gov/register/september2021/proposed/25%20DE%20Reg%20259RFA%2009-01-21.pdf)

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

[104 Delaware Health Care Claims Database Data Access Regulation](#)

DEPARTMENT OF AGRICULTURE THOROUGHBRED RACING COMMISSION

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

PUBLIC NOTICE

1001 Thoroughbred Racing Rules and Regulations

Summary

The Thoroughbred Racing Commission proposes to amend its Regulations adopted in accordance with 3 Del. C. §10103(c). The purpose of the proposed regulations is to amend Rule 13.12.3 to provide that a claim may be voided if a horse is vanned off the racetrack at the direction of the commission veterinarian; or is observed by the Commission Veterinarian to be lame or unsound while still on the racetrack and as such the Commission Veterinarian places that horse on the Vets list. Rule 15.14.4 is also being added to address consequences for a horse leaving the racetrack after entry but before racing. Other regulations issued by the Thoroughbred Racing Commission are not affected by this proposal. The Thoroughbred Racing Commission 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.

Comments

A copy of the proposed regulations is being published in the September 1, 2021 edition of the *Delaware Register of Regulations*. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Thoroughbred Racing Commission at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 Del.C. § 10118(a), public comments must be received on or before October 1, 2021. Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Regulation

On or after October 1, 2021, following review of the public comment, the Thoroughbred Racing Commission will

determine whether to amend its regulations by adopting the proposed rules or make additional changes because of the public comments received.

Effective Date of Amendments to Regulations

If adopted by the Thoroughbred Racing Commission, the amendments shall take effect ten days after being published as final in the *Delaware Register of Regulations*.

Delaware Thoroughbred Racing Commission
Sarah A. Crane, Executive Director

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

<http://regulations.delaware.gov/register/september2021/proposed/25 DE Reg 260RFA 09-01-21.pdf>

1001 Thoroughbred Racing Rules and Regulations (Break in Continuity of Sections)

13.0 Claiming Races

(Break in Continuity Within Section)

13.12 Nature and Effect of a Claim:

(Break in Continuity Within Section)

13.12.3 ~~In the event a horse dies during a claiming race or is euthanized on the racetrack during a claiming race, any claim on that horse will be declared void. A claim shall be voided if a horse is a starter as determined by the Commission, and the horse:~~

13.12.3.1 Dies on the racetrack;

13.12.3.2 Suffers an injury which requires euthanasia of the horse as determined by the Commission Veterinarian while the horse is still on the racetrack;

13.12.3.3 Is vanned off the racetrack at the direction of the Commission Veterinarian; or

13.12.3.4 Is observed by the Commission Veterinarian to be lame or unsound while still on the racetrack and as such the Commission Veterinarian places that horse on the Vets List.

(Break in Continuity of Sections)

15.0 Medication; Testing Procedures

(Break in Continuity Within Section)

15.14 Shock Wave Therapy/Instruments

(Break in Continuity Within Section)

15.14.4 Once a horse is entered to race, no horse shall be permitted to leave the racetrack prior to racing. Any horse that leaves the racetrack after the time of entry shall be scratched by the Stewards.

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

1001 Thoroughbred Racing Rules and Regulations

PROPOSED REGULATIONS

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Sections 122(3)(a) and 504 (16 Del.C. §§122(3)(a) & 504)
16 DE Admin. Code 4202

PUBLIC NOTICE

4202 Control of Communicable and Other Disease Conditions

Pursuant to 16 Del. C. §122(3)(a) and §504, the Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Control of Communicable and Other Disease Conditions. On September 1, 2021, the Division of Public Health plans to publish as “proposed” revisions to the Control of Communicable and Other Disease Conditions regulations. These revisions include requirements for mask use among all students, faculty, staff, and visitors inside K-12 school buildings, regardless of vaccination status, as well as a severability clause.

Copies of the proposed regulations are available for review in the September 1, 2021 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Friday, October 1, 2021, at:

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

***Please Note:**

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

<http://regulations.delaware.gov/register/september2021/proposed/25 DE Reg 262RFA 09-01-21.pdf>

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

4202 Control of Communicable and Other Disease Conditions

DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and 915, and 29 Delaware Code, Chapter 101 (18 **Del.C.** §§311 & 915; 29 **Del.C.** Ch. 101)
18 **DE Admin. Code** 1003

PUBLIC NOTICE

1003 Credit for Reinsurance

A. Type of Regulatory Action Required

Proposal of amendments to Regulation 1003 Credit for Reinsurance.

B. Synopsis of Subject Matter of the Regulation

Legislative Background

Delaware's Reinsurance Act, 18 **Del. C.** §§ 910-916, and Insurance Regulation 1003 are codifications of the National Association of Insurance Commissioners (NAIC) Credit for Reinsurance Model Law #785 (the Model Law) and NAIC Credit for Reinsurance Model Regulation #786 (the Model Regulation). Both the Model Law and the Model Regulation are designated by the NAIC as accreditation standards.

In 2019, the NAIC updated the Model Law and Model Regulation in response to the U.S.-EU Covered Agreement and the U.S.-UK Covered Agreement (the Covered Agreements). The Federal Insurance Office (FIO) has confirmed that the 2019 revisions to the Model Law satisfy the requirements of the Covered Agreements. See FIO Preemption Analysis at <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/covered-agreements/preemption-analysis>.

States are required to promulgate the Model Law and codify the Model Regulation in their entirety to avoid FIO preemption of the States' regulatory jurisdiction. FIO informs that:

- It is currently conducting a preemption determination process that consists of reviewing the laws of all 50 states, the District of Columbia, and the US territories;
- FIO has set an internal September 1, 2022 deadline for completing the preemption determination process; and
- FIO is planning to abide by their commitments made in the Covered Agreements.

Given FIO's September 1, 2022 deadline, it is incumbent upon states, including Delaware, to quickly amend their statutes and regulations to incorporate the amendments to the Model Law and Model Regulation. Accordingly, on June 29, 2021 the Commissioner of the Delaware Department of Insurance (the Department) worked with the Delaware General Assembly to amend Insurance Code Chapter 9 to incorporate the NAIC 2019 Model Act amendments. See HB 44 (83 Del. Laws. c. 104).

HB44 specifically does the following:

- Makes the Reinsurance Act consistent with provisions of covered agreements with the European Union and United Kingdom with respect to reinsurance collateral requirements;
- Provides reinsurers domiciled in NAIC-qualified jurisdictions other than within the EU (currently, Bermuda, Japan and Switzerland) with the possibility of similar reinsurance collateral reductions; and
- Applies to all cessions after July 30, 2021 under reinsurance agreements that have an inception, anniversary, or renewal date not less than 6 months after July 30, 2021.

Purpose of Proposal

The purpose of this proposal is to:

- Update Regulation 1003 to incorporate the amendments to the Model Regulation, based on the authority granted the Department under HB 44;
- Update formatting and internal cross-references; and
- Update the regulation with the effective date of these proposed amendments.

C. Notice and Public Comment

The proposed amendments appear below and may also be viewed on the Department of Insurance web-site at <http://insurance.delaware.gov/information/proposedregs/>. The Department will not be holding a public hearing on the proposed amendments.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendments to the regulation. Any written submission in response to this notice and relevant to the proposed amendments must be received by the Department of Insurance no later than 4:30 p.m. EDT, the 1st day of October, 2021 and should be directed to:

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

***Please Note:**

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

<http://regulations.delaware.gov/register/september2021/proposed/25 DE Reg 263RFA 09-01-21.pdf>

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

1003 Credit for Reinsurance

DEPARTMENT OF JUSTICE**FRAUD AND CONSUMER PROTECTION DIVISION**

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

PUBLIC NOTICE**105 Health Spa Act Regulation****Public Notice**

In compliance with the State's Administrative Procedures Act (APA -Title 29, Chapter 101 of the Delaware Code) and 29 Del.C. §2521, the Consumer Protection Unit of the Delaware Department of Justice ("the Unit") hereby publishes notice of a proposed regulation to the Health Spa Regulation Act.

Summary of Proposed Regulation

The proposed regulation was created to assist in the implementation and enforcement of the Health Spa Regulation Act by clarifying instructions for health spa registration, fee payment, contract requirements, and limitations of initiation fees.

Possible Terms of the Action Agency

None.

Other Regulations That May be Affected by the Proposal

The agency does not believe that other regulations will be impacted.

Notice of Public Comment

Persons wishing to comment on the proposed revision may submit their comments in writing no later than October

1, 2021 to:

Marion Quirk
Consumer Protection Director
Department of Justice, Consumer Protection Unit
State Office Building, 5th Floor
820 N. French Street
Wilmington, DE 19081

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

<http://regulations.delaware.gov/register/september2021/proposed/25 DE Reg 264RFA 09-01-21.pdf>

105 Health Spa Act Regulation

6 Del.C. §§4201 - 4222

1.0 Applicability

- 1.1 The Director of the Consumer Protection Unit enforces the Health Spa Regulation Act pursuant to the authority granted to the Director through 6 Del.C. §4222.
- 1.2 This Regulation of the Health Spa Regulation Act articulates the Director's interpretation of the Act for purposes of implementing and clarifying the statute pursuant to the authority granted in 29 Del.C. §2521.

2.0 Definitions

The following terms are defined in 6 Del.C. §4202 and have the same meaning when used in these rules:

"Buyer"

"Director"

"Health spa"

"Health Spa Contract"

"Health spa services"

"Initiation fee"

"Pre-opening contract"

3.0 Registration

- 3.1 All Health Spas must register with the Director prior to offering, advertising, selling, or executing any Health Spa Contract in the State of Delaware regardless of the contract term.
 - 3.1.1 The individual act of offering or advertising any Health Spa Contract is still unlawful unless the Health Spa has been properly registered with the Director.
 - 3.1.2 Multiple-class, class-package style memberships where consumers purchase a set of classes that is comparable in duration and fees to a three-month membership are considered Health Spa Contracts.
 - 3.1.3 If a Health Spa believes they are exempt from payment due to their multiple-class package model, it should inquire with the Director by presenting contracts, plan offerings, and expected duration of packages at HealthSpaRegulation@Delaware.gov.
- 3.2 Health Spas include yoga studios, Pilates studios, and other studios that use a room in which activities done in service of advertised physical exercise, physical fitness, weight control, or figure reduction occurs.
- 3.3 A Health Spa is required to sign the application to register under penalty of perjury.

PROPOSED REGULATIONS

- 3.4 Upon the occurrence of any material change in the information on the application to register, the Health Spa has 20 days to update the Director of the related change in information.
- 3.5 All Health Spas must be properly registered by January 1 of every calendar year. A calendar year runs from January 1 to December 31.
- 3.5.1 Applications to register must be emailed to the Director at HealthSpaRegulation@Delaware.gov by November 15 prior to the year the Health Spa is registering for.
- 3.5.2 Applications submitted after November 15 may be subject to fines at the Director's discretion.
- 3.6 Health Spas must re-submit a registration annually. Registration does not automatically renew.
- 3.7 Registration is not transferrable.
- 3.7.1 Registration is specific to a health spa's location.
- 3.7.2 If a health spa closes a location and re-establishes the same business in a different location, a new registration must be submitted unless:
- 3.7.2.1 The new location is within a 15-mile driving distance; and
- 3.7.2.2 Interchangeable, comparable services are offered to members with no increase to charges, dues, or fees.
- 3.7.3 If a health spa has multiple locations, each location must submit a separate registration unless the following conditions are present:
- 3.7.3.1 Each location is within a 15-mile driving distance; and
- 3.7.3.2 Interchangeable, comparable services are offered to members with no increase in charges, dues, or fees.
- 3.8 Pre-registration Contracts and Advertising
- 3.8.1 To lawfully offer, advertise, and sell pre-opening contracts or Health Spa Contracts prior to opening, a Health Spa must file a bond or letter of credit with the Director at the time of registration.
- 3.8.2 Any Health Spa that has registered with the Director to lawfully advertise or sell pre-opening contracts may request the bond or letter of credit be terminated after 90 days of operation but is not required to cancel or terminate the bond or letter of credit.
- 3.8.3 Failure to terminate the bond as provided in subsection 3.8.2 of this regulation is not a waiver of the annual registration requirement for health spas offering and selling qualifying health spa contracts.

4.0 **Health Spa Guaranty Fund**

- 4.1 Health Spas that offer, advertise, or execute or cause to be executed by the buyer a Health Spa Contract must pay an annual fee pursuant to 6 **Del.C.** §4203:

<u>Number of unexpired contracts exceeding 3 months</u>	<u>Amount of Annual Fees</u>
<u>199 or fewer</u>	<u>\$1,000</u>
<u>200 to 499</u>	<u>\$2,000</u>
<u>500 to 999</u>	<u>\$4,000</u>
<u>1,000 or more</u>	<u>\$8,000</u>

- 4.2 Health spas must pay an annual fee when:
- 4.2.1 A Health Spa Contract is offered, advertised, executed, or caused to be executed by a buyer.
- 4.2.2 A health spa:
- 4.2.2.1 Obligates a buyer to purchase health spa services to be rendered over a period longer than three months; and

4.2.2.2 Receives money, in an aggregate amount at any point, the amount of which is greater than the value of three months' commitment, are required to pay the annual fee.

4.3 Waiver of Annual Fee

4.3.1 A waiver of the annual fee does not waive other registration requirements.

4.3.2 A health spa that meets the criteria for a waiver may apply for a fee waiver under subsection 4.3 of this regulation when filing the annual registration at HealthSpaRegulation@Delaware.gov.

4.3.3 A waiver of the annual fee may be granted at the discretion of the Director when:

4.3.3.1 A health spa does not meet all the criteria of subsection 4.2.2.

4.3.3.2 A health spa that advertises or offers but does not execute contracts for longer than three months.

4.3.3.2.1 If at any point during a calendar year, a health spa that has been granted an exemption pursuant to subsection 4.3.3.2 of the regulation executes a qualifying health spa contract:

4.3.3.2.1.1 The fee waiver shall be automatically revoked without any action by the Director; and

4.3.3.2.1.2 The Health Spa will be required to pay the appropriate fee pursuant to subsection 4.1 of this regulation.

4.3.3.3 The Health Spa Guaranty Fund is over \$250,000 and a health spa is able to demonstrate proof of payment into the fund for any three years in a row.

4.3.3.3.1 Health spas bear the burden of proving they have paid the annual fee for three consecutive years with proof of payment.

4.3.3.3.2 Proof of payment means a copy of the check, bank invoice, or statement demonstrating payment was withdrawn, or other proof of transaction.

5.0 Right of Cancellation

5.1 Every Health Spa Contract must be memorialized in writing between the Health Spa and the consumer regardless of the duration of the contract, regardless of fees and pricing schedules, and regardless of the number of locations.

5.2 Moving or Going Out of Business

5.2.1 If a Health Spa moves or goes out of business, the Spa must provide its consumers with an alternative facility within 15 miles driving distance, not radial distance, of the original Health Spa location.

5.2.2 If the location is within a 15-mile radius but not within a 15-mile driving distance, the Health Spa must offer its members a pro-rated refund of their fees/paid dues.

6.0 Initiation Fees Limited

6.1 It is unlawful for a Health Spa to charge an initiation fee for any contract of less than 12 months' duration. Any Health Spas found to be doing so are subject to be fined at the Director's discretion.

6.2 An initiation fee is distinct from optional fees offered in exchange for merchandise that are neither required nor necessary to fully utilize all services offered in the health spa contract.

6.3 Initiation fees include annual fees, one-time facility fees, club entrance fees, and one-time fees marketed as refundable pending successful completion of the contract.

PROPOSED REGULATIONS

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF WATERSHED STEWARDSHIP**

Statutory Authority: 7 Delaware Code, Section 1902(a) (7 **Del.C.** §1902(a))
7 **DE Admin. Code** 7402

REGISTER NOTICE**SAN # 2021-01****DOCKET # 2021-R-WS-0003****7402 Shellfish Sanitation Regulations**

1. TITLE OF THE REGULATIONS:

7 **DE Admin. Code** 7402 Shellfish Sanitation Regulations

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

The current regulation does not list the membrane filter (MF) (membrane-Thermotolerant Escherichia coli [mTEC]) method as an approved bacteriological standard for the classification of shellfish growing areas. This method is an approved method under the National Shellfish Sanitation Program and is used by many states to classify the bacteriological water quality of shellfish harvesting areas because of its accuracy and significant cost savings for states due to the speed and simplicity of the test. This action will add the mTEC method as an approved method which can be used to classify shellfish growing areas, while maintaining the current approved methods found in the regulation. Side-by-side analysis has been conducted for over three (3) years and the results have shown that no changes in shellfish classifications would be required at this time if the method was adopted. This new method will allow the State of Delaware to save a significant amount of money annually, increase the speed that results are available and increase the ability for more areas to be monitored as needed to ensure shellfish safety as the industry grows.

This proposed method adoption has been presented to the commercial shellfish industry throughout the three (3) year assessment period and there are currently no impacts anticipated to the public due to no significant shellfish growing area classification changes being required. There are no costs associated with this regulatory change and there is minimal or no impact to commercial or recreational bi-valve shellfish harvesters. This action will save the State of Delaware thousands of dollars annually and continue to protect the State's shellfish resources and public health of shellfish consumers.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

There is no sunset date for the proposed regulation change.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Del.C.** §1902(a)

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

None

6. NOTICE OF PUBLIC COMMENT:

The proposed amendments may be inspected online starting September 1st, 2021 at http://regulations.delaware.gov/services/current_issue.shtml. A virtual public hearing will be held on **Tuesday, October 5th, 2021, beginning at 6 p.m.** The web link to the virtual meeting is found on the DNREC Public Hearings site at <https://de.gov/dnrehearings>. If prompted for a password, please use ShellfishSanRegs. To access the audio-only portion of the virtual hearing, dial 1-408-418-9388 and enter event code 179 119 1725. Closed-captioning is available by request if made at least 7 days before the event.

Those wishing to offer verbal comments during DNREC virtual public hearings must pre-register no later than noon on the date of the virtual hearing at <https://de.gov/dnrecomments> or by telephone at 302-739-9295.

The Department will accept public comment through the close of business on October, 20th, 2021. Comments

pertaining to the above matter will be accepted in written form via email to DNRECHearingComments@delaware.gov, using the online form at <https://de.gov/dnrecomments>, or by U.S. mail to the following address: Lisa Vest, Hearing Officer, DNREC-Office of the Secretary, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

Michael Bott

Phone: 302-739-9939

Fax: 302-739-6140

Michael.Bott@delaware.gov

***Please Note:**

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

<http://regulations.delaware.gov/register/september2021/proposed/25 DE Reg 268RFA 09-01-21.pdf>

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

7402 Shellfish Sanitation Regulations

Symbol Key

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

Final Regulations

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

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

DELAWARE CRIMINAL JUSTICE INFORMATION SYSTEM
DELAWARE CRIMINAL JUSTICE INFORMATION SYSTEM BOARD OF MANAGERS
Statutory Authority: 11 Delaware Code, Section 8605 (11 Del.C. §8605)
1 DE Admin. Code 1301

ORDER**1301 Delaware Criminal Justice Information System Rules and Regulations****NATURE OF THE PROCEEDINGS**

At **24 DE Reg. 963** (May 1, 2021), the Delaware Criminal Justice Information System Board of Managers (DELJIS Board of Managers), pursuant to 11 **Del. C.** §8605, and in accordance with 29 **Del. C.** §10115, published notice of intent to adopt regulations that seek to ensure that access to criminal justice information conforms to the statutory requirements outlined in Chapters 85 and 86 of Title 11 of the Delaware Code. At the same time, the DELJIS Board of Managers submitted a Regulatory Flexibility Analysis and Impact Statement for this proposed revised regulation, as required by 29 **Del. C.** Ch. 104. The DELJIS Board of Managers solicited written comments from the public for thirty (30) days as mandated by 29 **Del. C.** §10118(a).

SUMMARY OF EVIDENCE

In accordance with law, public notice regarding the proposed revised regulation was published in the *Delaware Register of Regulations*. The public comment period was open from May 1, 2021 through June 01, 2021. During this period, the DELJIS Board of Managers did not receive any written responses.

FINDINGS OF FACT

The public was given the required notice of the DELJIS Board of Managers' intention to adopt the proposed revised

regulation and was given the opportunity to submit comments. The required Regulatory Flexibility Analysis and Impact Statement for this proposed revised regulation was submitted. No written responses were received during the comment period. Thus, the DELJIS Board of Managers finds that the proposed revised regulations should be adopted as submitted by DELJIS.

EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the DELJIS Board of Managers pursuant to 11 **Del. C.** §8605. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

ORDER

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the DELJIS Board of Managers does hereby ORDER this 15th day of August 2021 that the regulations be, and that they hereby are, adopted to be enacted as set forth below.

IT IS SO ORDERED, this 15th day of August 2021.

Delaware Criminal Justice Information System Board of Managers

/s/ Marianne Kennedy, Chair,
DELJIS Board of Managers

/s/ Robert Coupe, Department of Justice

/s/ Jeffrey Horvath, Chief, Police Chief's Council

/s/ Jason Clarke, Secretary
Department of Technology and Information

/s/ Elmer Setting
Deputy State Court Administrator

/s/ Chris McGonigle, Office of Defense Services

/s/ Michelle Hoffman, Family Court

/s/ Lt. James Leonard, New Castle County Police
Department

/s/ Carrie Hyla, DSCYF, Division of Management
Support Services

***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 2021 issue of the *Register* at page 963 (24 DE Reg. 963). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1301 Delaware Criminal Justice Information System Rules and Regulations

FINAL REGULATIONS

DELAWARE PUBLIC EMPLOYEES' RETIREMENT SYSTEM**DELAWARE BOARD OF PENSION TRUSTEES**

Statutory Authority: 29 Delaware Code, Section 8308(c)(1) (29 **Del.C.** §8308(c)(1))
19 **DE Admin. Code** 2002, 2003, 2004, 2005, & 2006

ORDER

2002 State Employees' Pension Plan
2003 State Judiciary Pension Plan
2004 State Police Pension Plan
2005 County and Municipal Employees' Pension Plan
2006 County and Municipal Police/Firefighter Pension Plan

The Delaware Board of Pension Trustees, pursuant to its authority in 29 *Del.C.* §8308(c)(1), published proposed changes in the *Delaware Register of Regulations* on June 1, 2021 to the regulations of the following retirement plans: 2002 State Employees' Pension Plan; 2003 State Judiciary Pension Plan; 2004 State Police Pension Plan; 2006 County and Municipal/Firefighter Pension Plan; and 2005 County and Municipal Employees' Pension Plan (the "Proposed Regulations"). The comment period remained open until June 31, 2021. Public notice of the proposed changes to Proposed Regulations in the *Register of Regulations* was in conformity with Delaware law. Each set of regulations pertains to a public pension plan within the Delaware Public Employees' Pension ("DPERS").

Collectively, the proposed changes to these regulations included many non-substantive changes, some to alter style and form and to correct technical and spelling errors, and other changes. The changes to each set of regulations include updates to language to reorganize sections for the purposes of clarity, consistent with actual practice, and with deletions of obsolete provisions; a definition of "Pension Administrator" consistent with current practice; clarifications to the requirements for establishing a child with a permanent disability, consistent with current practice; deletion of references to the Medical Committee, which is obsolete, and updated the return-to-work post retirement requirements consistent with the IRC and the State Employees' Pension Plan as set forth in 29 *Del. C.* Ch. 55. Sections relating to the Distribution of Benefits, Direct Rollover and Trustee to Trustee Transfers, Maximum Benefit Limits and Minimum Contribution Limits, and Military Service were renumbered and updated to adopt current IRC approved language.

Additionally, regulations for the Delaware public safety plans (2004 State Police Pension Plan and 2006 County and Municipal/Firefighter Pension Plan) clarify disability standards and add a section concerning posttraumatic stress syndrome which is consistent with federal law and current practice.

Summary of the Evidence and Information Submitted

No comments were submitted by the public.

Findings of Fact

After discussion, the Board concluded that the regulations should be adopted as proposed.

Decision and Effective Date

The Board voted to approve the regulations as proposed. **THESE REGULATIONS SHALL BECOME EFFECTIVE OCTOBER 1, 2021.**

IT IS SO ORDERED this 30th day of July, 2021.

/s/ Suzanne B. Grant, Board Chair

/s/ Nancy Shevock, Member

/s/ Harold Stafford, Member

/s/ Rick Geisenberger,
Secretary of Finance, Member *ex officio*

/s/ Joanna Adams
Secretary and Pension Administrator, Delaware Office of Pensions

/s/ Arturo Agra, Member

Tom Shaw, Member (no signature)

/s/ Cerron Cade, Director,
Office of Management and Budget, Member *ex officio*

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

***Please note that no changes were made to the regulation as originally proposed and published in the June 2021 issue of the *Register* at page 1033 (24 DE Reg. 1033). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

Pension Plan Regulations

DEPARTMENT OF AGRICULTURE DELAWARE STANDARDBRED BREEDERS' FUND

Statutory Authority: 29 Delaware Code, Section 4815(b)(4)b.2. (29 **Del.C.** §4815(b)(4)b.2.)
3 **DE Admin. Code** 502

NOTICE

502 Delaware Standardbred Breeders' Fund Regulations

The State of Delaware, Department of Agriculture's Standardbred Breeders' Fund (the "Fund") hereby gives notice of its adoption of an amended regulation pursuant to the General Assembly's delegation of authority at 29 *Del.C.* §4815(b)(4)b.2. The amended regulations under Sections 15.5 and 15.6 address the increased appropriation to the Fund's purse and bonus account in accordance with the changes to Section 4815(b) of Title 29 of the Delaware Code as provided under Senate Bill 29 signed into law by the Governor and taking effect July 1, 2021.

The Fund is adopting the regulations pursuant to the informal process under 29 *Del. C.* §10113(b)(5) for amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations.

Delaware Standardbred Breeders' Fund

By: Judy Davis-Wilson, Administrator

502 Standardbred Breeders' Fund Regulations (*Break in Continuity of Sections*)

15.0 Investment Plan and Use of Fees

(*Break in Continuity Within Section*)

- 15.5 For the year 2022 and each race year thereafter, four million dollars (\$4,000,000) of the proceeds received pursuant to 29 **Del.C.** §4815(b) which established in the State of Delaware the Program and any interest earned on the endowment fund in the preceding (12) twelve months shall be deposited in a separate purse account for purses and bonuses for that race year.

~~45-515.6~~ Any monies from the purse account for the Program at the end of the race year shall revert to the endowment account of the Program.

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

502 Delaware Standardbred Breeders' Fund Regulations

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(3) (14 Del.C. §122(b)(3))
14 DE Admin. Code 505

REGULATORY IMPLEMENTING ORDER

505 High School Graduation Requirements and Diplomas

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del. C. §122(b)(3), the Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 505 High School Graduation Requirements and Diplomas. This regulation is being amended to clarify and update the process for requesting a duplicate Delaware High School diploma or Diploma of Alternate Achievement Standards. It is also being updated to include reference to students who may be experiencing homelessness.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on June 1, 2021. In addition, notice was published in *The News Journal* and the *Delaware State News* on June 1, 2021, in the form hereto attached as *Exhibit "A"*. No comments were received.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 505 High School Graduation Requirements and Diplomas in order to clarify and update the process for requesting a duplicate Delaware High School diploma or Diploma of Alternate Achievement Standards. It is also being updated to include reference to students who may be experiencing homelessness.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 505 High School Graduation Requirements and Diplomas. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 505 High School Graduation Requirements and Diplomas attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 505 High School Graduation Requirements and Diplomas 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 505 High School Graduation Requirements and Diplomas amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 DE Admin. Code 505 High School Graduation Requirements and Diplomas 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 July 15, 2021. 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 15th day of July 2021.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 15th day of July 2021

State Board of Education

Whitney Townsend Sweeney, President (Absent)

/s/ Vincent Lofink

/s/ Wali W. Rushdan, II, Vice President

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

/s/ Shawn Brittingham

/s/ Provey Powell, Jr.

Candace Fifer (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 June 2021 issue of the *Register* at page 1041 (24 DE Reg. 1041). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

505 High School Graduation Requirements and Diplomas

OFFICE OF THE SECRETARY

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

14 DE Admin. Code 701

REGULATORY IMPLEMENTING ORDER

701 Unit Count

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del. C. §122 (a), the Secretary of Education intends to amend 14 DE Admin. Code 701 Unit Count. The Department has reviewed the regulation in order to comply with 29 Del.C. §10407 which requires regulations to be reviewed on a recurring basis every four years. The proposed amendments are made to align language in this regulation with language in Regulation 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs related to a child with a disability who is determined eligible for special education and related services. Other changes are grammatical in nature and are made to ensure compliance with the *Delaware Administrative Code Drafting and Style Manual*.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on July 1, 2021. In addition, notice was published in *The News Journal* and the *Delaware State News* on July 1, 2021, in the form hereto attached as Exhibit "A". No comments were received.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 701 Unit Count in order to comply with 29 Del.C. §10407 which requires regulations to be reviewed on a recurring basis every four years. The proposed amendments are made to align language in this regulation with language in Regulation 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs related to a child with a disability who is determined eligible for special education and related services. Other changes are grammatical in nature and are made to ensure compliance 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 701 Unit Count. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 701 Unit Count attached hereto as *Exhibit*

"B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 701 Unit Count 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** 701 Unit Count amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 701 Unit Count 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 August 12, 2021. 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 12th day of August 2021.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 12th day of August 2021

701 Unit Count

1.0 Forms and Record Keeping

- 1.1 All information submitted through the unit count process shall be on ~~the~~ forms provided by the Department of Education or in such other format as may be acceptable to the Department.
- 1.2 Each school shall maintain September enrollment records in a manner which ~~will allow~~ allows for efficient enrollment audits by the Department of Education and the State Auditor of Accounts. At the end of September, each school shall assemble a comprehensive enrollment file that contains all necessary support materials to substantiate the enrollments reported. This file shall be retained in the school for at least three (3) years.
- 1.3 Records to substantiate students with disabilities included in the enrollment count shall contain a student ~~individual~~ Individualized Education Program (IEP) in effect during the last week of school in September and eligibility documentation. However, individual student files may be reviewed by the Department of Education or State Auditor of Accounts to ascertain that the students reported are identified as a child with a disability determined to be eligible for special education students and related services as per under 14 **DE Admin. Code** 925.

2.0 Special Situations Regarding Enrollment

- 2.1 All exceptions and extenuating circumstances relating to the enrollment count are addressed to the Secretary of Education and shall be received by the Secretary for consideration prior to September 30.
- 2.2 Students with disabilities included in the special education unit count under the placement provisions of Transfer Students or Change of Placement shall meet the evaluation and placement requirements found in 14 **DE Admin. Code** 925.
- 2.3 Students not assigned to a specific grade shall be reported in a grade appropriate for their age or their instructional level for purposes of the unit count.

3.0 Accounting for Students Not in Attendance the Last Ten Days in September

- 3.1 For students not in attendance at school during the last 10 school days of September during which students are required to be in attendance, the following information shall be on file to substantiate their inclusion in the enrollment count:

- 3.1.1 Reason for absence, usually medical, and date of last direct contact with student or parent.
- 3.1.2 Reason to believe that student will be returning to school prior to November 4th 1.
- 3.1.3 ~~Districts and Charter Schools~~ District and charter schools enrolling an intra-state transfer student during the last 10 school days of September during which students are required to be in attendance shall first determine if the student is currently obligated under a choice agreement or ~~first-year~~ first-year charter agreement before enrolling the student. If ~~said obligation~~ an agreement exists, "good cause" pursuant to 14 **Del.C.** §402 and §506(d) respectively must be determined before the receiving ~~district/charter~~ district or charter school can enroll the student. ~~Districts~~ District and charter schools enrolling an in state transfer student during the last 10 school days of September shall notify the student's previous district or charter school of such enrollment no later than the last student attendance day of September. The notification shall be by fax with a follow up letter to the previous ~~district/charter~~ district or charter school's unit count coordinator's office. The notification shall be clearly labeled Unit Count Transfer Students and include the student's name, grade, and previous school of attendance. A student enrolling with a formal notice of withdrawal from the previous district or charter school is exempted from this notification requirement. Failure to follow the notification procedure may result in including the same student in two different district or charter school enrollments and hence unit counts. If that occurs, the student will be disallowed from the receiving district or charter school's enrollment and unit count. Copies of the fax transmittals and follow up letters shall be on file to substantiate the student's inclusion in the receiving district or charter school's enrollment and unit count.

4.0 Programs, Situations and Program Types that Qualify for Inclusion in the Unit Count

- 4.1 Students in the following programs, situations and program types shall qualify for inclusion in the enrollment count:
 - 4.1.1 Delaware Adolescent Program, Inc. (DAPI):
 - 4.1.1.1 Students enrolled in DAPI shall be counted in the enrollment of the sending school.
 - 4.1.1.2 Students shall receive the level of special education service as defined by the current IEP.
 - 4.1.1.3 If a student was enrolled the previous year in a Career Technical Program in the reporting school, the students shall be reported as enrolled in the next career technical course in the program series.
 - 4.1.2 Repeating seniors who are enrolled in school for a minimum number of instructional hours defined as three (3) traditional courses or an equivalent time in a block schedule, shall be included in the unit count provided they meet the age and residency requirements. Students in the James H. Groves In ~~school~~ School Credit Program (14 **DE Admin. Code** ~~945-2-4~~ 915, subsection 2.4) and students in the Advanced Placement Program shall be enrolled and attend at least one (1) full credit course in their high school to be included in the unit count provided they also meet the age and residency requirements.
 - 4.1.3 Temporary problem, usually medical, which precludes school attendance prior to November 4th 1.
 - 4.1.4 Supportive Instruction (~~Homebound~~): (Homebound)
 - 4.1.4.1 Students receiving supportive instruction (homebound) pursuant to 14 **DE Admin. Code** 930 qualify for inclusion in the unit count.
 - 4.1.4.4 4.1.4.2A child with a disability receiving supportive instruction (homebound) shall be included in the unit count as a special education student if, in the child's placement immediately preceding the homebound placement, the child had an IEP in effect during the last week of school in September.
 - 4.1.5 Department of Services for Children, Youth and Their Families or Department of Correction Facilities: Students on a temporary basis pending disposition of case who are expected to return to school prior to November 4th 1.
 - 4.1.6 Consortium Discipline Alternative Program:
 - 4.1.6.1 Students enrolled at a Consortium Discipline Alternative Programs site shall be counted in the enrollment of the sending school pursuant to 14 **DE Admin. Code** 611.

- 4.1.6.2 Students shall receive the level of special education service as defined by the current IEP.
- 4.1.6.3 If a student was enrolled in the previous year in a Career Technical Program in the reporting school, the students shall be reported as enrolled in the next career technical course in the program series.
- 4.1.7 Except as provided in ~~section~~ Sections 5.0 and 7.0, all ~~pre-kindergarten~~ pre-kindergarten children with disabilities shall be counted in the Preschool ~~Pre-K-12~~ Pre-K to 12 Intensive Special Education (~~Intensive~~), (Intensive) or ~~Pre-K-12~~ Pre-K to 12 Complex Special Education (~~complex~~ Complex) units.
- 4.1.8 Students enrolled in residential facilities as of the last day of September. ~~These students are included in the enrollment count of the district operating the instructional program in that facility. The facilities that are eligible shall be identified each year by the Department of Education.~~
- 4.1.9 Regular programs include students who are enrolled in the regular elementary or secondary curriculum of the school, i.e., the core of the school subjects, ~~which most students take~~ taken by most students.
- 4.1.10 Special education services include students who have been ~~properly identified~~ found eligible for special education and related services under 14 DE Admin Code 925, Section 6.0 and have an IEP in effect during the last week of school in September. Students with disabilities must have appropriate supporting documentation on file as required by the Identification, Evaluation and Placement Process in 14 **DE Admin. Code 925**.
- 4.1.11 A maximum of 900 minutes of career and technical education time per week per student shall be credited toward the career and technical education unit determination. However, units shall be counted on the basis of 4 one (1) unit for each 30 students for students enrolled in the New Castle County Votech School District, the POLYTECH School District and the Sussex Technical School District.

5.0 Programs and Situations that Do Not Qualify for the Unit Count

- 5.1 Students in the following programs and situations do not qualify for inclusion in the enrollment count:
- 5.1.1 Students who have not attended school during the last 10 days of ~~September~~ September.
- 5.1.2 Students who are enrolled in General Education Development (GED) ~~programs~~ programs.
- 5.1.3 Students who are enrolled in other than Department of Education approved ~~programs~~ programs.
- 5.1.4 Students who are transferred to a state residential facility during September shall not be included in the enrollment count of the ~~District/Charter School~~ district or charter school unless that ~~District/Charter School~~ district or charter school operates the facility's instructional program; otherwise the student must be treated as a ~~withdrawal~~ withdrawal.
- 5.1.5 Students enrolled in a ~~Homeschool~~ homeschool as defined in 14 **Del.C.** §2703A.

6.0 Nontraditional High School Schedules

- 6.1 For unit count ~~purposes~~ purposes, if a career technical student in a school utilizing nontraditional schedules receives, during the course of the year, the same amount of instruction the student would have received under a traditional class schedule, the district shall average the time and calculate instructional time on a weekly basis; providing however, that a career technical student receives a minimum of 300 minutes of instruction per week.
- 6.1.1 The following exemplifies a situation with the required minimum minutes and hours for a full time career technical student and shows that the heavy concentration of minutes or hours could occur either in the fall or the spring of the ~~year~~ year:

Fall and Spring Career Technical=	300 minutes per week
Spring and Fall Career Technical=	1500 minutes per week
1800 /2 =	900 minutes per week

6.2 For unit count ~~purposes~~ purposes, a district shall meet the following criteria to include selected students participating in a district's Distance Education/Twilight Program in the September 30th 30 unit ~~count~~ count:

6.2.1 For purposes of this section, a Distance Education/Twilight Program shall mean a district approved credit bearing program as follows:

~~6.2.1~~ 6.2.1.1 Students must be currently suspended indefinitely or expelled by the district and enrolled in the district's alternative placement program; or

~~6.2.2~~ 6.2.1.2 Students with disabilities enrolled in the district's Distance Education/Twilight Program for credit recovery only must be receiving services as decided upon by the IEP team and reflected in the IEP on-site; or

~~6.2.3~~ 6.2.1.3 The inclusion of students with non-behavior issues and not special education in the unit count can only be included if there is not a break in educational service and they meet the entry criteria of the program and the additional criteria outlined in subsections 6.2.4 through 6.2.11;

~~6.2.4~~ 6.2.2 Students and their ~~parent(s)/guardian(s)~~ parents or guardians must attend a mandatory program orientation session provided by the district staff. A sign in sheet and signed agreement will be kept on file and serve as sufficient evidence to meet this requirement.

~~6.2.5~~ 6.2.3 Students must be enrolled for a minimum of three (3) courses.

~~6.2.6~~ 6.2.4 Students must be required to complete a minimum number of hours of active engagement each week that they are enrolled in the program. The minimum number of hours should not be less than three (3) hours per week.

~~6.2.7~~ 6.2.5 Students must be enrolled in eSchoolPLUS, the statewide pupil accounting system.

~~6.2.8~~ 6.2.6 The district must keep records on file for the school year of the unit count on work completed and time spent working on the educational program for each enrolled student. The district must submit a sample to the Department of Education that may serve as sufficient evidence to meet this requirement.

~~6.2.9~~ 6.2.7 The district must provide evidence of staff monitoring the progress of each student and providing feedback to participating students and their ~~parents/guardians~~ parents or guardians.

~~6.2.10~~ 6.2.8 The district must show evidence on how progress of students enrolled in the program is incorporated into their academic record for meeting the district's graduation requirements.

~~6.2.11~~ 6.2.9 An audit file containing information listed in subsection 6.2 and its subsections must be maintained on all students participating in the program and must be presented upon request to the Department of Education ~~and/or~~ or the State Auditor's Office.

7.0 Charter Schools

Funding for charter schools is limited to students lawfully enrolled in such grades K through 12 as the charter school may be approved to operate. Charter schools shall not include any ~~Pre-K~~ Pre-K students in their enrollment for unit count purposes. This section shall not be interpreted to authorize any charter school to enroll ~~Pre-K~~ Pre-K students.

8.0 Unit Adjustments After Audit

If, after the units are certified by the Secretary of Education, a student is disqualified through the auditing process from the unit count, the units will be recalculated without that student. Another eligible student shall not be substituted for the disqualified student. A special education student who has been identified and is receiving special education services and is disqualified from the unit count due to irregularities contained within supporting documentation, may then be included in the appropriate regular enrollment category provided the student meets eligibility requirements. Only a student disqualified by the audit process may be reassigned to another unit category. In no event can this adjustment result in a net increase in units for a district.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES

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

ORDER

BEFORE DELAWARE HEALTH AND SOCIAL SERVICES
 IN THE MATTER OF

REVISION OF THE REGULATION
 OF DELAWARE'S
 DELAWARE SOCIAL SERVICES MANUAL (DSSM)
 DSSM 11004.1, 11004.8

Processing Applications for Child Care

NATURE OF THE PROCEEDINGS:

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of 31 *Del. C.* 512, Delaware Health and Social Services ("Department") / Division of Social Services (DHSS/DSS) is proposing to amend the Division of Social Services Manual (DSSM) regarding Purchase of Care, specifically, to update the formatting and text to provide clear child care application requirements and procedures for DSS staff, stakeholders, and the public.

The Department published its notice of proposed regulation changes pursuant to 29 *Del. C.* § 10115 in the June 2021 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 1, 2021 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

Effective for services provided on and after September 11, 2021 the Delaware Health and Social Services (DHSS)/ Division of Social Services (DSS) proposes to amend the DSSM regarding Purchase of Care, specifically, to update the formatting and text to provide clear child care application requirements and procedures for DSS staff, stakeholders, and the public.

Statutory Authority

- 45 CFR 98.20
- 31 *Del. C.* § 503(e)
- 31 *Del. C.* § 508
- 31 *Del. C.* § 512(1)

Background

DSSM 11004.1 Processing Applications for Child Care explains the requirements for parents and caretakers to apply for child care assistance, including application methods and verification requirements. DSSM 11004.8 Defining Presumptive Child Care Services explains that parents and caretakers may be eligible for presumptive child care services for a one- or two-month period when the parent or caretaker has an immediate need for child care but has not submitted all mandatory verifications to DSS. These policies also detail application processing procedures for DSS staff.

Purpose

The purpose of DSS amended DSSM 11004.1 and 11004.8 is to update the formatting and text to provide clear child care application requirements and procedures for DSS staff, stakeholders, and the public. DSS added examples of when child care is guaranteed, application methods, and types of verifications to DSSM 11004.1.

Public Notice

In accordance with the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, DHSS/DSS gives public notice and provides an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on July 1, 2021.

Fiscal Impact Statement

DSS amended these regulations to provide clear and accurate directions on application processing for child care. These regulations are currently in place and there are no new financial responsibilities associated with the amendments.

Summary of Comments Received with Agency Response and Explanation of Changes

The following summarized comments were received:

Comment: One commenter indicated the list of situations in which DSS will provide child care assistance for eligible children does not mention cases in which parents or caretakers are attending an educational program. The commenter suggested DSS add this eligibility criteria to the list.

Agency Response: DSS is adding educational programs to the list in DSSM 11004.1 (1).

Comment: One commenter noted the revised regulations state that parents/caretakers may apply for child care in various ways, including by emailing a completed application to the local DSS office. The commenter suggested these email addresses be publicly available. In addition, other information that should be publicly available include the various forms that parents/caretakers may have to complete for their child care applications.

Agency Response: DSS informs families during intake, redetermination, and contact during the eligibility period of the various ways of returning documentation and at that time, an email address will be provided to the family. DSS provides forms to clients when they are required for eligibility determination.

Comment: One commenter noted DSSM 11004.8, Defining Presumptive Child Care Services states that child care will be approved for only the current month if a case is "pending verifications prior to adverse action," and approved for the current month and next month if a case is "pending verifications after adverse action." The commenter recommended clarifying what "adverse action" means in this context. The recommendation included a cross-reference in this section to DSSM 11003.7.2, Determining Child Care for Homeless Families. Homeless families are eligible to receive presumptive child care services for 90 days even if they lack documentation when they apply.

Agency Response: DSS is revising DSSM 11004.8 based on the comments.

Comment: One commenter indicated the proposed regulation DSSM 11004.8.3 states that if parents and caretakers were denied presumptive child care in their previous eligibility determination, they are not eligible for presumptive child care. The commenter requested clarification on the rationale for this rule and why a previous denial should affect a current eligibility determination.

Agency Response: Families are authorized for presumptive child care when required verification is pending. Families are given a specific period of time in which to provide missing verification. If the missing verification is not submitted to DSS by the deadline, the child care case is closed. If the family continues to have a need, the family is required to verify eligibility information prior to receiving child care services.

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

- Community Legal Aid Society, Inc.

FINDINGS OF FACT:

The Department finds the proposed changes as set forth in the June 2021 *Register of Regulations* should be adopted with additions. The Department finds that the proposed does not require further public notice or comment under the APA because the amendments are non-substantive pursuant to 29 *Del.C.* §10118(c).

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding Purchase of Care, specifically, to update the formatting and text to provide clear child care application requirements and procedures for DSS staff, stakeholders, and the public, is adopted and shall be final

effective September 11, 2021.

8/13/2021

Date of Signature

Molly K. Magarik, MS
Cabinet Secretary, DHSS

POLICY AMENDMENT

Delaware Health and Social Services
Division of Social Services
Policy and Program Development Unit

11004.1 ~~Application Process~~ Processing Applications for Child Care

[Statutory Authority]

45 C.F.R 98.20

The application process will always consist of the following:

- A. ~~a Case Manager, parent/caretaker interview; (in person or over the phone)~~
- B. ~~a review and verification of eligibility requirements;~~
- C. ~~a review of the parent information about child care certificates;~~
- D. ~~a determination of eligibility along with written parent/caretaker notification of the eligibility decision;~~
- E. ~~completion of the Application for Child Care Assistance;~~
- F. ~~as necessary, a determination of the child care fee;~~
- G. ~~creation of a case in the DCIS II Child Care Sub-system;~~
- H. ~~as appropriate, completion of the Service Authorization Form;~~
- I. ~~completion of the Child Care Payment Agreement; and~~
- J. ~~a review of the parent/caretaker's rights and responsibilities, such as keeping their Case Manager informed of changes.~~

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

1. DSS will provide child care assistance for eligible children when a parent or caretaker:
 - Participates in a TANF or Food Benefit Employment and Training (E&T) program;
 - Participates in the TANF Transitional Work Program (TWP);
 - **[Attends a DSS-approved educational program or job training program;]**
 - Is employed or accepts an offer of employment;
 - Receives protective services from the Division of Family Services (DFS); or
 - Verifies a special need.
2. A parent or caretaker may apply for child care:
 - In person at any DSS location;
 - Over the phone with a DSS case worker;
 - By mailing, faxing, or emailing a completed application to the local DSS office; or
 - Online through Delaware ASSIST or other online application methods.
3. DSS will interview the applicant and process the signed child care application within two business days. The [application] filing date will be the effective begin date for assistance.

4. A parent or caretaker must verify household income and the need for child care during the application process.
 - A. A parent or caretaker must verify the last 30 days of earned and unearned income received prior to the date of application for DSS to determine financial eligibility.
 - i. Earned income may be verified by:
 - a. Wage stubs;
 - b. A signed employer statement on employer letterhead noting the employee's name, start date, work schedule, earnings, and frequency of pay;
 - c. Verification of Employment (Form 170); or
 - d. A data match confirming employment and income.
 - ii. Unearned income may be verified by:
 - a. Award letters;
 - b. Pension statements;
 - c. Court order documentation;
 - d. Other forms of documentation from sources verifying the gross unearned income amount; or
 - e. A data match confirming unearned income.
 - B. A parent or caretaker must verify their need for child care by providing:
 - i. Wage verification or an offer of employment that includes the amount of work hours;
 - ii. A schedule, proof of registration, or statement from an authorized education program verifying the start date, days and hours of attendance, and expected completion date;
 - iii. A schedule, proof of registration, or statement from an authorized training program verifying the start date, days and hours of attendance, and expected completion date;
 - iv. A DFS referral for protective care; or
 - v. Child Care Medical Certification Form (Form 611) or written documentation completed by a physician or medical professional that verifies a special need and the required care.
 - C. Presumptive child care may open when a parent or caretaker reports income and a need for child care but has not provided all mandatory verifications in accordance with DSSM 11004.8.
5. A parent or caretaker must provide all mandatory verifications, complete an intake interview, and make a provider selection within 30 days from the application date for child care to become effective on the application filing date.
 - A. If information is returned after 30 days of the application date, but before 60 days, child care will begin on the date verifications are received.
 - B. If information is not returned before 60 days from the application date, the parent or caretaker must reapply for child care.
6. DSS must inform parents and caretakers of their:
 - Eligibility determination;
 - Monthly parent copayment amount; and
 - Rights and responsibilities for the Child Care Subsidy Program.
7. DSS must give parents and caretakers a Subsidized Child Care Client Agreement (Form 626) when child care approval cannot be generated from the eligibility system.

POLICY AMENDMENT

Delaware Health and Social Services
 Division of Social Services
 Policy and Program Development Unit

11004.8 Defining Presumptive Child Care Services**[Statutory Authority]**

31 Del.C. §503(e), 508, and 512(1)

~~Presumptive Child Care is a limited one to two month eligibility period and authorization for child care. This will be automatically generated when a mandatory verification field is in the "pending verification" status and the parent/ caretaker did not receive Child Care in the previous month.~~

~~When the case is entered into the DCIS II Child Care Sub system and the status is pending due to verification needed, the system automatically calculates the 10 day period allowed for the return of necessary information. If the case is entered and the 10 day calculation falls prior to adverse action, the system will generate an authorization for the current month only. If the case is entered and the 10 day calculation falls after adverse action the system will generate an authorization for the current month and the next month only. Eligibility will be denied after the presumptive period if the client does not return the necessary information. It will be necessary to change the appropriate fields and check verified if the client returns the necessary information. The system will generate the appropriate notices.~~

~~If a client was opened in Presumptive Child Care or denied Presumptive Child Care in the previous determination, Presumptive Child Care will not be issued.~~

This policy applies to parents and caretakers who need immediate child care services, but who have not verified all mandatory eligibility factors.

1. Parents and caretakers may self-declare income and the need for child care at the time of application and receive presumptive child care services if they are determined eligible pending verifications.
2. Presumptive child care is limited to a one- or two-month eligibility and authorization period.
 - A. If a case is pending verifications prior to [the date of] adverse action [in the eligibility system], child care will be approved for the current month only.
 - B. If a case is pending verifications after [the date of] adverse action [in the eligibility system], child care will be approved for the current month and the next month only.

[Note: Families who apply for Purchase of Care and meet the definition of "homeless" in DSSM 1003.7.2 will receive presumptive child care services for 90 days, regardless of whether documentation is provided at the time of application.]

3. Parents and caretakers are not eligible for presumptive child care if they:
 - Received child care assistance in the previous month;
 - Were open in presumptive child care in their previous eligibility determination; or
 - Were denied for presumptive child care in their previous eligibility determination.
4. DSS case workers will:
 - A. Process the child care application and complete the intake interview within two business days for parents and caretakers in need of presumptive child care services.
 - B. Enter the application information and select "pending verification" for missing mandatory verifications in the eligibility system. The eligibility system will automatically open presumptive child care if the parent or caretaker is eligible in accordance with section (3) of this policy.
 - C. Enter the presumptive child care authorization period of one or two months after the child care

has been confirmed.

- D. Inform the parent or caretaker in writing of the mandatory verifications required to complete the eligibility determination for child care.
 - E. Update the mandatory verifications in the eligibility system to "verified" once the parent or caretaker provides the mandatory verifications.
 - i. The case worker will also update the authorization to the next review period, which will be 12 months from the application filing date, unless a shorter authorization period was requested in writing in accordance with DSSM 11004.5.
 - F. Update the mandatory verifications in the eligibility system to "not verified" one day after the requested return date if the parent or caretaker fails to provide the mandatory verifications.
 - i. The child care case will close at the end of the presumptive child care authorization period.
-

DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311, 3370, and 3571R, and 29 Delaware Code, Section 10113 (18 **Del.C.** §§311, 3370, & 3571R; 29 **Del.C.** §10113)
18 **DE Admin. Code** 1409

FINAL ORDER

1409 Insurance Coverage for Telemedicine and Telehealth

Regulation 1409, entitled Insurance Coverage for Telemedicine and Telehealth, sets forth requirements for insurance coverage for the delivery of healthcare using telemedicine and telehealth.

On March 12, 2020, Delaware's Governor issued a Declaration of a State of Emergency for the State of Delaware (the Declaration) due to a public health threat as a result of the COVID-19 pandemic. Thereafter, the Declaration was amended through a series of modifications and a Joint Order of the Department of Health and Social Services and the Delaware Emergency Management Agency (the Joint Order), which, in total, eased restrictions on who may provide medical services through telehealth, who may receive those services and under what circumstances, and how those services were to be paid.

On July 17, 2020, the Governor signed House Substitute 1 for House Bill 348 as modified by House Amendment 1 (150th General Assembly) (the Act). The Act, which expired on July 1, 2021, promulgated the telemedicine-related requirements in the Declaration as further modified in the Joint Order. The Act included revisions to sections 3370 and 3571R of the Delaware Insurance Code.

On June 23, 2021, the Governor signed House Bill 160 as amended by House Amendment 1 (151st General Assembly), known as the Telehealth Access Preservation and Modernization Act of 2021 (TAPM 21). TAPM21 generally makes permanent the telehealth flexibilities put in place under the Act. TAPM 21 became effective on July 1, 2021.

With this order, the Department is updating Regulation 1409 to conform the regulation with TAPM21, including updating definitions and removing the July 1, 2021 expiration date. These updates are exempt from the requirement of public notice and comment because they include "amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations," pursuant to 29 Del.C. § 10113(b)(5).

This order shall be effective 10 days after publication in the *Register of Regulations*.

IT IS SO ORDERED.

This 19 day of July, 2021

Trinidad Navarro
Commissioner, Delaware Department of Insurance

1409 Insurance Coverage for Telemedicine and Telehealth

1.0 Authority

This regulation is adopted by the Commissioner pursuant to the authority granted by 18 **Del.C.** §§311, 3370 and 3571R and is promulgated in accordance with 29 **Del.C.** Chapter 101.

2.0 Definitions

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

"Distant site" means a site at which a health care provider legally allowed to practice in the state is located while providing health care services by means of telehealth.

"Originating site" means a site in Delaware ~~or outside of Delaware if the patient is a Delaware resident~~ at which a patient is located at the time health care services are provided to the patient by means of telemedicine or telehealth, unless the term is otherwise defined with respect to the provision in which it is used; ~~provided, however, notwithstanding used. Notwithstanding~~ any other provision of law, insurers and providers may agree to alternative siting arrangements deemed appropriate by the parties.

"Store and forward transfer" means ~~the transmission of a patient's medical information either to or from an originating site or to or from the provider at the distant site, but does not require the patient being present nor must it be in real time. the synchronous or asynchronous transmission of a patient's medical information either to or from an originating site or to or from the provider at the distant site, but does not require the patient being present nor must it be in real time, as set forth in 24 Del.C. §6001(4).~~

"Telehealth" means the use of information and communications technologies consisting of telephones, ~~store and forward transfers~~, remote patient monitoring devices or other electronic means which support clinical health care, health-care provider consultation, patient and professional health-related education, public health, and health administration administration, and other services which may not require the use of technology permitting visual communication. as authorized in 24 **Del.C.** Ch. 60.

"Telemedicine" ~~means a form is a subset~~ of telehealth which is the delivery of clinical health-care services and other services, as authorized in 24 Del.C. Ch. 60, by means of real time 2-way audio, visual, or other telecommunications or electronic communications, including the application of secure video conferencing or store and forward transfer technology to provide or support health-care delivery, which facilitate the assessment, diagnosis, consultation, treatment, education, care management and self-management of a patient's ~~health-care health-care~~ by a health-care provider legally allowed to practice in the state and practicing within his or her the health-care provider's scope of practice as would be practiced in-person with a patient, and legally allowed to practice in the State, or other jurisdiction when treating a Delaware resident, while such patient is at an originating site and the health-care provider is at a distant site.

3.0 Compliance with Statutes Regarding Telemedicine and Telehealth

Each insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis; each health service corporation providing individual or group accident and sickness subscription contracts; and each managed care organization and health maintenance organization providing a health care plan for health care services shall comply with the provisions of 18 **Del.C.** §§3370 and 3571R, and this regulation.

4.0 Telehealth

- 4.1 Each insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis; each health service corporation providing individual or group accident and sickness subscription contracts; and

each managed care organization and health maintenance organization providing a health care plan for health care services shall provide coverage for the cost of such health care services provided through telehealth. Coverage for health care services provided through telehealth shall be provided so long as the underlying health care service is a covered service and the health care provider providing the service is licensed to furnish the service under State law and is practicing within the scope of State ~~law~~. law, including but not limited to 24 Del.C. Ch. 60.

- 4.2 No insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis; health service corporation providing individual or group accident and sickness subscription contracts; or managed care organization or health maintenance organization providing a health care plan for health care services shall impose any limitation on the ability of an insured to seek medical care through the use of telehealth service solely because the health care service is being provided through telehealth. Such prohibited limitations shall include, but not be limited to, preauthorization, medical necessity, homebound requirements, or requiring the use of technology permitting visual communication.

5.0 Severability

If any provision of this regulation or the application of any such provision to any person or circumstance shall be held invalid, the remainder of such provisions, and the application of such provision to any person or circumstance other than those as to which it is held invalid, shall not be affected.

6.0 Effective Date

This regulation became effective on February 11, 2016, ten (10) days after being published as a final regulation. The amendments to the ~~regulation shall become regulation~~, effective November 11, 2020, and shall ~~expire 2020 (the 2020 amendments)~~ on July 1, 2021, unless extended by order of the Commissioner. The expiration date of the 2020 amendments was removed by operation of the Telehealth Access Preservation and Modernization Act of 2021, HB 160/HA1 (151st Gen. Assembly) and by order of the Commissioner dated July 19, 2021.

DEPARTMENT OF LABOR DIVISION OF INDUSTRIAL AFFAIRS

Statutory Authority: 19 Delaware Code, Sections 105(a)(8) and 3503(f); 29 Delaware Code, Section 8503(7) (19 **Del.C.** §§105(a)(8) & §3503(f); 29 **Del.C.** §8503(7))
19 **DE Admin. Code** 1326

FINAL ORDER

1326 Workplace Fraud Act Regulations

I. NATURE OF PROCEEDINGS

Pursuant to its authority under 29 *Del. C.* § 8503(7), 19 *Del. C.* § 105(a)(8) and 19 *Del. C.* § 3503(f) the State of Delaware, Department of Labor's Division of Industrial Affairs (herein "the Division") proposed to amend its regulations. The Division's purpose in proposing these amendments was to explicitly prohibit labor brokers from providing construction services. The proposed amendments also allow general contractors, construction managers, and subcontractors to engage other construction companies in the same line of work as the general contractor, construction manager, or subcontractor. Minor amendments and changes were also inserted regarding definitions.

Notice of a public comment period of thirty (30) days on the Division's proposed amended regulations was published in the *Delaware Register of Regulations* for July 1, 2021 as well as in two Delaware newspapers of general circulation in accordance with 29 *Del. C.* § 10115. This is the Division's Decision and Order adopting the proposed amended regulations.

FINAL REGULATIONS

II. PUBLIC COMMENTS

The Division received no public comments in response to its notice of intention to adopt the proposed regulations apart from comments praising the Division's efforts. The Division did not receive written comments suggesting changes to the proposed regulations.

III. FINDINGS AND CONCLUSIONS

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

IV. ORDER

AND NOW this 12th day of August 2021, it is hereby ordered that:

1. The proposed amendments to the Division's regulations are adopted;
2. The text of the final regulations shall be in the form attached hereto as Exhibit A;
3. The effective date of this Order is ten days from the date of its publication in the *Delaware Register of Regulations* in accordance with 29 *Del. C.* §10118(e); and
4. The Division reserves to itself the authority to issue such order and further orders concerning its Regulations as it deems appropriate.

IT IS SO ORDERED.

Department of Labor

Karryl Hubbard, Secretary of Labor

***Please note that no changes were made to the regulation as originally proposed and published in the July 2021 issue of the *Register* at page 61 (25 DE Reg. 61). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

[1326 Workplace Fraud Act Regulations](#)

DIVISION OF INDUSTRIAL AFFAIRS

Statutory Authority: 19 Delaware Code, Sections 105(a)(8) and 3603; 29 Delaware Code, Section 8503(7) (19 **Del.C.** §§105(a)(8) & 3603; 29 **Del.C.** §8503(7))

FINAL ORDER

[1329 Delaware Contractor Registration Act Regulations](#)

I. NATURE OF PROCEEDINGS

Pursuant to its authority under 29 *Del. C.* § 8503(7), 19 *Del. C.* § 105(a)(8) and 19 *Del. C.* § 3603 the State of Delaware, Department of Labor's Division of Industrial Affairs (herein "the Division") proposed regulations. The Division's purpose in proposing these regulations is to provide guidance to entities seeking to register under the Delaware Contractor Registration Act. The proposed regulations will also provide guidance on enforcement procedures of the Delaware Department of Labor and outline the administrative process for entities found by the Department to in violation of the Delaware Contractor Registration Act.

Notice of a public comment period of thirty (30) days on the Division's proposed regulations was published in the *Delaware Register of Regulations* for July 1, 2021 as well as in two Delaware newspapers of general circulation in accordance with 29 *Del. C.* § 10115. This is the Division's Decision and Order adopting the proposed regulations.

II. PUBLIC COMMENTS

The Division received public comments in response to its notice of intention to adopt the proposed regulations apart from comments praising the Division's efforts. The Division received written comments suggesting changes to the proposed regulations.

III. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Notice of the proposed regulation was published in the *Register of Regulations* on July 1, 2021. In addition, notice of the proposed regulation was published in *The News Journal* on July 3, 2021 and *Delaware State News* on July 5, 2021. The Division received one public comment at the public hearing on July 26, 2021.

In addition, the Division received nine written submittals regarding the proposed regulation. Most of the evidence and information received was repetitive in nature from the comments received by the Department. Some of the comments concerned the authority that has been granted to the Secretary of Labor in denying, suspending and or revoking a Certificate of Registration. Also, there was concerns about the Department requiring contractors to submit surety bonds while under investigation. In addition, there were questions regarding the ability for a contractor seek judicial review in a higher court prior to having their certificate suspended or revoked by the Secretary of Labor. The Division also received a public comment that the Regulations match the expectations and core principles that were discussed and wish to adopt the Regulations as written with no changes.

IV. FINDINGS AND CONCLUSIONS

The Division reviewed and considered the written submittals in addition to the public comment provided during the public hearing. The Division clarified language by adding subsection 13.3 in response to the comments seeking clarification on the judicial review process. In accordance with 29 **Del. C.** § 10118(c), the Division determined the addition of subsection 13.3 are not substantive, and as a result, is not required to repropose the changes. Accordingly, the Division finds that it is appropriate to adopt the proposed regulation, 19 **DE Admin. Code** 1329, pursuant to 19 **Del.C.** §§105(a)(8) & §3603 and 29 **Del.C.** §8503(7). The text of 19 **DE Admin. Code** 1329 shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 19 **DE Admin. Code** 1329 Contractor Registration Act in the Administrative Code of Regulations for the Division.

V. ORDER

AND NOW this 16th day of August 2021, it is hereby ordered that:

1. The Division's regulations are adopted;
2. The text of the final regulations shall be in the form attached hereto as Exhibit A;
3. The effective date of this Order is ten days from the date of its publication in the *Delaware Register of Regulations* in accordance with 29 *Del. C.* §10118(e); and
4. The Division reserves to itself the authority to issue such order and further orders concerning its Regulations as it deems appropriate.

IT IS SO ORDERED.

Department of Labor

Karryl Hubbard, Secretary of Labor

1329 Delaware Contractor Registration Act Regulations
(Break in Continuity of Sections)

13.0 Judicial Review

(Break in Continuity Within Section)

- [13.3 If a contractor seeks judicial review of a final determination from the Secretary as provided in subsection 13.1, the 20-day period to return or surrender the contractor's certificate of registration pursuant to subsection 13.2, is tolled until the matter has been fully determined on appeal to the appropriate court.]

*Please note that no additional changes were made to the regulation as originally proposed and published in the July 2021 issue of the *Register* at page 62 (25 DE Reg. 62). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

1329 Delaware Contractor Registration Act Regulations

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901 (c & d) and 903(e)(2)a.1
(7 **Del.C.** §§901 (c & d) & 903(e)(2)a.1)
7 **DE Admin. Code** 3541

Secretary's Order No.: 2021-F-0018

**RE: Approving Final Regulation, pursuant to 7 Del. C. §903(e)(2)a.1,
to Amend 7 DE Admin. Code 3541: *Atlantic Sharks***

Date of Issuance: July 21, 2021

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

3541 Atlantic Sharks

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

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

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

mandated by 7 Del. C. §903(e)(2)a.2.

Background, Procedural History and Findings of Fact

This order amends 7 DE Admin. Code 3541: *Atlantic Sharks* to reduce fishing mortality on Shortfin Mako Shark by adopting mandatory management measures approved by the Atlantic States Marine Fisheries Commission's ("ASMFC") Coastal Sharks Management Board to remain compliant with the Interstate Fishery Management Plan for Atlantic Coastal Sharks. Specifically, this order adopts new minimum recreational fishing size limits for Shortfin Mako Shark and restricts the type of fishing hook that can be used when recreationally fishing for most Atlantic shark species. The 2017 International Commission for the Conservation of Atlantic Tunas ("ICCAT") stock assessment determined that North Atlantic Shortfin Mako Shark were overfished, and overfishing is occurring. In response and consistent with the ICCAT binding Recommendation 17-08 and the *Magnuson-Stevens Fishery Conservation and Management Act*, the National Marine Fisheries Service amended the 2006 Consolidated Atlantic Highly Migratory Species Fisheries Management Plan and adopted a final rule for Shortfin Mako Shark to reduce fishing mortality and establish a foundation for rebuilding the Shortfin Mako Shark population.

Among the specific management measures included in the final federal rule are a required 71-inch (fork length) recreational minimum size limit for male Shortfin Mako Shark and an 83-inch (fork length) recreational minimum size limit for female Shortfin Mako Shark. The final federal rule also requires the use of non-offset, corrodible circle hooks when fishing for most Atlantic sharks, except when fishing with flies or artificial lures. The ASMFC's Coastal Sharks Board, in accordance with Addendum V to the Interstate Fishery Management Plan for Atlantic Coastal Sharks adopted these specific, non-optional, management measures for state waters to provide consistency with federal measures as part of ongoing efforts to rebuild the North Atlantic Shortfin Mako Shark stock. The ASMFC Coastal Shark Board further limited hook use to non-stainless-steel circle hooks when fishing for most Atlantic shark species recreationally.

The Department has the statutory basis and legal authority to act with regard to promulgation of the proposed amendments to 7 DE Admin. Code 3541: *Atlantic Sharks*, pursuant to 7 Del. C. §§901 (c & d) and 903(e)(2)a.1. The specific management measures are required by the ASMFC Addendum V to the Interstate Fishery Management Plan for Atlantic Coastal Sharks and are consistent with federal management measures in Amendment 11 to the 2006 Consolidated Atlantic Highly Migratory Species Fisheries Management Plan and the associated final federal rules (50 CFR 635).

ORDER

In accordance with 7 Del. C. §903(e)(2)a.1, it is hereby ordered, this 21st day of July, 2021 that the above referenced amendments to 7 DE Admin. Code 3541: *Atlantic Sharks*, a copy of which is hereby attached, are supported by the evidence contained herein and are hereby adopted. The above referenced amendment shall take effect 48 hours following publication of this Secretary's Order and regulation on the Department's website in accordance with 7 Del. C. §903(e)(2)a.2.

Shawn M. Garvin, Secretary

3541 Atlantic Sharks

(Penalty Section 7 Del.C. §936(b)(2))

1.0 Definitions:

“**Aggregated large coastal species**” means any of the following species of sharks or parts thereof:

- Nurse shark, *Ginglymostoma cirratum*
- Blacktip shark, *Carcharhinus limbatus*
- Bull shark, *Carcharhinus leucas*
- Lemon shark, *Neqapron brevirostris*
- Silky shark, *Carcharhinus falciformis*
- Spinner shark, *Carcharhinus brevipinna*
- Tiger shark, *Galeocerdo cuvieri*

“**Blacknose shark**” means *Carcharhinus acronotus* or any parts thereof.

“**Circle hook**” means a fishing hook originally designed and manufactured so that the point is turned perpendicularly back to the shank to form a generally circular or oval shape.

“**Corrodible**” means not made of stainless steel or other material resistant to corrosion.

“**Fillet**” means to remove slices of fish flesh, of irregular size and shape, from the carcass by cuts made parallel to the backbone.

“**Hammerhead species**” means any of the following species of sharks or parts thereof:

Great hammerhead, *Sphyrna mokarran*

Scalloped hammerhead, *Sphyrna lewini*

Smooth hammerhead, *Sphyrna zygaena*

“**Land or landing**” means to put or cause to go on shore from a vessel.

“**Management unit**” means any of the aggregated large coastal species, small coastal species, blacknose shark, hammerhead species, pelagic species and prohibited species of sharks or parts thereof defined in this regulation.

“**NOAA Fisheries**” means National Oceanic and Atmospheric Administration’s National Marine Fisheries Service.

“**Non-offset**” means the point and barb being in the same plane as the shank.

“**Pelagic species**” means any of the following species of sharks or parts thereof:

Porbeagle shark, *Lamna nasus*

Shortfin mako, *Isurus oxyrinchus*

Blue shark, *Prionace glauca*

Oceanic whitetip shark, *Carcharhinus longimanus*

Common thresher shark, *Alopias vulpinus*

“**Prohibited species**” means any of the following species of sharks or parts thereof:

Basking shark, *Cetorhinidae maximus*

White shark, *Carcharodon carcharias*

Bigeye sand tiger, *Odontaspis noronhai*

Sand tiger, *Odontaspis taurus*

Whale shark, *Rhincodon typus*

Bignose shark, *Carcharhinus altimus*

Caribbean reef shark, *Carcharhinus perezi*

Dusky shark, *Carcharhinus obscurus*

Galapagos shark, *Carcharhinus galapagensis*

Narrowtooth shark, *Carcharhinus brachyurus*

Night shark, *Carcharhinus signatus*

Atlantic angel shark, *Squatina dumerili*

Caribbean sharpnose shark, *Rhizoprionodon porosus*

Smalltail shark, *Carcharhinus porosus*

Bigeye sixgill shark, *Hexanchus vitulus*

Sevengill shark, *Heptranchias perlo*

Sixgill shark, *Hexanchus griseus*

Longfin mako, *Isurus paucus*

Bigeye thresher, *Alopias superciliosus*

“**Sandbar shark**” or “**research species**” means *Carcharhinus plumbeus* or any parts thereof.

“**Shore fishing**” or “**shore angler**” means any fishing that does not take place on board a vessel.

“**Small coastal species**” means any of the following species of sharks or parts thereof:

Bonnethead, *Sphyrna tiburo*

Atlantic sharpnose shark, *Rhizoprionodon terraenovae*

Finetooth shark, *Carcharhinus isodon*

“Smoothhound” means any of the following species of sharks or parts thereof:

Smooth dogfish, *Mustelus canis*

Florida smoothhound, *Mustelus norrisi*

2.0 Prohibited Species

- 2.1 It is unlawful for any person to land, purchase, trade, barter, or possess or attempt to land, purchase, trade, barter, or possess a prohibited species.
- 2.2 It is unlawful for any hook and line fisherman to remove from the water sandbar shark, or any other species of shark when prohibited from harvest under §3541.
- 2.3 It is unlawful for any person to engage in a directed commercial fishery for a prohibited or research species.

3.0 Finning

- 3.1 Except as provided in 3.2, it is unlawful for any person to possess the fins from any shark in the management unit prior to landing said shark unless said fins are naturally attached to the body of said shark.
- 3.2 A person issued a valid commercial food fish license may completely remove the fins from any smoothhound, provided the total weight of the fins does not exceed twelve (12) percent of the total dressed weight of smoothhound complex carcasses on board a vessel.

4.0 Fishing Methods

- 4.1 It is unlawful for any person to fish for any shark while in state waters with any fishing equipment or by any method, except: (1) Hook and Line; (2) Gill Net.
- 4.2 It is unlawful to use any hook other than a non-offset, corrodible circle hook when recreationally fishing for the sharks specified in this regulation, excluding smoothhound, except when fishing with artificial lures or flies.

5.0 Filleting Prior to Landing

It is unlawful for any person to fillet a shark in the management unit prior to landing said shark. A shark may be eviscerated prior to landing said shark, but the head, tail, and fins must remain naturally attached to the carcass, except as provided in 3.2 and commercial fishermen may eviscerate and remove the head of any shark reduced to possession, but the tail and fins must remain attached to the carcass.

6.0 Shark Handling

It is unlawful to release any shark in the management unit or any sandbar shark in a manner that will not ensure said sharks maximum probability of survival. All species of shark when prohibited from harvest under §3541 must be immediately released.

7.0 Recreational Possession Limits

- 7.1 It is unlawful for the operator of any vessel without a commercial food fishing license to have on board said vessel more than one non-prohibited shark per trip from among those species in the management unit, regardless of the number of people on board the vessel. In addition each recreational angler fishing from a vessel may harvest and possess one bonnethead, and one Atlantic sharpnose shark per trip.
- 7.2 It is unlawful for any shore angler without a commercial foodfishing license to take and reduce to possession more than one non-prohibited shark from among those species in the management unit per day (a day being 24 hours). Recreational shore anglers may also harvest one additional bonnethead, and one additional Atlantic sharpnose shark per day.

8.0 Unlawful Sale

It is unlawful for any shark from the management unit caught in state waters to be bought and sold without a federal shark dealer permit.

9.0 Commercial Quotas and Limits

- 9.1 It is unlawful for any person who has been issued a valid commercial food fishing license while on board any vessel to possess any non-prohibited shark from the management unit after the closure date set by NOAA Fisheries for that fishery. Further, it is unlawful for any person who has been issued a valid commercial food fishing license while on board any vessel to possess any non-prohibited sharks from the management unit in excess of current federal daily harvest limits administered by NOAA Fisheries.
- 9.2 Delaware's annual smoothhound quota will be 0.339 percent of the coastwide quota in accordance with the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Atlantic Coastal Sharks.
- 9.3 When the Department has determined that 95% of Delaware's annual smoothhound quota allocation has been landed, the Department shall establish, based on recent fishery performance and landings, a date and time to order the fishery closed.
- 9.4 It is unlawful for any person who has been issued a valid commercial food fishing license while on board any vessel to possess any smoothhound once the Department has ordered the fishery closed.
- 9.5 Any overage in the Delaware's annual commercial smoothhound quota will be subtracted from the following year's smoothhound quota allocation.

10.0 Recreational Size Limits

- 10.1 It is unlawful to possess without a valid commercial foodfishing license any non-prohibited shark from among those species in the management unit that measures less than 54 inches, fork length (tip of snout to indentation between dorsal and ventral tail lobes), - except as provided in ~~40.2 and 10.2~~, 10.3, and 10.4.
- 10.2 It is unlawful to possess without a valid commercial food fishing license any hammerhead species that measures less than 78 inches, fork length (tip of snout to indentation between dorsal and ventral tail lobes).
- 10.3 It is unlawful to possess without a valid commercial foodfishing license any male shortfin mako that measures less than 71 inches fork length (tip of snout to indentation between dorsal and ventral tail lobes) or any female shortfin mako that measures less than 83 inches fork length.
- ~~40.3~~ 10.4 Smoothhound, bonnethead, Atlantic sharpnose, blacknose, and finetooth sharks are exempt from size limits.

11.0 Aggregated Large Coastal Sharks Closed Season

It is unlawful to possess silky, tiger, blacktip, spinner, bull, lemon, nurse, scalloped hammerhead, great hammerhead, and smooth hammerhead sharks from May 15 through July 15, regardless of where the shark was caught. Fishermen who catch any of these species in federal waters may not transport them through Delaware state waters during the aforementioned closed season.

12.0 Unlawful Possession of Sandbar Shark and Exception

It is unlawful to land or possess any sandbar sharks, except for a commercial fisherman in possession of a valid sandbar shark research permit issued by NOAA Fisheries. There must be a qualified observer aboard any vessel that lands and possesses sandbar sharks fishing under the auspices of a valid federal research permit.

13.0 Federally Prohibited Shark Reciprocity

It is unlawful to land or possess any species of shark in state waters that is illegal to catch or land or possess in federal waters.

14.0 Collecting for Research or Display

The Department may grant anyone permission to take and possess sharks that would otherwise be illegal to take and possess when used for display and/or research purposes. Applicants will need a current State of Delaware scientific collecting permit and a valid federal sandbar shark research permit, if collecting sandbar sharks. Applicants must annually report the number, weight, species, location caught, and gear used for each shark collected for research or display purposes, and the annual disposition of said sharks throughout the life of each shark so taken. The Division reserves the right to place limits on or deny any request to take prohibited species of sharks under the auspices of a scientific collecting permit.

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901(b), (c), and (d); and 903(a), (b), and(e)(2)a.
(7 Del.C. §§901(b), (c), and (d) & 903(a), (b) & (e)(2)a.)
7 DE Admin. Code 3542

Secretary's Order No: 2021-F-0021

RE: Approving Final Amendments to 7 DE Admin. Code 3542-*Tilefish*

Date of Issuance: August 16, 2021

Effective Date: September 11, 2021

3542 Tilefish

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

Background, Procedural History and Findings of Fact

This Order relates to 7 DE Admin. Code 3542-*Tilefish* ("Amendments"). The Department proposes revisions to the existing Tilefish regulations to implement changes to the recreational and commercial daily possession limits and establish a closed recreational season for Tilefish throughout Delaware state waters, thus making the Regulation identical to the Mid-Atlantic Marine Fisheries Council's ("MAFMC") federal water regulation for Tilefish.

This action is being taken by the Department to provide consistency between the State of Delaware and federal waterlines. In 2016, Delaware implemented Tilefish Regulations for Golden and Blueline Tilefish that limits recreational landing to a total of seven Tilefish between the two types of fish and both have a no closed season. The recreational possession limits established by Delaware are less stringent than the new federal regulations for Tilefish.

In the years 2020 and 2021, the MAFMC adopted federal regulations that limit Tilefish recreational landings to: (1) eight Golden Tilefish, with no closed season; (2) three Blueline Tilefish per private vessel; (3) five Blueline Tilefish per United States Coast Guard uninspected for-hire vessel; (4) seven Blueline Tilefish per United States Coast Guard inspected for-hire vessel, and (5) a closed season for Blueline Tilefish from November 1 through April 30.

The conflicting limits established by Delaware and MAFMC for Tilefish have proven to be confusing for anglers and could inadvertently lead to violations by anglers harvesting Tilefish between the waterlines.

The Department proposes to amend the Regulation to be identical to that of the federal regulations for consistency purposes. The Amendments will increase the recreational landing limit for Tilefish as per the

aforementioned limits established by MAFMC and increase the commercial daily landings limit for state waters, from 300 pounds to the federal waters limit of 500 pounds.

The Department has the statutory basis and legal authority to act with regard to the formal promulgation of these Amendments, pursuant to 7 *Del.C.* §§901(b), (c), &(d); 903(a), (b) & (e)(2)a. The Department published its initial proposed regulation Amendments in the July 1, 2021, *Delaware Register of Regulations*. Thereafter, the public hearing regarding this matter was held on July 22, 2021. There were two (2) members of the public in attendance with no comments received by the Department for the formal promulgation. Pursuant to 29 *Del.C.* §10118(a), the hearing record ("Record") remained open for receipt of additional written comment for 15 days following the public hearing. The Record formally closed on August 6, 2021.

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

Subsequent to the close of the Record, the Hearing Officer prepared the Hearing Officer's Report dated August 9, 2021 ("Report"), which expressly incorporated the Department's Amendments into the Record generated in this matter. The Report documents the proper completion of the required regulatory amendment process, establishes the Record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix "A."

Reasons and Conclusions

Based on the Record developed by the Department's experts in the Division of Fish and Wildlife, and established by the Hearing Officer's Report, I find that the proposed regulatory Amendments to 7 DE Admin. Code 3542-*Tilefish* are well-supported. I further find that the Department's experts fully developed the record to support adoption of these Amendments. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed Amendments be promulgated as final.

The following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to 7 *Del. C.* §§901(b),(c),&(d); 903(a), (b) & (e)(2)a;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Chapter 60, to issue an Order adopting these proposed Amendments as final;
3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on July 22, 2021, and during the 15 days subsequent to the hearing (through August 6, 2021), before making any final decision;
4. Promulgation of the proposed Amendments to 7 DE Admin. Code 3542-*Tilefish*, will enable the Department to implement changes to the recreational and commercial daily possession limits and establish a closed recreational season for Tilefish throughout Delaware state waters, thus making the Regulation identical to the MAFMC's federal water regulation for Tilefish;
5. The Department has reviewed the proposed Amendments in light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and has selected Exemption "B1," as this regulation is not substantially likely to impose additional cost or burdens upon individuals and/or small businesses;
6. The Department's proposed regulatory Amendments, as initially published in the July 1, 2021, *Delaware Register of Regulations*, and as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and
7. The Department shall submit the proposed Amendments as final regulatory amendments to the *Delaware Register of Regulations* for publication in its next available issue and provide such other notice as the law and regulation require, and the Department determines is appropriate.

Shawn M. Garvin
Secretary

3542 Tilefish

1.0 Tilefish possession limits

- 1.1 It is unlawful for a recreational finfisherman to possess aboard a vessel more than ~~seven (7)~~ tilefish in aggregate to include eight golden tilefish (*Lopholatilus chamaelonticeps*), unless otherwise authorized by the Department. It is unlawful for a recreational finfisherman to possess more than three blueline tilefish (*Caulolatilus microps*) or golden tilefish (*Lopholatilus chamaelonticeps*) if fishing from a private vessel, more than five blueline tilefish if fishing from a United States Coast Guard uninspected for-hire vessel, or more than seven blueline tilefish if fishing from a United States Coast Guard inspected for-hire vessel, unless otherwise authorized by the Department.
- 1.2 It shall be unlawful for any recreational fisherman to take and reduce to possession or to land any blueline tilefish (*Lopholatilus chamaelonticeps*) beginning at 12:01 a.m. November 1 and ending midnight April 30.
- 4-21.3 Notwithstanding the provisions of subsection 1.1, a person issued a valid commercial food fishing license may possess aboard a vessel up to ~~300~~ 500 pounds of tilefish in aggregate to include blueline tilefish (*Caulolatilus microps*) or golden tilefish (*Lopholatilus chamaelonticeps*) in any number, provided said tilefish were taken using gear for which said person is lawfully permitted under 7 Del.C. §915.
- ~~4-31.4~~ It is unlawful for a person issued a valid commercial food fishing license to possess aboard a vessel more than ~~300~~ 500 pounds of tilefish in aggregate to include blueline tilefish (*Caulolatilus microps*) or golden tilefish (*Lopholatilus chamaelonticeps*).

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901 and 903(a), (b) & (e)
(7 Del.C. §§901 & 903(a), (b) & (e))
7 DE Admin. Code 3550

Secretary's Order No: 2021-F-0022

RE: Approving Final Amendments to 7 DE Admin. Code 3550 - *Cobia*

Date of Issuance: August 16, 2021

Effective Date: September 11, 2021

3550 *Cobia* (*Rachycentron canadum*)

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

Background, Procedural History and Findings of Fact

This Order relates to 7 DE Admin. Code 3550 - *Cobia* ("Amendments"). The Department proposes revisions to the existing regulations to implement changes to *Rachycentron canadum*'s ("*Cobia*") minimum size, vessel limit and open season throughout the State of Delaware.

This action is being taken by the Department to maintain compliance with Addendum I to the Interstate Fishery Management Plan for Atlantic Migratory Group *Cobia* ("*Cobia* FMP") under the authority of the *Atlantic Coastal Fisheries Cooperative Management Act* ("ACFCMA") (16 USC §§5101, et seq.) that was adopted by the Atlantic States Marine Fisheries Commission ("ASMFC") in October 2020. The ASMFC adopted the Addendum I to the *Cobia* FMP to mandate changes to recreational *de minimis* measures.

In May 2020, the Department adopted regulations to implement management measurements for *Cobia*. During that time, the *Cobia* FMP established the justification of *de minimis* status by recreational harvests, for states that have less than 1% of coastwide recreational landings by weight, within 2 of the most recent 3 years. As such,

Delaware qualified for *de minimis* status under the Cobia FMP criteria and adopted management measures that were the same as the Commonwealth of Virginia (the closest neighboring State with non-*de minimis* status).

The current Cobia regulations establish the commercial management measures at a minimum of 37 inches in total length, with a possession limit of two (2) fish per person and no greater than six (6) fish per vessel, and an open season of all year around. The Cobia recreational management measures are a minimum of 40 inches in total length, a possession limit of one (1) per person, no greater than three (3) per vessel, and an open season from June 1 - September 15.

Addendum I to the Cobia FMP redefined the recreational *de minimis* measures. As previously stated, Delaware qualifies for *de minimis* status under the Cobia FMP and to remain in compliance with the Cobia FMP, the Department may adopt either of two management options described below.

The Department considered the first option outlined in the Cobia FMP that reflects *de minimis* management measures to include recreational management measures of a minimum of 37 inches total length, a possession limit of one (1) fish per person, one (1) fish per vessel, and with open season all year ("Option 1").

The Department also considered a second option reflecting the management measures in place for Virginia, which is the nearest non-*de minimis* jurisdiction, with established management measures. The recreational management measures remain the same size limit as the May 2020 regulation, with a minimum of 40 inches in total length; however, only one (1) fish per vessel can measure more than fifty (50) inches, additionally a possession limit of one (1) per person and no greater than two (2) fish per vessel, and the open season is reduced by two weeks to June 15 - September 15 ("Option 2").

The commercial management measures for both options remain the same as the May 2020 regulation, as described above.

The overall benefits of Option 1 include a broader season (with no closed season) than the current restricted season and allows for anglers to catch legal-sized Cobia with reducing the recreational minimum size by 3 inches. Option 1 has also been implemented by New Jersey, providing consistency, and ease of compliance and enforcement, of regulations with Delaware's neighboring *de minimis* state that share waters in Delaware Bay.

The Department hereby adopts the Amendments with the implementation of Option 1 management measures. The Department believes that the implementation of the amended Cobia regulations will maintain social and economic benefits to the fishing communities involved, by ensuring a Cobia fishery for future generations. Moreover, the Department anticipates the proposed Amendments will not have any significant, measurable or predictable costs to the affected Delaware fisheries or their dependent businesses.

The Department has the statutory basis and legal authority to act with regard to the formal promulgation of these proposed Amendments, pursuant to 7 *Del.C.* §§901, 903(a), (b) and (e). The Department published its initial proposed regulation Amendments in the July 1, 2021, *Delaware Register of Regulations*. Thereafter, the public hearing regarding this matter was held on July 22, 2021. There were two members of the public in attendance, however no public comment was given at that time. Pursuant to 29 *Del.C.* §10118(a), the hearing record ("Record") remained open for receipt of additional written comment for 15 days following the public hearing. The Record formally closed for comment in this matter at close of business on August 6, 2021, with two comments received by the Department for the formal promulgation.

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

Subsequent to the close of the Record, and at the request of presiding Hearing Officer Theresa Newman, the Department's Division of Fish and Wildlife staff prepared a Technical Response Memorandum ("TRM"). The TRM responds to the comments received by the Department in this matter and provides a thorough discussion with regard to the two possible options for Cobia management for Delaware at this time. Since both Option 1 and Option 2 have identical commercial management limits for this fishery, the Department focused more on the benefits of recreational limits in its deliberations concerning this matter.

The Department's experts in the Division of Fish and Wildlife have concluded that Option 1 provides greater benefits than Option 2. The recreational management limits for Option 1 allow Delaware anglers to catch a legal-sized Cobia and the comments received are in favor of the year-round open season. Moreover, Option 1 is consistent with Delaware's neighboring state, New Jersey. As Delaware and New Jersey share waters in Delaware Bay, the consistency of the same measurements between the shared waters is more beneficial as both states tend to cross water lines. For these reasons, the Department proposes that Option 1 be incorporated into the aforementioned Amendments.

Following the receipt of the Department's TRM as noted above, the Hearing Officer prepared her Hearing

Officer's Report dated August 9, 2021 ("Report"), which expressly incorporated both the Department's proposed Amendments and the TRM into the Record generated in this matter. The Report documents the proper completion of the required regulatory amendment process, establishes the Record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix "A."

Reasons and Conclusions

Based on the Record developed by the Department's experts in the Division of Fish and Wildlife, and established by the Hearing Officer's Report, I find that the proposed regulatory Amendments to 7 DE Admin. 3550 - *Cobia*, are well supported. I further find that the Department's experts fully developed the record to support adoption of these Amendments. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed Amendments be promulgated as final.

The following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to 7 *Del. C.* §§901, 903(a), (b) and (e);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Chapter 60, to issue an Order adopting these proposed Amendments as final;
3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on July 1, 2021, and during the 15 days subsequent to the hearing (through August 6, 2021), before making any final decision;
4. Promulgation of the proposed Amendments to 7 DE Admin. Code 3550 - *Cobia*, will enable the Department to implement changes to *Cobia*'s minimum size, vessel limit and open season throughout the State of Delaware by adopting Option 1;
5. The Department has reviewed the proposed Amendments in light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and has selected Exemption "B1," as this regulation is not substantially likely to impose additional cost or burdens upon individuals and/or small businesses;
6. The Department's proposed regulatory Amendments, as initially published in the July 1, 2021 *Delaware Register of Regulations*, with the implementation of Option 1, and as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and
7. The Department shall submit the proposed Amendments as final regulatory amendments to the *Delaware Register of Regulations* for publication in its next available issue and provide such other notice as the law and regulation require, and the Department determines is appropriate.

Shawn M. Garvin
Secretary

3550 *Cobia (Rachycentron canadum)*

4.0 Recreational Seasons

- 4.1 ~~It is unlawful for a recreational fisherman to possess any Cobia during the periods of January 1 through May 31 and September 16 through December 31.~~
- 4.2 ~~It is lawful for a recreational fisherman to possess Cobia during the period of June 1 through September 15 in accordance with Sections 2.0 and 3.0.~~

2-01.0 Recreational Possession Limits

- ~~2-11.1 It is unlawful for a recreational fisherman to possess more than one Cobia per day or per trip, whichever is longer.~~

~~2-21.2~~ Except in accordance with ~~4-0~~ Section 3.0 of this section regulation, it is unlawful to have aboard any vessel more than ~~three~~ one Cobia.

~~3-0~~ 2.0 Recreational Size Limit

It is unlawful for a recreational fisherman to possess any Cobia that measures less than ~~40~~ 37 inches in total length.

~~4-0~~ 3.0 Commercial Possession Limits

~~4-1~~ 3.1 A commercial fisherman may take and reduce to possession no more than two Cobia per day or per trip, whichever is longer, using commercial fishing gear for which said fisherman is lawfully permitted.

~~4-2~~ 3.2 It is unlawful for a commercial fisherman to possess more than two Cobia per day or per trip, whichever is longer.

~~4-3~~ 3.3 Notwithstanding subsections ~~4-1~~ 3.1 and ~~4-2~~ 3.2, a commercial fishing vessel may have up to six Cobia per day or per trip, whichever is longer, onboard provided the number of Cobia does not exceed twice the number of commercial fishermen onboard that vessel.

~~5-0~~ 4.0 Commercial Size Limit

It is unlawful for a commercial fisherman to possess, trade, barter or sell or attempt to trade, barter or sell any Cobia that measure less than 37 inches in total length.

[OR

~~4.0~~ Recreational Seasons

~~4-1~~ It is unlawful for a recreational fisherman to possess any Cobia during the periods of January 1 through May 31 ~~June 14~~ and September 16 through December 31.

~~4-2~~ It is lawful for a recreational fisherman to possess Cobia during the period of June 1 ~~15~~ through September 15 in accordance with Sections ~~2.0~~ and ~~3.0~~.

~~2.0~~ Recreational Possession Limits

~~2-1~~ It is unlawful for a recreational fisherman to possess more than one Cobia per day or per trip, whichever is longer.

~~2-2~~ Except in accordance with ~~4.0~~ of this section, it is unlawful to have aboard any vessel more than three ~~two~~ Cobia with only one that measures greater than 50 inches in total length.

~~3.0~~ Recreational Size Limit

It is unlawful for a recreational fisherman to possess any Cobia that measures less than ~~40~~ inches in total length.

~~4.0~~ Commercial Possession Limits

~~4-1~~ A commercial fisherman may take and reduce to possession no more than two Cobia per day or per trip, whichever is longer, using commercial fishing gear for which said fisherman is lawfully permitted.

~~4-2~~ It is unlawful for a commercial fisherman to possess more than two Cobia per day or per trip, whichever is longer.

~~4-3~~ Notwithstanding subsections ~~4-1~~ and ~~4-2~~, a commercial fishing vessel may have up to six Cobia per day or per trip, whichever is longer, onboard provided the number of Cobia does not exceed twice the number of commercial fishermen onboard that vessel.

~~5.0~~ Commercial Size Limit

~~It is unlawful for a commercial fisherman to possess, trade, barter or sell or attempt to trade, barter or sell any Cobia that measure less than 37 inches in total length.]~~

DEPARTMENT OF SAFETY AND HOMELAND SECURITY DELAWARE SEX OFFENDER MANAGEMENT BOARD

Statutory Authority: 11 Delaware Code, Section 4120A(c)(8) (11 **Del.C.** §4120A(c)(8))
1 **DE Admin. Code** 1100

ORDER

1100 Delaware Sex Offender Management Board

NATURE OF THE PROCEEDINGS

At **24 DE Reg. 995** (May 1, 2021), the Sex Offender Management Board (SOMB), pursuant to 11 **Del. C.** §4120A (c)(8), and in accordance with 29 **Del. C.** §10115, published notice of intent to adopt regulations that seek to add an associate level service provider, add provisions for declared states of emergencies, as well as update and clarify information regarding qualifications for Sex Offense Service Providers and the credentialing process. At the same time, the SOMB submitted a Regulatory Flexibility Analysis and Impact Statement for this proposed revised regulation, as required by 29 **Del. C.** Ch. 104. The SOMB solicited written comments from the public for thirty (30) days as mandated by 29 **Del. C.** §10118(a).

SUMMARY OF EVIDENCE

In accordance with law, public notice regarding the proposed revised regulation was published in the *Delaware Register of Regulations*. The public comment period was open from May 1, 2021 through June 03, 2021. During this period, the SOMB did not receive any written responses.

FINDINGS OF FACT

The public was given the required notice of the SOMB's intention to adopt the proposed revised regulation and was given opportunity to submit comments. The required Regulatory Flexibility Analysis and Impact Statement for this proposed revised regulation was submitted. No written responses were received during the comment period. Thus, the SOMB finds that the proposed revised regulations should be adopted as submitted by the SOMB.

EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the SOMB pursuant to 11 **Del. C.** §4120A (c)(8). The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

ORDER

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the SOMB does hereby ORDER this 15th day of August 2021 that the regulations be, and that they hereby are, adopted to be enacted as set forth below.

IT IS SO ORDERED, this 15th day of August 2021.

Sex Offender Management Board

/s/ Marvin Mailey, Chairman, SOMB

/s/ Nathaniel McQueen, Jr., Secretary

Department of Safety and Homeland Security

/s/ Melissa Zebley, Colonel

Delaware State Police

/s/ Lisa Minutola, Office of Defense Services

/s/ Jeffrey Horvath, Chief

Police Chief's Council

/s/ Melanie Ewing-Lahutsky, Superior Court

/s/ Terra Taylor, Department of Corrections

/s/ Ashley Bruncsak, Youth Rehabilitation Services

/s/ Robert Hudson

Department of Safety and Homeland Security

/s/ Michelle Twyman

Department of Health and Social Services

/s/ Chuck Sawchenko, Lt.,

State Bureau of Identification

/s/ Samuel Dowling, Department of Corrections P&P

/s/ Francesca Stasko, Anew Mental Health

***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 2021 issue of the *Register* at page 995 (24 DE Reg. 995). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1100 Delaware Sex Offender Management Board

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATERSHED STEWARDSHIP

Statutory Authority: 7 Delaware Code, Sections 4006(h) and (i) (7 **Del.C.** §4006(h) & (i))

GENERAL NOTICE

Regulatory Guidance Documents for Regulation 5101 Sediment and Stormwater Regulations

The Department of Natural Resources and Environmental Control (DNREC) Division of Watershed Stewardship Sediment and Stormwater Program has released revised regulatory guidance documents for public review. These documents support **Regulation No. 5101 Sediment and Stormwater Regulations**, as set forth at 7 *Del.C.* §4006(h) and (i).

The regulatory guidance documents include:

- Construction Site Stormwater Management Plan (CSSMP) for Standard Plans Plan Review Checklist
- Application for Standard Plan Approval - Non-Residential Construction with less than 1.0 acre disturbed

The DNREC Sediment and Stormwater Program hereby provides notice of these regulatory guidance documents, pursuant to 7 *Del.C.* §4006(i), which incorporates the provisions of 7 *Del.C.* §6004. A public hearing will NOT be held unless the Secretary receives a meritorious request for a hearing within 15 days of date of this notice, ending September 15, 2021. A request for a public hearing shall be in writing and show familiarity with the regulatory guidance document and provide a reasoned statement of the regulatory guidance document's probable impact.

These documents may be reviewed under the Standard Plan Applications heading at the following link: <https://dnrec.alpha.delaware.gov/watershed-stewardship/sediment-stormwater/applications/>

Questions regarding the revised regulatory guidance documents may be directed to Elaine Webb, elaine.webb@delaware.gov.

PREPARED BY:

Elaine Z. Webb

(302) 739-9921

elaine.webb@delaware.gov

DELAWARE HEALTH INFORMATION NETWORK**PUBLIC NOTICE****101 Delaware Health Information Network Regulations**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 103, Section 10306 and Senate Bill No. 88 of the 151st General Assembly (2021), the Delaware Health Information Network (DHIN) is proposing an amendment to its existing regulations governing participation in and use of clinical data held by DHIN.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same to, the Scott Perkins, General Counsel, Delaware Health Information Network, 107 Wolf Creek Blvd., Suite 2, Dover, Delaware 19901 or by email to Scott.Perkins@dhin.org by 4:30 p.m. on October 29, 2021. Please identify in the subject line: DHIN Regulations on Participation and Use of Data.

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

DELAWARE HEALTH INFORMATION NETWORK**PUBLIC NOTICE****102 Delaware Health Information Network Regulations on Participation**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 103, Section 10306 and Senate Bill No. 88 of the 151st General Assembly (2021), the Delaware Health Information Network (DHIN) is proposing an amendment to its regulations governing access and use of clinical data for approved analytic purposes.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same to, the Scott Perkins, General Counsel, Delaware Health Information Network, 107 Wolf Creek Blvd., Suite 2, Dover, Delaware 19901 or by email to Scott.Perkins@dhin.org by 4:30 p.m. on October 29, 2021. Please identify in the subject line: DHIN Regulations on Use of Clinical Data for Approved Analytic Purposes.

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

DELAWARE HEALTH INFORMATION NETWORK**PUBLIC NOTICE****104 Delaware Health Care Claims Database Data Access Regulation**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 16 of the Delaware Code, Chapter 103, Sections 10306 and 10314(d), the Delaware Health Information Network (DHIN) is proposing an amendment to its regulations governing access and use of clinical data held in the Delaware Health Care Claims Database.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed regulatory amendments must submit same to, the Scott Perkins, General Counsel, Delaware Health Information Network, 107 Wolf Creek Blvd., Suite 2, Dover, Delaware 19901 or by email to Scott.Perkins@dhin.org by 4:30 p.m. on October 29, 2021. Please identify in the subject line: DHIN Delaware Healthcare Claims Database Data Access Regulation.

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

DELAWARE RIVER BASIN COMMISSION
PUBLIC NOTICE

The Delaware River Basin Commission held its quarterly public hearing on **Wednesday, August 11, 2021**. The hearing was held remotely. Please check the Commission's website, www.drbc.gov, for details regarding the draft docket decisions that were the subjects of the public hearing.

The Commission's quarterly business meeting will be held remotely on **Wednesday, September 9, 2021**, beginning at **10:30 a.m.** Please check the Commission's website, www.drbc.gov, for details about the meeting format and how to attend.

For additional information, please visit the DRBC website at www.drbc.gov or contact Patricia Hausler at patricia.hausler@drbc.gov.

DEPARTMENT OF AGRICULTURE
THOROUGHBRED RACING COMMISSION
PUBLIC NOTICE**1001 Thoroughbred Racing Rules and Regulations**

The Thoroughbred Racing Commission proposes to amend its Regulations adopted in accordance with 3 Del. C. §10103(c). The purpose of the proposed regulations is to amend Rule 13.12.3 to provide that a claim may be voided if a horse is vanned off the racetrack at the direction of the commission veterinarian; or is observed by the Commission Veterinarian to be lame or unsound while still on the racetrack and as such the Commission Veterinarian places that horse on the Vets list. Rule 15.14.4 is also being added to address consequences for a horse leaving the racetrack after entry but before racing. Other regulations issued by the Thoroughbred Racing Commission are not affected by this proposal. The Thoroughbred Racing Commission 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.

A copy of the proposed regulations is being published in the September 1, 2021 edition of the *Delaware Register of Regulations*. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Thoroughbred Racing Commission at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 Del.C. § 10118(a), public comments must be received on or before October 1, 2021. Written materials submitted will be available for inspection at the above address.

On or after October 1, 2021, following review of the public comment, the Thoroughbred Racing Commission will determine whether to amend its regulations by adopting the proposed rules or make additional changes because of the public comments received.

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education meets monthly. These meetings are open to the public. The Board rotates locations of regular meetings among the three counties.

Meeting information can be accessed via the [public meeting calendar](#).

[Meeting materials available on the State Board of Education's eBoard site](#). (If you are having technical difficulties accessing the site, please try a different browser.)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF PUBLIC HEALTH****PUBLIC NOTICE****4202 Control of Communicable and Other Disease Conditions**

Pursuant to 16 **Del. C.** §122(3)(a) and §504, Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Control of Communicable and Other Disease Conditions. On September 1, 2021, the Division of Public Health plans to publish as “proposed” revisions to the Control of Communicable and Other Disease Conditions regulations. These revisions include requirements for mask use among all students, faculty, staff, and visitors inside K-12 school buildings, regardless of vaccination status, as well as a severability clause.

Copies of the proposed regulations are available for review in the September 1, 2021 edition of the Delaware Register of Regulations, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit them to Alanna Mozeik by Friday, October 1, 2021, at:

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

DEPARTMENT OF INSURANCE**OFFICE OF THE COMMISSIONER****PUBLIC NOTICE****1003 Credit for Reinsurance****Legislative Background**

Delaware's Reinsurance Act, 18 **Del. C.** §§ 910-916, and Insurance Regulation 1003 are codifications of the National Association of Insurance Commissioners (NAIC) Credit for Reinsurance Model Law #785 (the Model Law) and NAIC Credit for Reinsurance Model Regulation #786 (the Model Regulation). Both the Model Law and the Model Regulation are designated by the NAIC as accreditation standards.

In 2019, the NAIC updated the Model Law and Model Regulation in response to the U.S.-EU Covered Agreement and the U.S.-UK Covered Agreement (the Covered Agreements). The Federal Insurance Office (FIO) has confirmed that the 2019 revisions to the Model Law satisfy the requirements of the Covered Agreements. See FIO Preemption Analysis at <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/covered-agreements/preemption-analysis>.

States are required to promulgate the Model Law and codify the Model Regulation in their entirety to avoid FIO preemption of the States' regulatory jurisdiction. FIO informs that:

- It is currently conducting a preemption determination process that consists of reviewing the laws of all 50 states, the District of Columbia, and the US territories;
- FIO has set an internal September 1, 2022 deadline for completing the preemption determination process; and
- FIO is planning to abide by their commitments made in the Covered Agreements.

Given FIO's September 1, 2022 deadline, it is incumbent upon states, including Delaware, to quickly amend their statutes and regulations to incorporate the amendments to the Model Law and Model Regulation. Accordingly, on June 29, 2021 the Commissioner of the Delaware Department of Insurance (the Department) worked with the Delaware General Assembly to amend Insurance Code Chapter 9 to incorporate the NAIC 2019 Model Act amendments. See HB 44 (83 Del. Laws. c. 104).

HB44 specifically does the following:

- Makes the Reinsurance Act consistent with provisions of covered agreements with the European Union and United Kingdom with respect to reinsurance collateral requirements;
- Provides reinsurers domiciled in NAIC-qualified jurisdictions other than within the EU (currently, Bermuda, Japan and Switzerland) with the possibility of similar reinsurance collateral reductions; and
- Applies to all cessions after July 30, 2021 under reinsurance agreements that have an inception, anniversary, or renewal date not less than 6 months after July 30, 2021.

Purpose of Proposal

The purpose of this proposal is to:

- Update Regulation 1003 to incorporate the amendments to the Model Regulation, based on the authority granted the Department under HB 44;
- Update formatting and internal cross-references; and
- Update the regulation with the effective date of these proposed amendments.

The proposed amendments may be viewed on the Department of Insurance web-site at <http://insurance.delaware.gov/information/proposedregs/>. The Department will not be holding a public hearing on the proposed amendments.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendments to the regulation. Any written submission in response to this notice and relevant to the proposed amendments must be received by the Department of Insurance no later than 4:30 p.m. EST, the 1st day of October, 2021 and should be directed to:

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

DEPARTMENT OF JUSTICE
FRAUD AND CONSUMER PROTECTION DIVISION
PUBLIC NOTICE
105 Health Spa Act Regulation

In compliance with the State's Administrative Procedures Act (APA -Title 29, Chapter 101 of the Delaware Code) and 29 **Del.C.** §2521, the Consumer Protection Unit of the Delaware Department of Justice ("the Unit") hereby publishes notice of a proposed regulation to the Health Spa Regulation Act.

The proposed regulation was created to assist in the implementation and enforcement of the Health Spa Regulation Act by clarifying instructions for health spa registration, fee payment, contract requirements, and limitations of initiation fees.

Persons wishing to comment on the proposed revision may submit their comments in writing no later than October 1, 2021 to:

Marion Quirk
Consumer Protection Director
Department of Justice, Consumer Protection Unit
State Office Building, 5th Floor
820 N. French Street
Wilmington, DE 19081

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL****DIVISION OF WATERSHED STEWARDSHIP****PUBLIC NOTICE****7402 Shellfish Sanitation Regulations**

The current regulation does not list the membrane filter (MF) (membrane-Thermotolerant Escherichia coli [mTEC]) method as an approved bacteriological standard for the classification of shellfish growing areas. This method is an approved method under the National Shellfish Sanitation Program and is used by many states to classify the bacteriological water quality of shellfish harvesting areas because of its accuracy and significant cost savings for states due to the speed and simplicity of the test. This action will add the mTEC method as an approved method which can be used to classify shellfish growing areas, while maintaining the current approved methods found in the regulation. Side-by-side analysis has been conducted for over three (3) years and the results have shown that no changes in shellfish classifications would be required at this time if the method was adopted. This new method will allow the State of Delaware to save a significant amount of money annually, increase the speed that results are available and increase the ability for more areas to be monitored as needed to ensure shellfish safety as the industry grows.

This proposed method adoption has been presented to the commercial shellfish industry throughout the three (3) year assessment period and there are currently no impacts anticipated to the public due to no significant shellfish growing area classification changes being required. There are no costs associated with this regulatory change and there is minimal or no impact to commercial or recreational bi-valve shellfish harvesters. This action will save the State of Delaware thousands of dollars annually and continue to protect the State's shellfish resources and public health of shellfish consumers.

The proposed amendments may be inspected online starting September 1st, 2021 at http://regulations.delaware.gov/services/current_issue.shtml. A virtual public hearing will be held on **Tuesday, October 5th, 2021, beginning at 6 p.m.** The web link to the virtual meeting is found on the DNREC Public Hearings site at <https://de.gov/dnrechearings>. If prompted for a password, please use ShellfishSanRegs. To access the audio-only portion of the virtual hearing, dial 1-408-418-9388 and enter event code 179 119 1725. Closed-captioning is available by request if made at least 7 days before the event.

Those wishing to offer verbal comments during DNREC virtual public hearings must pre-register no later than noon on the date of the virtual hearing at <https://de.gov/dnreccomments> or by telephone at 302-739-9295.

The Department will accept public comment through the close of business on October, 20th, 2021. Comments pertaining to the above matter will be accepted in written form via email to DNRECHearingComments@delaware.gov, using the online form at <https://de.gov/dnreccomments>, or by U.S. mail to the following address: Lisa Vest, Hearing Officer, DNREC-Office of the Secretary, 89 Kings Highway, Dover, DE 19901.
