

---

# Delaware Register of Regulations

---

Issue Date: February 1, 2024

Volume 27 - Issue 8, Pages 552-634

---



## IN THIS ISSUE:

Errata

Regulations:  
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 January 15, 2024.

*Cover Photo*  
Joe Fulgham

---

# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

---

553

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

## DIVISION OF RESEARCH STAFF

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

---

# TABLE OF CONTENTS

---

555

Cumulative Tables ..... 557

## ERRATA

### DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

#### Division of Waste and Hazardous Substances

1351 Underground Storage Tank Systems..... 561  
1352 Aboveground Storage Tanks..... 562

---

## EMERGENCY

### DEPARTMENT OF STATE

#### Office of the Alcoholic Beverage Control Commissioner

Rule 203 (Formerly Rule 36) Delivery, Sale and Consumption of Alcoholic Liquors for  
On-Premises Consumption..... 563

---

## PROPOSED

### DELAWARE STATE FIRE PREVENTION COMMISSION

710 Ambulance Service Regulations..... 566

### DEPARTMENT OF HEALTH AND SOCIAL SERVICES

#### Division of Public Health

4306 Stroke System Regulation..... 567  
4459 Lead-Based Paint Hazards..... 567  
4459A Regulations Governing the Childhood Lead Poisoning Prevention Act..... 570

#### Division of Social Services

Food Benefit Certification: DSSM 9068, 9068.1, 9068.2, 9068.3, 9068.4, 9068.5..... 577  
Processing Applications for Child Care: DSSM 11004.1..... 580

### DEPARTMENT OF STATE

#### Division of Professional Regulation

1100 Board of Dentistry and Dental Hygiene..... 584

#### Public Service Commission

3001 Rules for Certification and Regulation of Electric Suppliers, Net Metering, and  
Community Energy Facilities..... 585  
3012 Rules for Regulation of Net Metering..... 588  
3013 Rules for and Regulation of Community Energy Facilities..... 590

### DEPARTMENT OF TRANSPORTATION

#### Division of Transportation Solutions

1207 Electronic Speed Monitoring System..... 592

---

## FINAL

### DEPARTMENT OF EDUCATION

#### Office of the Secretary

105 Residential Child Care Facilities and Day Treatment Programs..... 599  
705 Leave for Training Camp or Special Duty in the National Guard or  
the Military Reserves of the United States..... 602  
1034 DIAA Health and Safety Requirements..... 604

---

# TABLE OF CONTENTS

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### Division of Public Health

4110 Pharmacists Dispensing and Administering Contraceptives..... 609

## DEPARTMENT OF LABOR

### Division of Industrial Affairs

1341 Workers' Compensation Regulations..... 614

## DEPARTMENT OF SAFETY AND HOMELAND SECURITY

### Police Officer Standards and Training Commission

801 Regulations of the Delaware Council on Police Training..... 615

803 COPT Firearms Instructors Standards and Requirements..... 617

## DEPARTMENT OF STATE

### Division of Professional Regulation

1900 Board of Nursing..... 619

2100 Board of Examiners in Optometry..... 620

## GENERAL NOTICES

## DEPARTMENT OF STATE

### Division of Professional Regulation

1400 Board of Electrical Examiners..... 623

### Office of the Alcoholic Beverage Control Commissioner

Rule 601 (Formerly Rule 35.1) Gathering Licenses..... 624

Rule 701 (Formerly Rule 51) A Rule Requiring the Biennial Renewal of Wholesale, Retail, and Annual Gathering Licenses..... 624

Rule 702 (formerly Rule 51.1) A Rule Requiring the Biennial Renewal of Supplier's Licenses ..... 624

Rule 1008 (Formerly Rule 19.1) Bottle Clubs - Licensing and Operation..... 625

## DEPARTMENT OF TRANSPORTATION

### Division of Transportation Solutions

Senate Bill 89 as amended by Senate Amendment 1 – Oakdale Road (N130590)..... 626

## CALENDAR OF EVENTS/HEARING NOTICES

Delaware River Basin Commission; Notice of Public Hearing and Quarterly Business Meeting..... 627

Delaware State Fire Prevention Commission; Notice of Public Comment Period..... 627

Department of Education; Notice of Monthly Public Meeting..... 627

Dept. of Health and Social Services, Div. of Public Health and Div. of Social Services; Notices of Public Comment Periods..... 627-630

Dept. of State, Div. of Professional Regulation; Notice of Public Hearing and Public Comment Period ..... 631

Dept. of State, Public Service Commission; Notices of Public Hearings and Public Comment Periods 631-633

Department of Transportation, Division of Transportation Solutions; Notice of Public Comment Period..... 633

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**

709 Fire Service Standards..... 27 DE Reg.470(Prop.)

**DEPARTMENT OF AGRICULTURE**

**Office of the Secretary**

806 Regulations for Invasive Plants..... 27 DE Reg. 80 (Prop.)

**Thoroughbred Racing Commission**

1001 Thoroughbred Racing Rules and Regulations..... 27 DE Reg. 10 (Prop.)  
27 DE Reg.153 (Final)

**DEPARTMENT OF EDUCATION**

**Office of the Secretary**

105 Residential Child Care Facilities and Day Treatment Programs..... 27 DE Reg. 82 (Prop.)

106A Teacher Appraisal Process

Delaware Performance Appraisal System (DPAS II) Revised..... 27 DE Reg. 99 (Final)

107A Specialist Appraisal Process

Delaware Performance Appraisal System (DPAS II) Revised..... 27 DE Reg.101 (Final)

108A Administrator Appraisal Process

Delaware Performance Appraisal System (DPAS II)..... 27 DE Reg.102 (Final)

235 Teacher of the Year Award..... 27 DE Reg. 84 (Prop.)

275 Charter Schools..... 27 DE Reg.103 (Final)

415 Voluntary School Assessments..... 27 DE Reg. 515(Final)

501 State Content Standards..... 27 DE Reg. 516(Final)

502 Alignment of Local School District Curricula to the State Content Standards 27 DE Reg. 518(Final)

503 Instructional Program Requirements..... 27 DE Reg. 519(Final)

608 Unsafe School Choice Option Policy..... 27 DE Reg.471(Prop.)

901 Dispute Resolution Process for Educational Placement for Children and Youth Experiencing Homelessness..... 27 DE Reg.137(Prop.)

910 Delaware Requirements for Issuance of the Secondary Credential..... 27 DE Reg. 520(Final)

922 Children with Disabilities Subpart A, Purposes and Definitions..... 27 DE Reg.474(Prop.)

923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies 27 DE Reg.476(Prop.)

925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs..... 27 DE Reg.477(Prop.)

1001 Participation in Extra Curricular Activities..... 27 DE Reg. 522(Final)

1021 DIAA Committees..... 27 DE Reg.154 (Final)

..... 27 DE Reg. 523(Final)

1040 Out-of-Season and Summer Athletic Activities and Contact..... 27 DE Reg.479(Prop.)

1043 Officials..... 27 DE Reg.158 (Final)

1213 Speech-Language Pathologist Student Loan Repayment Program..... 27 DE Reg. 11 (Prop.)

27 DE Reg.159 (Final)

1215 High Needs Educator Student Loan Payment Program..... 27 DE Reg. 14 (Prop.)

27 DE Reg.162 (Final)

1216 Educator Support Scholarship Program..... 27 DE Reg. 18 (Prop.)

27 DE Reg.165 (Final)

1218 Mental Health Services Student Loan Repayment Program..... 27 DE Reg. 21 (Prop.)

27 DE Reg.168 (Final)

**Professional Standards Board**

|   |                       |
|---|-----------------------|
| 1501 Salary Supplements for Educators.....                        | 27 DE Reg. 525(Final) |
| 1503 Comprehensive Educator Induction Programs.....               | 27 DE Reg.142(Prop.)  |
| .....   | 27 DE Reg.481(Prop.)  |
| 1510 Initial License.....   | 27 DE Reg.171 (Final) |
| .....   | 27 DE Reg.483(Prop.)  |
| 1516 Professional Standards Board Standing Committees.....        | 27 DE Reg.173 (Final) |
| 1517 Paraeducator Permit.....                                     | 27 DE Reg. 526(Final) |
| 1519 Multiple Measures for Demonstrating Content Knowledge.....   | 27 DE Reg. 37 (Final) |
| 1571 Special Education Teacher of Students with Disabilities..... | 27 DE Reg. 24 (Prop.) |
| .....   | 27 DE Reg.175 (Final) |
| 1552 Junior Reserve Officers' Training Corps (JROTC) Teacher..... | 27 DE Reg.528 (Final) |
| 1585 School Behavior Analyst.....                                 | 27 DE Reg.176 (Final) |
| 1586 School Behavior Analyst Assistant.....                       | 27 DE Reg.181 (Final) |
| 1596 Charter School Leader.....                                   | 27 DE Reg. 39 (Final) |

**DEPARTMENT OF FINANCE****Division of Revenue**

|  |                       |
|--|-----------------------|
| Regulations Governing Tax Refund Intercept Claims of Other States.....                 | 27 DE Reg.143(Prop.)  |
| Regulation Governing Tax Refund Offset and<br>Lottery Winnings Intercept Programs..... | 27 DE Reg.105 (Final) |

**Office of the State Lottery**

|  |                       |
|--|-----------------------|
| 203 Video Lottery and Table Game Regulations.....      | 27 DE Reg.106 (Final) |
| .....  | 27 DE Reg.484(Prop.)  |
| 205 Delaware Charitable Video Lottery Regulations..... | 27 DE Reg.485(Prop.)  |

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES****Division of Health Care Quality**

|   |                       |
|---|-----------------------|
| 3345 Personal Assistance Services Agencies.....       | 27 DE Reg. 43 (Final) |
| 3350 Skilled Home Health Agencies (Licensure).....    | 27 DE Reg. 44 (Final) |
| 3351 Home Health Agencies--Aide Only (Licensure)..... | 27 DE Reg. 45 (Final) |

**Division of Medicaid and Medical Assistance**

|  |                       |
|--|-----------------------|
| Continuous Coverage for Children Enrolled in Medicaid.....   | 27 DE Reg.486(Prop.)  |
| Title XIX Medicaid State Plan -<br>Ground Emergency Medical Transportation (GEMT).....                             | 27 DE Reg.149(Prop.)  |
| Title XIX Medicaid State Plan - Pharmacy Over the Counter (OTC) &<br>Physician Administered Drugs (PAD).....       | 27 DE Reg.147(Prop.)  |
| Title XIX Medicaid State Plan: Temporary Extension to<br>COVID-19 Disaster Relief Co-pay & Premium Provisions..... | 27 DE Reg.107 (Final) |
| US Savings Bonds: DSSM 20330.7.....  | 27 DE Reg. 46 (Final) |

**Division of Public Health**

|   |                       |
|---|-----------------------|
| 4305 Trauma System Regulation.....  | 27 DE Reg.529 (Final) |
| 4458A Cottage Food Regulations.....   | 27 DE Reg. 30 (Prop.) |
| 4459A Regulations Governing the Childhood Lead Poisoning<br>Prevention Act for Children Between the Ages of 22 and 26 Months..... | 27 DE Reg.109 (Final) |
| 4501 Regulations for Animals Held in Shelter.....   | 27 DE Reg.530 (Final) |

**Division of Social Services**

|   |                       |
|---|-----------------------|
| Delaware's SNAP EBT System: DSSM 9093, 9093.1, 9093.11..... | 27 DE Reg.111 (Final) |
| Determining Relative Child Care: DSSM 11006.7.....          | 27 DE Reg. 49 (Final) |

**Division of Substance Abuse and Mental Health**

|   |                       |
|---|-----------------------|
| 6002 Credentialing Mental Health Screeners and<br>Payment for Voluntary Admissions..... | 27 DE Reg.185 (Final) |
|---|-----------------------|

**DEPARTMENT OF HUMAN RESOURCES**

**State Employee Benefits Committee**

2001 Group Health Insurance Plan Eligibility and Enrollment Rules..... 27 **DE Reg.**532 (Final)

**DEPARTMENT OF INSURANCE**

**Office of the Commissioner**

611 Automobile Insurance Premium Refunds..... 27 **DE Reg.**488(Prop.)

1004 Term and Universal Life Insurance Reserve Financing..... 27 **DE Reg.**489(Prop.)

1316 Arbitration of Health Insurance Disputes Between Carriers And  
Non-Network Providers of Emergency Care Services..... 27 **DE Reg.**113 (Final)

1406 Third Party Administrators..... 27 **DE Reg.**150(Prop.)

2102 Termination of Coverage for Policies of Commercial Governmental and  
Professional Liability Insurance [Formerly Regulation 54]..... 27 **DE Reg.**114 (Rep.)

**DEPARTMENT OF LABOR**

**Division of Paid Leave**

1401 Rules Defining and Regulating the Healthy Delaware Families Act,  
Family and Medical Leave Insurance Program and the Division of Paid  
Leave ..... 27 **DE Reg.** 51 (Final)

..... 27 **DE Reg.**496(Prop.)

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

**Division of Fish and Wildlife**

3503 Striped Bass Recreational Fishing Seasons; Methods of Take;  
Creel Limit; Possession Limit..... 27 **DE Reg.**115 (Final)

3505 Striped Bass Commercial Fishing Seasons; Quotas;  
Tagging and Reporting Requirements..... 27 **DE Reg.**466(Emer.)

..... 27 **DE Reg.**497(Prop.)

3801 Shellfish Aquaculture..... 27 **DE Reg.**151(Prop.)

**Division of Waste and Hazardous Substances**

1351 Underground Storage Tank Systems..... 27 **DE Reg.** 87 (Prop.)

..... 27 **DE Reg.**533 (Final)

1352 Aboveground Storage Tanks..... 27 **DE Reg.** 88 (Prop.)

..... 27 **DE Reg.**536 (Final)

**DEPARTMENT OF SAFETY AND HOMELAND SECURITY**

**Office of the Alcoholic Beverage Control Commissioner**

Rule 202 (Formerly Rule 19) A Rule Defining the Words Hotel, Motel,  
Restaurant and Dinner Theater..... 27 **DE Reg.**186 (Final)

Rule 1201 (Formerly Rule 7) A Rule Requiring Persons Between the  
Ages of 16 and 18 to Secure a Work Permit to be  
Employed by an On-Premises Licensee..... 27 **DE Reg.**189 (Final)

Rule 1202 (Formerly Rule 7.1) Employment of Persons Who Have Reached  
the Age of 18 Years in Package Stores..... 27 **DE Reg.**189 (Final)

**DEPARTMENT OF STATE**

**Division of Professional Regulation**

1700 Board of Medical Licensure and Discipline..... 27 **DE Reg.** 89 (Prop.)

1900 Board of Nursing..... 27 **DE Reg.** 61 (Final)

2000 Board of Occupational Therapy Practice..... 27 **DE Reg.** 91 (Prop.)

2500 Board of Pharmacy..... 27 **DE Reg.**500(Prop.)

2930 Council on Real Estate Appraisers..... 27 **DE Reg.** 94 (Prop.)

3100 Board of Funeral Services..... 27 **DE Reg.**501(Prop.)

3300 Board of Veterinary Medicine..... 27 **DE Reg.**190 (Final)



# CUMULATIVE TABLES

|   |                       |
|---|-----------------------|
| 3600 Board of Geologists.....   | 27 DE Reg. 31 (Prop.) |
| 3900 Board of Social Work Examiners.....  | 27 DE Reg.502(Prop.)  |
| 5300 Board of Massage and Bodywork.....   | 27 DE Reg. 63 (Final) |
| 6100 Board of Elevator Mechanics.....   | 27 DE Reg.539 (Final) |
| Uniform Controlled Substances Act Regulations.....  | 27 DE Reg. 7 (Emer.)  |
| <b>Office of the Alcoholic Beverage Control Commissioner</b>  |                       |
| Rule 601 (Formerly Rule 35.1) Gathering Licenses.....   | 27 DE Reg.503(Prop.)  |
| Rule 701 (Formerly Rule 51) A Rule Requiring the Biennial Renewal<br>of Wholesale, Retail, and Annual Gathering Licenses.....     | 27 DE Reg.506(Prop.)  |
| Rule 702 (formerly Rule 51.1) A Rule Requiring the Biennial Renewal of<br>Supplier's Licenses.....                                | 27 DE Reg.506(Prop.)  |
| Rule 1008 (Formerly Rule 19.1) Bottle Clubs - Licensing and Operation.....  | 27 DE Reg.511(Prop.)  |
| <b>Public Service Commission</b>  |                       |
| 1002 Minimum Filing Requirements for All Regulated Companies Subject<br>to the Jurisdiction of the Public Service Commission..... | 27 DE Reg.117 (Final) |
| <b>DEPARTMENT OF TRANSPORTATION</b>   |                       |
| <b>Division of Motor Vehicles</b>   |                       |
| 2226 Third Party Commercial Driver License Skills Testing.....  | 27 DE Reg. 35 (Prop.) |
|   | 27 DE Reg.191(Final)  |
| 2266 Vehicle Document Fees.....   | 27 DE Reg. 94 (Prop.) |

---

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL****DIVISION OF WASTE AND HAZARDOUS SUBSTANCES**

Statutory Authority: 7 Delaware Code, Chapters 60 and 74 and Section 6010(a) (7 **Del.C.** Chs. 60 & 74 & §6010(a))  
7 **DE Admin. Code** 1351

**ERRATA****1351 Underground Storage Tank Systems**

\* **Please Note:** The Department of Natural Resources and Environmental Control regulation, 7 **DE Admin. Code** 1351 Underground Storage Tank Systems, was published as final in the *Delaware Register of Regulations*, 27 **DE Reg.** 533 (01/01/24). Subsections 1.13.7 (Part C) and 1.22.3.3 (Part B) were inadvertently published incorrectly.

Subsection 1.13.7 was published as:

1.13.7 During the installation of all new UST Systems, every stage of the construction shall be documented with photographs to demonstrate that the UST System was installed in compliance with the requirements for new UST Systems. Upon completion of the installation, copies of the photographs, as built plan, and required certification(s) as required in Part A, subsections 4.6.11 and 4.6.12 shall be submitted to the Department within ~~thirty (30)~~ 30 Days of the completion of the UST System installation. The Facility Owner and Operator shall keep copies of all documents and photographs on file for the life of the UST System.

Subsection 1.13.7 should have read:

1.13.7 During the installation of all new UST Systems, every stage of the construction shall be documented with photographs to demonstrate that the UST System was installed in compliance with the requirements for new UST Systems. Upon completion of the installation, copies of the photographs, as built plan, and required certification(s) as required in Part A, subsections 4.6.11 and 4.6.12 shall be submitted to the Department within ~~thirty (30)~~ 30 Days of the completion of the UST System installation. The **[Facility]** Owner and Operator shall keep copies of all documents and photographs on file for the life of the UST System.

Subsection 1.22.3.3 was published as:

1.22.3.3 Vent Line flow restrictors (ball float valves) shall not be installed for overfill prevention after ~~January 11, 2020~~.

Subsection 1.22.3.3 should have read:

1.22.3.3 Vent Line flow restrictors (ball float valves) shall not be installed for overfill prevention **[after]** ~~January 11, 2020~~.

**DIVISION OF WASTE AND HAZARDOUS SUBSTANCES**

Statutory Authority: 7 Delaware Code, Chapter 74A and Section 7401A (7 **Del.C.** Ch. 74A & §7401A)

**7 DE Admin. Code 1352**

**ERRATA****1352 Aboveground Storage Tanks**

\* **Please Note:** The Department of Natural Resources and Environmental Control regulation, 7 **DE Admin. Code** 1352 Aboveground Storage Tanks, was published as final in the *Delaware Register of Regulations*, 27 **DE Reg.** 536 (01/01/24). Subsection 4.1.8 (Part B) was inadvertently published incorrectly.

Subsection 4.1.8 was published as:

- 4.1.8 Installation of all new non-metallic ASTs ~~installed after June 11, 2004~~ constructed for the purpose of storing sulfuric acid, Spent Acid or Spent Caustic or other regulated substances with similar corrosive properties shall be subject to additional design consideration ~~[including but not limited to]~~ NACE SP0294, material compatibility, coating requirements and additional non-destructive examination (NDE).

Subsection 4.1.8 should have read:

- 4.1.8 Installation of all new non-metallic ASTs ~~installed after June 11, 2004~~ constructed for the purpose of storing sulfuric acid, Spent Acid or Spent Caustic or other regulated substances with similar corrosive properties shall be subject to additional design consideration including ~~[but not limited to]~~ NACE SP0294, material compatibility, coating requirements and additional non-destructive examination (NDE).

**Symbol Key**

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

**Emergency Regulations**

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

**§ 10119. Emergency regulations.**

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

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

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

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

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

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

---

**DEPARTMENT OF STATE****OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER**

Statutory Authority: 4 Delaware Code, Section 304 and 29 Delaware Code, Section 10119 (4 **Del.C.** §304 & 29 **Del.C.** §10119)  
4 **DE Admin. Code** 203

**ORDER****Rule 203 (Formerly Rule 36) Delivery, Sale and Consumption of Alcoholic Liquors for On-Premises Consumption****AUTHORITY**

Pursuant to 4 **Del.C.** §304 and 29 **Del.C.** §10119, the Delaware Alcoholic Beverage Control Commissioner ("Commissioner" or "Office") is adopting amendments to 4 **DE Admin. Code** 203: Delivery, Sale and Consumption of Alcoholic Liquors for On-Premises Consumption ("Regulation"), to allow on-premises licensees to sell, serve or deliver and patrons to consume alcoholic liquors 1 hour earlier, at 8 a.m., from the former time of 9 a.m., to comply with House Bill 235 which amends 4 **Del.C.** §709. The Commissioner is authorized under 29 **Del.C.** §10119 to adopt emergency regulations when 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, 4 **Del.C.** §304 authorizes the Commissioner to establish, by rules and regulations, an effective control of the business of manufacture, sale, dispensation, distribution and importation of alcoholic liquors within and into the State of Delaware, including the time, place and manner in which alcoholic liquors shall be sold and dispensed, not inconsistent with Title 4 of the Delaware Code or with any other law of the State.

**REASON FOR THE EMERGENCY ORDER**

In response to meeting the demands of Delaware consumers, liquor licensees, and the developing alcoholic

beverage industry, the General Assembly passed House Bill 235 ("HB 235"), which amended 4 **Del. C.** §709 to change from 9:00 a.m. to 8:00 a.m. the time at which an on-premise licensee can sell, serve and deliver alcoholic beverages to customers for consumption on the premises. The Governor signed HB 235 effective January 11, 2024. The Office is implementing this measure through this Emergency Order until this revision to the Regulation can be completed in accordance with 29 **Del.C.** Chapter 101.

This Emergency Order is consistent with HB 235 by revising the Regulation for the time at which a Delaware on-premises licensee can sell, serve or deliver or a patron can consume alcoholic beverages on the licensee's premises, from 9 a.m. to 8 a.m.

The Office finds this measure is compliant with the amendments to the Delaware Code at 4 **Del.C.** §709. To avoid confusion in the industry, the Office finds it is necessary to adopt this measure pursuant to 4 **Del.C.** §304 and to implement the revision prior to completion of the typical regulatory process. 29 **Del.C.** §10111 et seq. Further, and in accordance with 29 **Del.C.** §10119, the Office finds it necessary to engage this regulatory measure regarding the time in which alcoholic liquors shall be sold, served, dispensed or consumed to ensure the public safety and welfare of consumers and on-premise licenses in the Delaware alcoholic liquor industry and avoid any confusion or misunderstanding as to the applicable law and regulations.

#### EFFECTIVE DATE OF ORDER

This Emergency Order shall take effect on the date the Governor signed HB 235, January 11, 2024, and shall remain in effect for 120 days, or until such time as the regulatory process for this Rule change is complete.

#### PETITION FOR RECOMMENDATIONS

The Commissioner will receive, consider, and respond to any petitions by any interested party for recommendations or revisions of this Order. Petitions should be presented to the Office of Alcoholic Beverage Control Commission, 820 N. French St., 10th Floor, Wilmington, DE 19801, attention: Deputy Commissioner Douglas Denison.

#### ORDER

It is this 11th day of January, 2024 the Order of this Office that the above-referenced amendments to 4 **DE Admin. Code** 203 Delivery, Sale and Consumption of Alcoholic Liquors for On-Premises Consumption, a copy of which is hereby attached, are supported by the evidence contained herein and adopted pursuant to 4 **Del. C.** §304 according to the procedures of 29 **Del.C.** §10119.

The Honorable Jacqueline Paradee Mette, Esq.  
Commissioner

#### Rule 203 (Formerly Rule 36) Delivery, Sale and Consumption of Alcoholic Liquors for On-Premises Consumption

##### 1.0 Purpose and Scope

This ~~rule~~ regulation defines the term "Delivery", "Sale", "Service" and "Consumption" of alcoholic liquors and prescribes the hours of the day when alcoholic liquors may be delivered, sold and consumed, under the provisions of 4 **Del.C.** §709.

##### 2.0 Definitions

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

"**Consumption**" of alcoholic liquors means the act of drinking or eating alcoholic beverages, includes possession of an alcoholic beverage with the present ability to drink or eat it.

"**Delivery**" of alcoholic liquors means the transfer of possession or custody of alcoholic liquors from one person to another.

---

"**Sale**" of alcoholic liquors means solicit or receive an order ~~for~~; for, keep or expose for sale, deliver for value or in any other way than purely gratuitously.

"**Service**" of alcoholic liquors means the delivery of alcoholic beverages.

"**Time of Day day**" means prevailing local time in the State of Delaware as fixed by Executive Order or pursuant to ~~the~~ The Uniform Time Act of ~~1966~~, ~~15~~ 1966 (15 U.S.C. §260, et ~~seq.~~ seq.)

### 3.0 Prohibited Acts

No person licensed by the Commissioner shall sell, serve or deliver alcoholic liquors on, in or from an establishment licensed for On-premises consumption between the hours of ~~4:00 A.M. and 9:00 A.M.~~ 1 a.m. and 8 a.m. No alcoholic liquors shall be consumed on licensed premises between the hours of ~~2:00 A.M. and 9:00 A.M.~~ 2 a.m. and 8 a.m.

---

**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 STATE FIRE PREVENTION COMMISSION**

Statutory Authority: 16 Delaware Code, Section 6604(1) (16 **Del.C.** §6604(1))  
1 **DE Admin. Code** 710

**PUBLIC NOTICE****710 Ambulance Service Regulations**

The Delaware State Fire Prevention Commission, pursuant to 16 **Del. C.** § 6604(1), proposes to revise regulation 710, by updating language and labels. The proposed regulations add Emergency Medical Responder and Field Training Officer positions. Finally, the proposed regulations list specific crimes which could result in discipline.

The Board will accept written comments, which should be sent to Sherry Lambertson, Executive Specialist for the Delaware Fire Prevention Commission, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, DE 19904. Written comments may also be sent by email to the following email address: [fire.commission@delaware.gov](mailto:fire.commission@delaware.gov). The Public Comment period will end on Monday, March 4, 2024.

**\*Please Note:**

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

<https://regulations.delaware.gov/register/february2024/proposed/27 DE Reg 566RFA 02-01-24.pdf>

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

<https://regulations.delaware.gov/register/february2024/proposed/27 DE Reg 566 02-01-24.htm>

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
DIVISION OF PUBLIC HEALTH**Statutory Authority: 16 Delaware Code, Section 9704 (16 **Del.C.** §9704)**PUBLIC NOTICE****4306 Stroke System Regulation**

Pursuant to 16 **Del.C.** §9704, the Department of Health and Social Services, Division of Public Health, is proposing new 4306 Stroke System Regulation.

A copy of the proposed regulation is available for review in the February 1, 2024 issue of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov>, or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs, or other written materials concerning the proposed regulations must submit them by 4:30 p.m. on Monday, March 4, 2024, to:

Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [DHSS\\_DPH\\_regulations@delaware.gov](mailto:DHSS_DPH_regulations@delaware.gov)  
Phone: (302) 744-4951

**\*Please Note:**

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

[https://regulations.delaware.gov/register/february2024/proposed/27 DE Reg 567RFA 02-01-24.pdf](https://regulations.delaware.gov/register/february2024/proposed/27%20DE%20Reg%20567RFA%2002-01-24.pdf)

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

[https://regulations.delaware.gov/register/february2024/proposed/27 DE Reg 567 02-01-24.htm](https://regulations.delaware.gov/register/february2024/proposed/27%20DE%20Reg%20567%2002-01-24.htm)

---

**DIVISION OF PUBLIC HEALTH**Statutory Authority: 16 Delaware Code, Section 122(3)t (16 **Del.C.** §122(3)t)  
16 **DE Admin. Code** 4459**PUBLIC NOTICE****4459 Lead-Based Paint Hazards**

Pursuant to 16 **Del.C.** §122(3)t, the Department of Health and Social Services, Division of Public Health, Health Systems Protection section, is re-proposing revisions to Regulation 4459 Lead Based Paints Hazards. The revisions include:

- Changes to the definition of "Target Housing";
- Technical changes to the soil lead concentration in subsection 5.6.7.1;
- Addition of electronic payments for accreditation of training programs;
- Removal of the requirement for the Secretary to maintain a list of parties whose accreditation has changed status; and
- Addition of the ability for an abatement worker to apply for a 1-year provisional certification.



These amendments were previously published in the December 2023 issue of the *Register* (27 DE Reg. 407 (12/01/23) (Prop.)) and are hereby re-proposed with substantive changes resulting from the public comment received (between December 1, 2023, and January 8, 2024). A summary of the written comments received on the proposed regulation as published in the December *Register* is provided below:

**Commenter Names/agency:** Amy Roe, Ph.D. and Sarah Bucic, MSN, RN

**Comment:**

2.0 Abatement: The definition for abatement describes "the permanent enclosure or encapsulation of lead-based paint." However, the only permanent method for addressing lead poisoning risk is complete removal. Enclosure and encapsulation are not permanent. That DHSS regulations describe leaving lead in situ as being a "permanent solution" is misleading and factually wrong. All encapsulation and enclosure methods have the potential to degrade over time, need repair, and can present a future lead risk. It is inappropriate to list non-permanent solutions thusly. This section should be changed so as to not allow any methods that require maintenance and repair from being included as a permanent solution.

**Agency Response:** The Division appreciates the submission of comments regarding this regulation. The Division has reviewed these comments and has determined that the regulation will remain as proposed in the December 2023 *Register*, since it is consistent with the current EPA definition.

**Comment:**

2.0 Target Housing: The definition of target housing excludes and is non-protective for housing for the elderly and persons with disabilities. Lead hazard does not discriminate by age or disability. This exclusion should be removed.

**Agency Response:** The Division appreciates the submission of comments regarding this regulation. The Division has reviewed these comments and has determined that the definition of target housing will be changed to:

"Target housing" means any housing constructed prior to 1978 ~~except housing for the elderly or persons with disabilities (unless any 1 or more children aged 6 years or under resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0 bedroom dwelling. or constructed during or after 1978 and contains components with lead-based paint.~~

**Comment:**

5.1.4.4.1 a lead soil hazard is present when lead in a play area  $\geq$  400 ppm, or when lead in a yard  $\geq$  1200 ppm. This is not a health-based standard, and should be lowered to reflect a health-based standard. Soil used for growing fruit and vegetables should also be specified.

**Agency Response:** The Division appreciates the submission of comments regarding this regulation. The Division has reviewed these comments and has determined that the regulation will remain as proposed in the December 2023 *Register*, since it is consistent with the current EPA soil hazard definition and the Delaware Hazardous Substance Cleanup Act Screening Level Guidance.

**Comment:**

5.6.7.1 replacement of contaminated soil. 400 ppm lead in soil is an extremely hazardous level. Using the EPA soil lead hazard for hazmat cleanup in this manner is wholly irresponsible. Soil background levels in Delaware do not exceed 100 ppm; thusly, the permissible soil replacement should be clean fill, and should not exceed 100 ppm.

**Agency Response:** The Division appreciates the submission of comments regarding this regulation. The Division has reviewed these comments and has determined that the regulation will read:

5.6.7.1 If soil is removed, the lead-contaminated soil shall be replaced with soil with a lead concentration as close to local background as practical, but not greater than ~~400 PPM~~ 100 milligrams per kilogram.

**Comment:**

5.6.8.8 clearance levels for lead in dust at 400  $\mu\text{g}/\text{dL}$  for windowsills exceeds the current federal standard. To keep Delaware regulations current with the federal law, this should point to the EPA Lead Dust Clearance Levels.

**Agency Response:** The Division appreciates the submission of comments regarding this regulation. The Division has reviewed these comments and has determined that the regulation will remain as proposed in the December 2023 *Register*, since it is consistent with the current EPA standard of 100 micrograms/square foot.

The Department of Health and Social Services, and the Division of Public Health greatly appreciate the thoughtful

input given.

Copies of the re-proposed regulations are available for review in the February 1, 2024, issue of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov>, or by calling the Division of Public Health at (302) 744-4700.

Public comments will be received until the close of business Monday, March 4, 2024. Comments will be accepted in written form via email to [DHSS\\_DPH\\_regulations@delaware.gov](mailto:DHSS_DPH_regulations@delaware.gov), or by U.S. mail to the following address:

Vicki Schultes, Hearing Officer  
Division of Public Health  
417 Federal Street  
Dover, DE 19901

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

[https://regulations.delaware.gov/register/february2024/proposed/27 DE Reg 567aRFA 02-01-24.pdf](https://regulations.delaware.gov/register/february2024/proposed/27%20DE%20Reg%20567aRFA%2002-01-24.pdf)

## **4459 Lead-Based Paint Hazards (Break in Continuity of Sections)**

### **2.0 Definitions**

#### **(Break in Continuity Within Section)**

**"Target housing"** means any housing constructed prior to 1978, ~~except housing for the elderly or persons with disabilities (unless any 1 or more children aged 6 years or under resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0 bedroom dwelling or~~ constructed during or after 1978 and contains components with lead-based paint.

### **3.0 Accreditation of Training Programs and Application and Renewal Requirements**

#### **(Break in Continuity Within Section)**

3.2 Application process. The following are procedures a training provider shall follow to receive accreditation to offer lead-based paint activities courses:

3.2.1 A training provider seeking accreditation shall submit a written application to the Secretary containing the following information:

#### **(Break in Continuity Within Section)**

3.2.1.8 All training providers shall include in their application for accreditation the following:

3.2.1.8.1 A description of the facilities and equipment to be used for lecture and hands-on training.

3.2.1.8.2 The name, address, and location of the training facility.

3.2.1.8.3 A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course.

3.2.1.8.4 A copy of the quality control plan as described in subsection 3.3.9.

3.2.1.8.5 A An electronic payment, a certified check, or a check written on a business account in the appropriate amount made payable to the Division of Public Health.

3.2.1.8.6 A copy of the course test blueprint for each course.

#### **(Break in Continuity Within Section)**

3.8 Procedures for suspension, revocation, or modification of training program accreditation.

#### **(Break in Continuity Within Section)**

~~3.8.7 The Secretary shall maintain a list of parties whose accreditation has been suspended, revoked, modified, or reinstated.~~

**4.0 Certification of Individuals and Firms Engaged in Lead-Based Paint Activities**

## 4.1 Certification of individuals.

***(Break in Continuity Within Section)***

- 4.1.5 An individual certified outside of Delaware as an Abatement Worker under a jurisdiction with which Delaware does not have reciprocity (see subsection 6.3) may apply for provisional certification for a period of 1 year provided the individual's certification is issued through an EPA-approved training course and approved provider.

**5.0 Work Practice Standards for Conducting Lead-Based Paint Activities: Target Housing and Child-Occupied Facilities*****(Break in Continuity Within Section)***

## 5.6 Abatement.

***(Break in Continuity Within Section)***

- 5.6.7 If conducted, soil abatement shall be conducted in one of the following ways:

- 5.6.7.1 If soil is removed, the lead-contaminated soil shall be replaced with soil with a lead concentration as close to local background as practical, but not greater than ~~400 PPM~~ 100 milligrams per kilogram.

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

**<https://regulations.delaware.gov/register/february2024/proposed/27 DE Reg 567a 02-01-24.htm>**

**DIVISION OF PUBLIC HEALTH**

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

**PUBLIC NOTICE****4459A Regulations Governing the Childhood Lead Poisoning Prevention Act**

Pursuant to 16 **Del.C.** §122(3)t, the Department of Health and Social Services, Division of Public Health, Health Systems Protection section, is re-proposing revisions to 4459A Regulations Governing the Childhood Lead Poisoning Prevention Act. The revisions include:

- Amending the age limits for elevated blood lead level screening or testing in subsection 3.2;
- Clarified the acronym "DPH" in subsections 3.6, 5.0, and 10.3.2;
- Amended the use of the word "Program" in subsections 10.3.3.2 and 10.6;
- Amended references to "elevated blood lead levels" in subsection 11.1;
- Addition of the Division's investigation and reporting obligations; and
- Technical and renumbering revisions.

These amendments were previously published in the December 2023 issue of the *Register* (27 **DE Reg.** 409 (12/01/23) (Prop.) and are hereby re-proposed with substantive changes resulting from the public comment received (between December 1, 2023, and January 8, 2024). A summary of the written comments received on the proposed regulation as published in the December *Register* is provided below:

Entities offering written comments included:

Amy Roe, Ph.D. and Sarah Bucic, MSN, RN

Karl Markiewicz

Dawn E. Alexander, M. Ed and Dr. Tricia Dallas, Delaware Public Preschool Coalition

---

Jon Neubauer, Delaware State Education Association  
Ronda Bostick, State Council for Persons with Disabilities  
Ann Fisher and Pam Wier, Governor's Advisory Council for Exceptional Citizens  
Judith Gorra, MD, Delaware Division of Health and Social Services

**Comment by Amy Roe, Ph.D. and Sarah Bucic, MSN, RN:**

**1.0 General Provisions** includes enforcement and penalties, yet these are not described in the regulations. Enforcement and penalties should be specific and explained.

**Agency Response:** The Division appreciates the submission of comments regarding this regulation. The Division has reviewed these comments and has determined that the regulation will remain as proposed in the December 2023 *Register*.

**Comment by Amy Roe, Ph.D. and Sarah Bucic, MSN, RN:**

**2.0 Definitions.** Administer a blood lead level screening or test includes ordering a blood specimen. This continues to be a problem. Ordering a test is not administering one, and there is no required follow-up to make sure that the test was performed.

**Agency Response:** The Division appreciates the submission of comments regarding this regulation. The Division has reviewed these comments and has determined that the regulation will remain as proposed in the December 2023 *Register*.

**Comment by Amy Roe, Ph.D. and Sarah Bucic, MSN, RN:**

Program is defined as the Delaware State Lead-Based Paint Program, but it is also used elsewhere in the regulations to refer to different things, including blood lead reporting, Medicaid, and children's health. Using this term in multiple ways is confusing.

**Agency Response:** The Division appreciates the submission of comments regarding this regulation. The Division has reviewed these comments and is proposing the following amendments for clarity:

10.3.3.230 calendar days from first entry into the ~~program or system~~ child care facility, public or private nursery school, preschool, or kindergarten.

10.6 The information sent to or received by a ~~program~~ child care facility, public or private nursery school, preschool, kindergarten or school shall be recorded and certified by a health care provider's signature on a form that includes the following:

**Comment by Amy Roe, Ph.D. and Sarah Bucic, MSN, RN:**

Screening should be limited to only FDA approved methodologies. DHSS has been allowing non-FDA approved approaches, such as filter paper, that are denounced by the CDC.

**Agency Response:** The Division appreciates the submission of comments regarding this regulation. The Division has reviewed these comments and has determined that the regulation will remain as proposed in the December 2023 *Register*. The Division has requested of the CDC Lead Poisoning Prevention and Surveillance Branch their official stance on the use of filter paper in a meeting in November 2023. No immediate knowledge of an official stance was known to the participant(s) and information forwarded to the CDC laboratory. To date no response was received. Actions may be taken once CDC's position is provided.

**Comment by Amy Roe, Ph.D. and Sarah Bucic, MSN, RN:**

3.6, 5.0, and 10.3.2 include DPH as an acronym, but this isn't defined in the regulations.

**Agency Response:** The Division appreciates the submission of comments regarding this regulation. The Division has reviewed these comments and is proposing the following amendments to the regulation:

3.6 In addition to the blood lead level screening and testing requirements in this section, a health care provider may order a lead screening or test at their discretion and these results must be reported to ~~DPH~~ the Division pursuant to Section 7.0.

**5.0 Religious Exemption**

A religious exemption may be granted to a child if the blood lead level screening or testing conflicts with a genuine and sincere religious belief and not a belief based merely on philosophical, scientific,

moral, personal, or medical opposition to blood lead level screening or testing. The ~~DPH~~ the Division affidavit of blood lead level screening or testing exemption for religious beliefs shall be signed and dated by the child's parent or guardian, notarized, and kept in the child's medical chart.

10.3.2 The ~~DPH~~ the Division affidavit signed by the parent or guardian stating that the blood lead level screening or test is contrary to the parent's or guardian's religious beliefs; or

**Comment by Karl Markiewicz:**

I'd like to suggest that a similar table which outlines the follow-up blood testing timeframes be included in the regulations. Parents/guardians and health care providers need to ensure the CDC's recommended follow up BLL testing is conducted.

**Agency Response:** The Division appreciates the submission of comments regarding this regulation. The Division has reviewed these comments and has determined that the regulation will remain as proposed in the December 2023 *Register*. Inclusion of guidelines will remove decision-making flexibility health care providers may need. Further, the Department would not be able to recommend revised guidelines without first reproposing and revising the regulations.

**Comment by Ronda Bostick, State Council for Persons with Disabilities:**

SCPD supports investigative and reporting requirements but questions the 60-day timeline that DPH is establishing for investigations. Further, SCPD would like for DPH to clarify the policy regarding storage and destruction of blood samples or information that could identify sensitive genetic and health information, as well as steps DPH will take to safeguard samples.

**Agency Response:** The Division appreciates the submission of comments regarding this regulation. The Division has reviewed these comments and has determined that the regulation will remain as proposed in the December 2023 *Register*.

**Comment by Ann Fisher and Pam Wier, Governor's Advisory Council for Exceptional Citizens:**

Presently, this regulation addresses that documents will be confidential but it does not address sample retention, nor safeguard this information from potential subpoenas such as what was utilized in the New Jersey news article. Council would like to request additional information on DPH's policy with respect to storage and destruction of blood samples; information that could identify sensitive genetic and health information, and steps DPH takes to safeguard samples from uses not contemplated by the lead poisoning law.

**Agency Response:** The Division appreciates the submission of comments regarding this regulation. The Division has reviewed these comments and has determined that the regulation will remain as proposed in the December 2023 *Register*.

**Comment by Ronda Bostick, State Council for Persons with Disabilities:**

Once the site of lead exposure is definitively identified, DPH's next steps must be within 10 days, DPH has 60 days to get to the point of triggering the 10-day timeline (note: this is consistent with 16 Del. C. § 2610). If a child is still at risk of exposure in their current home, such a lengthy timeline can prolong and increase the lead exposure the child faces, which can have long-term health implications and increase the potential for disability.

**Agency Response:** The Division appreciates the submission of comments regarding this regulation. The Division has reviewed these comments and has determined that the regulation will remain as proposed in the December 2023 *Register*.

**Comment by Ann Fisher and Pam Wier, Governor's Advisory Council for Exceptional Citizens:**

Although once the site of lead exposure is definitively identified, DPH's next steps must be within 10 days, DPH has 60 days to get to the point of triggering the 10-day timeline (note: this is consistent with 16 Del. C. § 2610). If a child is still at risk of exposure in their current home, such a lengthy timeline can prolong and increase the lead exposure the child faces, which can have long-term health implications and increase the potential for disability.

**Agency Response:** The Division appreciates the submission of comments regarding this regulation. The Division has reviewed these comments and has determined that the regulation will remain as proposed in the December 2023 *Register*.

**Comment by Amy Roe, Ph.D. and Sarah Bucic, MSN, RN:**

**11.0 Division's Investigation and Reporting Obligations:** This section should include all the investigation and reporting obligations of the Department, not just those pertaining to the Lead Based Paint Program. For example, other obligations include:

1. Case management for every child with a blood test at or above the reference value.

**Agency Response:** The Division appreciates the submission of comments regarding this regulation. The Division has reviewed these comments and has determined that the regulation will remain as proposed in the December 2023 *Register*.

**Comment by Amy Roe, Ph.D. and Sarah Bucic, MSN, RN:**

Direct referrals to IDEA Part C for eligible children for early intervention services (age birth to three with a blood lead level at or above 5 µg/dL). Coordination between the Childhood Lead Poisoning Prevention Program and IDEA Part C has been problematic, resulting in many eligible children who have never been offered the services to which they are entitled. This relationship and reporting obligation should be codified in regulations.

**Agency Response:** The Division appreciates the submission of comments regarding this regulation. The Division has reviewed these comments and has determined that the regulation will remain as proposed in the December 2023 *Register*. The Division provides the name and contact information of all children at or above the CDC reference level to the Delaware Birth to Three program.

**Comment by Dawn E. Alexander, M. Ed and Dr. Tricia Dallas, Delaware Public Preschool Coalition:**

Include language that requires referral to the IDEA Part C lead agency for children birth to three with blood lead levels at or above 5 µg/dL, as per the 2022 IDEA Part C "Established Conditions" adopted by DHSS.

Include language to ensure that if children received services from DE's IDEA Part C/Birth to Three program due to a BLL of 5 µg/dL or higher, this information is systematically communicated by the IDEA Part C/Birth to Three IFSP teams or via a Division of Public Health database to the children's public preschool program nurses and school psychologists. This information must be made available upon transition from IDEA Part C services to IDEA Part B services within the public school system.

**Agency Response:** The Division appreciates the submission of comments regarding this regulation. The Division has reviewed these comments and has determined that the regulation will remain as proposed in the December 2023 *Register*. The Division provides the name and contact information of all children at or above the CDC reference level to the Delaware Birth to Three program.

**Comment by Jon Neubauer, Delaware State Education Association:**

Include language that requires referral to IDEA Part C for eligible children age birth to three with blood lead levels at or above 5 µg/dL.

**Agency Response:** The Division appreciates the submission of comments regarding this regulation. The Division has reviewed these comments and has determined that the regulation will remain as proposed in the December 2023 *Register*. The Division provides the name and contact information of all children at or above the CDC reference level to the Delaware Birth to Three program.

**Comment by Amy Roe, Ph.D. and Sarah Bucic, MSN, RN:**

Clarifying language around IDEA Part B eligibility, for lead-exposed children aged 3-21, should be added to the regulations in order to provide guidance for school psychologists and school nurses determining eligibility for special education services.

**Agency Response:** The Division appreciates the submission of comments regarding this regulation. The Division has reviewed these comments and has determined that the regulation will remain as proposed in the December 2023 *Register*.

**Comment by Dawn E. Alexander, M. Ed and Dr. Tricia Dallas, Delaware Public Preschool Coalition:**

Provide criteria/clear guidance based on current CDC recommendations to assist DE public school IEP teams in determining eligibility for special education eligibility, as per IDEA Part B law, under the classification of Other Health Impairment (OHI) for lead-exposed children aged 3-21.

**Agency Response:** The Division appreciates the submission of comments regarding this regulation. The Division has reviewed these comments and has determined that the regulation will remain as proposed in the

December 2023 *Register*.

**Comment by Jon Neubauer, Delaware State Education Association:**

Provide clarifying language to help guide IEP teams in determining eligibility for special education, as per IDEA Part B eligibility under the classification of "Other Health Impairment (OHI)", for lead-exposed children aged 3-21.

**Agency Response:** The Division appreciates the submission of comments regarding this regulation. The Division has reviewed these comments and has determined that the regulation will remain as proposed in the December 2023 *Register*.

**Comment by Amy Roe, Ph.D. and Sarah Bucic, MSN, RN:**

Data sharing with school nurses, as required by HB 227 (2023) and appears in Title 16 §2603 (d) as follows: "The Division of Public Health shall ensure that all school nurses have access to data that confirms or denies whether each enrolled child has been screened for lead poisoning. A record of the proof of screening shall be kept in each student's school health record."

**Agency Response:** The Division appreciates the submission of comments regarding this regulation. The Division has reviewed these comments and has determined that the regulation will remain as proposed in the December 2023 *Register*. The Division is currently drafting a data sharing agreement with the Department of Education to address data availability to school nurses.

**Comment by Dawn E. Alexander, M. Ed and Dr. Tricia Dallas, Delaware Public Preschool Coalition:**

Include language that requires DHSS to share children's BLLs with school nurses and to share any lead related information with school nurses to identify children who may qualify for services under IDEA Part B as OHI due to lead exposure.

**Agency Response:** The Division appreciates the submission of comments regarding this regulation. The Division has reviewed these comments and has determined that the regulation will remain as proposed in the December 2023 *Register*. The Division is currently drafting a data sharing agreement with the Department of Education to address data availability to school nurses.

**Comment by Jon Neubauer, Delaware State Education Association:**

Add language that requires data sharing with school nurses to advocate for children who qualify for services under IDEA section B for consideration with the IEP team. In addition to confirmation of lead screening data, school nurses should be provided with blood lead levels for their students.

**Agency Response:** The Division appreciates the submission of comments regarding this regulation. The Division has reviewed these comments and has determined that the regulation will remain as proposed in the December 2023 *Register*. The Division is currently drafting a data sharing agreement with the Department of Education to address data availability to school nurses.

**Comment by Amy Roe, Ph.D. and Sarah Bucic, MSN, RN:**

We recommend: 4459A § 11.1 be amended as follows: 11.1 Within 60 days of receiving notification that a child has an elevated blood lead level, a blood lead test at or above the reference value, the Division shall determine.... We also recommend that the use of elevated blood lead level in 4459 be changed to "reference value", and that "reference value" be consistently applied in the future.

**Comment by Dawn E. Alexander, M. Ed and Dr. Tricia Dallas, Delaware Public Preschool Coalition:**

Replace "elevated blood lead levels" with "a blood lead test with results at or above the blood lead reference value" to align the DE regulation with Center for Disease Control (CDC) recommendations.

**Comment by Jon Neubauer, Delaware State Education Association:**

Replace the existing language of "elevated blood lead levels" with "a blood lead test with results at or above the blood lead reference value". This would align the regulation with recommendations from the Center for Disease Control (CDC).

**Agency Response:** The Division appreciates the submission of comments regarding this regulation. The Division has reviewed these comments and proposes to amend the regulation as follows:

11.1 Within 60 days of receiving notification that a child has a blood lead level, at or above the reference level the Division shall determine: the child's residential address from birth through testing, the site of the child's lead exposure, and the property owner of the site at which the child became exposed to lead. Any

---

documents that the Division creates or holds that contain confidential health information shall be conspicuously marked and will not become public documents.

**Comment by Judith Gorra, MD:**

Section 3 of the provision entitled: Blood Lead Level Screenings and Tests, has two subsections allowing the provider to obtain "a blood lead level screening or test if not medically indicated" (Subsection 3.4) and/or "at their discretion" (Subsection 3.6).

I wanted to confirm if there are any age limits for these two subsections, as immigrant children who are new to our country and state, have potential exposures to lead in numerous ways and the Child Health Clinics have routinely tested all immigrant children for possible lead poisoning.

**Agency Response:** The Division appreciates the submission of comments regarding this regulation. The Division has reviewed these comments and proposes to amend the regulation as follows for clarification:

3.2 Unless a child's parent or guardian requests a blood lead level screening or test, a primary health care provider for a child who is 28 months old or older and younger than ~~6~~ 18 years old shall administer a blood screening or test for lead in the following circumstances:

The Department of Health and Social Services, and the Division of Public Health greatly appreciate the thoughtful input given.

Copies of the re-proposed regulations are available for review in the February 1, 2024, issue of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov>, or by calling the Division of Public Health at (302) 744-4700.

Public comments will be received until the close of business Monday, March 4, 2024. Comments will be accepted in written form via email to [DHSS\\_DPH\\_regulations@delaware.gov](mailto:DHSS_DPH_regulations@delaware.gov), or by U.S. mail to the following address:

Vicki Schultes, Hearing Officer  
Division of Public Health  
417 Federal Street  
Dover, DE 19901

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

[https://regulations.delaware.gov/register/february2024/proposed/27 DE Reg 570RFA 02-01-24.pdf](https://regulations.delaware.gov/register/february2024/proposed/27%20DE%20Reg%20570RFA%2002-01-24.pdf)

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

### 3.0 Requirement for Blood Lead Level Screenings and Tests

- 3.1 Pursuant to 16 Del.C. §2602(a), a primary health care provider for a child shall administer a blood screening or test for lead when the child is between 9 and 15 months of age and again between 21 and 27 months of age. Screenings or tests administered from 15 through 18 months of age shall be considered a 12-month screening or test, and from 18 through 21 months of age shall be considered a 24-month screening or test.
- 3.2 Unless a child's parent or guardian requests a blood lead level screening or test, a primary health care provider for a child who is 28 months old or older and younger than ~~6~~ 18 years old shall administer a blood screening or test for lead in the following circumstances:
- 3.2.1 If the child has not previously received a blood lead level screening or test;
- 3.2.2 If the child's parent or guardian fails to provide documentation that the child has previously received a blood lead level screening or test; or
- 3.2.3 If the health care provider is unable to obtain the results of a previous blood lead analysis.
- 3.3 A health care provider shall administer a blood lead level test, by venous methodology, if the results of a capillary screening indicate a blood lead level result greater than or equal to the reference value.



- 3.4 A health care provider giving non-primary care to a child may administer a blood lead level screening or test, even if a blood lead level screening or test is not medically indicated.
- 3.5 If a child is insured under Delaware's Medicaid program, the child's primary health care provider shall administer a blood lead level screening or test to the child at the 12-month visit and again at the 24-month visit in accordance with Early and Periodic Screening, Diagnosis and Treatment (EPSDT) requirements.
- 3.6 In addition to the blood lead level screening and testing requirements in this section, a health care provider may order a lead screening or test at their discretion and these results must be reported to ~~DPH~~ the Division pursuant to Section 7.0.

#### 4.0 [Reserved.]

#### 5.0 Religious Exemption

A religious exemption may be granted to a child if the blood lead level screening or testing conflicts with a genuine and sincere religious belief and not a belief based merely on philosophical, scientific, moral, personal, or medical opposition to blood lead level screening or testing. The ~~DPH~~ Division affidavit of blood lead level screening or testing exemption for religious beliefs shall be signed and dated by the child's parent or guardian, notarized, and kept in the child's medical chart.

*(Break in Continuity of Sections)*

#### 10.0 Proof of Documentation Requirements Prior to Child Care or School Enrollment

- 10.1 Upon first admission or continued enrollment, the parent or guardian of a child 12 months of age or older shall provide to the child care facility, public or private nursery school, preschool, or kindergarten proof that the child received a blood lead level screening or test.
- 10.2 Except in the case of enrollment in kindergarten, the blood lead level screening or test may be done within 60 calendar days of the date of enrollment.
- 10.3 A child's parent or guardian must provide 1 of the following to a child care facility, public or private nursery school, preschool, or kindergarten:
  - 10.3.1 A statement from the child's primary health care provider that the child has received the required screenings or tests for lead; or
  - 10.3.2 The ~~DPH~~ Division affidavit signed by the parent or guardian stating that the blood lead level screening or test is contrary to the parent's or guardian's religious beliefs; or
  - 10.3.3 Certified documentation of the child's blood lead analysis, as specified in this regulation, administered in connection with the 12-month visit and 24-month visit to the child's health care provider not later than:
    - 10.3.3.1 30 calendar days from the 12-month visit or 24-month visit; or
    - 10.3.3.2 30 calendar days from first entry into the ~~program or system~~ child care facility, public or private nursery school, preschool, or kindergarten.
- 10.4 If the child's first blood lead level screening or test was administered after the child is 28 months old, then only certified documentation of the most recent blood lead analysis is required to be reported.
- 10.5 If a child has more than 2 blood lead level screenings or tests administered from the ages of 9 months through 27 months then only certified documentation of the 2 most recent blood lead analyses shall be reported.
- 10.6 The information sent to or received by a ~~program~~ child care facility, public or private nursery school, preschool, kindergarten or school shall be recorded and certified by a health care provider's signature on a form that includes the following:
  - 10.6.1 Name of the child;
  - 10.6.2 Date of the blood lead analysis; and
  - 10.6.3 The signature of the child's primary health care provider or designee.
- 10.7 This Section shall apply to all children born after June 30, 2021.

## **11.0 Division's Investigation and Reporting Obligations**

- 11.1 Within 60 days of receiving notification that a child has a blood lead level at or above the reference level, the Division shall determine: the child's residential address from birth through testing, the site of the child's lead exposure, and the property owner of the site at which the child became exposed to lead. Any documents that the Division creates or holds that contain confidential health information shall be conspicuously marked and will not become public documents.
- 11.2 Within 10 days of identifying the site of lead exposure, the Division shall notify the Delaware State Lead-Based Paint Program, created by 16 Del.C. §2607, of the location and contact information of the property owner. These communications will be public records subject to disclosure under the Freedom of Information Act, Delaware Code, Title 29, Chapter 100.

## **~~44-0~~ 12.0 Severability**

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

## **~~42-0~~ 13.0 Penalty**

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

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

<https://regulations.delaware.gov/register/february2024/proposed/27 DE Reg 570 02-01-24.htm>

---

## **DIVISION OF SOCIAL SERVICES**

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

### **PUBLIC NOTICE**

#### **Food Benefit Certification**

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 Food Benefit Certification.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Division of Social Services (DSS), 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [DHSS\\_DMMA\\_Publiccomment@Delaware.gov](mailto:DHSS_DMMA_Publiccomment@Delaware.gov), or by fax to 302-255-4413 by 4:30 p.m. on March 4, 2024. Please identify in the subject line: Food Benefit Certification.

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

### **SUMMARY OF PROPOSAL**

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) is proposing to amend the Division of Social Services Manual (DSSM) regarding Food Benefit Certification.

## Statutory Authority

7 CFR 273.10 (f)

## Background

DSSM 9068 is being amended to reflect the changes from 24-month to 12-month certification periods for households in which all members are elderly or disabled, and from 12-month to 6-month certification periods for all other households participating in SNAP. DSS is shortening SNAP certification period lengths to eliminate the SNAP periodic review and to help reduce errors caused when households do not report changes in circumstances during the certification period. DSSM 9068 was also updated with current case processing procedures and DSSM 9068.1 through DSSM 9068.5 will be sunset with relevant information from these policies added to DSSM 9068.

## Summary of Proposal

### *Purpose*

The purpose of this proposed regulation is to sunset DSSM 9068.1 through DSSM 9068.5 and add relevant information from these policies to DSSM 9068. The proposed policy will also explain the requirements for certification periods in the Supplemental Nutrition Assistance Program (SNAP), including assigning certification periods, when the certification period begins and ends, and adjusting or terminating certification periods based on household circumstances.

### *Summary of Proposed Changes*

Effective for services provided on and after April 11, 2024, Delaware Health and Social Services (DHSS) /Division of Social Services (DSS) proposes to amend the Division of Social Services Manual (DSSM) regarding Food Benefit Certification.

### *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 should be received by 4:30 p.m. on March 4, 2024.

## Fiscal Impact

DSSM 9068 is already in effect and there are no new financial responsibilities associated with the regulation.

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

<https://regulations.delaware.gov/register/february2024/proposed/27 DE Reg 577RFA 02-01-24.pdf>

## 9000 Food Stamp Program

### 9068 Assigning Certification Periods for Food Benefits

~~{7 CFR 273.10(f)}~~

#### Statutory Authority

~~7 CFR 273.10(f)~~

~~DSS approves eligible households for a defined number of months called a certification period. The certification period is the period of time that DSS determines a household is eligible to receive benefits.~~

~~At the end of the certification period, entitlement to food benefits expires. DSS will not issue any further food benefits until the household completes a new application, is interviewed and provides all necessary verifications.~~

~~The first month for which the household is eligible to participate starts the first month of the certification period. DSS will assign certification periods according to each household's circumstances.~~

~~The certification periods for all households shall not exceed 12 months, except households listed in DSSM 9068.2.~~

A certification period is the set amount of time that an approved household is eligible to receive food benefits.

1. DSS assigns approved food benefit households a certification period based on each household's circumstances at application and recertification.
2. DSS will assign the following certification periods to food benefit households:
  - A. A 12-month certification period will be assigned to households in which all members are elderly or disabled as defined in DSSM 9094 and have no earned income.
  - B. A 6-month certification period will be assigned to all other households.

|  |
|--|
| <u>Exception: Households certified on an expedited basis who have postponed verifications will be assigned an initial 1-month or 2-month certification period as specified in DSSM 9046.1.</u> |
|--|

3. The certification period begins the first month that a household is eligible for food benefits.

Examples:

  - i. A household submits a food benefit application on January 10. The household is determined eligible for January. The first month of the household's certification period is January.
  - ii. A household submits a food benefit application on January 28. The household is determined eligible for January, but does not receive a benefit issuance due to a prorated benefit of less than \$10.00. The first month of the household's certification period is January.
  - iii. A household submits a food benefit application on January 5. The household is determined to be over income for January, but eligible beginning February. The first month of the household's certification period is February.
4. A household's eligibility for food benefits expires at the end of the certification period.
5. Households must complete the recertification process according to DSSM section 9091 and have their renewal application approved to establish a new certification period and continue receiving food benefits.
6. DSS may terminate a food benefit household's certification period before the assigned end date only for the following reasons:
  - A. The household becomes ineligible due to a reported change and the food benefit case is closed as required by DSSM section 9085; or
  - B. The household fails to respond to a Request for Contact during the certification period and the food benefit case is closed as required by DSSM 9085.5; or
  - C. The household requests for their food benefit case to be closed.

7. DSS case workers will not adjust certification period lengths unless instructed to do so by management or the Information Systems Unit (ISU).

8. DSS informs households of the begin and end dates of their certification periods on the food benefit approval notice.

### **~~9068.1 12-Month Certification Periods~~**

~~Assign households subject to simplified reporting, except the elderly or disabled households per DSSM 9068.2, a 12-month certification period.~~

~~Households assigned a 12-month certification period are required to complete and return an interim report in the 6<sup>th</sup> month of the certification period.~~

## ~~9068.2 24 Month Certification Periods for Elderly or Disabled Households~~

~~Assign a 24-month certification period to households where all members are elderly or disabled and have no earned income.~~

~~Households assigned a 24-month certification period are required to complete and return an interim report in the 12<sup>th</sup> month of the certification period.~~

## ~~9068.3 Length of Certification Periods~~

~~Assign each household the longest certification period possible based on its circumstances.~~

~~Households with unstable circumstances can be assigned a certification period consistent with their circumstances, but no less than 4 months.~~

## ~~9068.4 Shortening Certification Periods~~

~~Households certification periods will not be terminated before the assigned certification periods end except for the following reasons:~~

- ~~- DSS receives information that the household has become ineligible, or~~
- ~~- The household fails to respond to a Request for Contact to resolve unclear information.~~

~~Households certification periods will not be shortened due to loss of cash assistance or change in employment status.~~

~~Close or adjust households benefits in response to reported changes according to DSSM 9085.~~

~~Do not use the Notice of Expiration to shorten a certification period.~~

## ~~9068.5 Lengthening Certification Periods~~

~~When needed, lengthen a household's certification period after it has been assigned as long as the total months of certification do not exceed 12 months.~~

~~Inform households whose certification is lengthened of the new certification ending date with a notice containing the same information as the notice of eligibility.~~

---

## DIVISION OF SOCIAL SERVICES

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

### PUBLIC NOTICE

#### Processing Applications for Child Care

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of 31 Del. C. §512, Delaware Health and Social Services ("Department") / Division of Social Services (DHSS/DSS) is proposing to amend the Division of Social Services Manual (DSSM), Policy 11004.1 Processing Applications for Child Care.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Division of Social Services (DSS), 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [DHSS\\_DMMA\\_Publiccomment@Delaware.gov](mailto:DHSS_DMMA_Publiccomment@Delaware.gov), or by fax to 302-255-4413 by 4:30 p.m. on March 4, 2024. Please identify in the subject line: Processing Applications for Child Care

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

---

## SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) is proposing to amend the Division of Social Services Manual (DSSM), Policy 11004.1 Processing Applications for Child Care.

### **Statutory Authority**

45 CFR 98.20

### **Background**

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

### **Summary of Proposal**

#### *Purpose*

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

#### *Summary of Proposed Changes*

Effective for services provided on and after April 11, 2024, Delaware Health and Social Services (DHSS) /Division of Social Services (DSS) proposes to amend the Division of Social Services Manual (DSSM), Policy 11004.1 Processing Applications for Child Care.

#### *Public Notice*

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

### **Fiscal Impact**

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

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

[https://regulations.delaware.gov/register/february2024/proposed/27 DE Reg 580RFA 02-01-24.pdf](https://regulations.delaware.gov/register/february2024/proposed/27%20DE%20Reg%20580RFA%2002-01-24.pdf)

## 11000 Child Care Subsidy Program

### **11004.1 Processing Applications for Child Care**

#### Statutory Authority

45 C.F.R 98.20

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

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

---

# PROPOSED REGULATIONS

---

- In person at any DSS location;
  - Over the phone with a DSS case worker;
  - By mailing, faxing, or emailing a completed application to the local DSS office; or
  - Online through Delaware ASSIST or other online application methods.
3. ~~DSS will interview the applicant and process the signed child care application within two business days.~~  
~~The application filing date will be the effective begin date for assistance.~~  
A parent or caretaker selects the date child care services begin.
- A. The DSS authorization for child care will begin on the first day the child attends a child care setting. The authorization cannot begin prior to the child attending a child care setting.
- B. The DSS authorization for child care may begin before the date of application, but no earlier than the first day of the application month if the child was attending the child care setting.

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

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

|  |
|--|
| <p><u>Note: The DSS eligibility system will allow authorizations for child care to begin the first day of the month of application</u></p> |
|--|

4. A parent or caretaker must verify household income and the need for child care during the application process.
- A. A parent or caretaker must verify the last 30 days of earned and unearned income received prior to the date of application for DSS to determine financial eligibility.
- i. Earned income may be verified by:
    - a. Wage stubs;
    - b. A signed employer statement on employer letterhead noting the employee's name, start date, work schedule, earnings, and frequency of pay;
    - c. Verification of Employment (Form 170); or
    - d. A data match confirming employment and income.
  - ii. Unearned income may be verified by:
    - a. Award letters;
    - b. Pension statements;
    - c. Court order documentation;

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



# PROPOSED REGULATIONS

## DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION Board of Dentistry and Dental Hygiene

Statutory Authority: 24 Delaware Code, Section 1106(a)(1) (24 Del.C. §1106(a)(1))  
24 DE Admin. Code 1100

### PUBLIC NOTICE

#### 1100 Board of Dentistry and Dental Hygiene

The Delaware Board of Dentistry and Dental Hygiene, pursuant to 24 Del. C. 1106(a)(1), proposes to revise its regulations. The proposed amendments clarify that limited licensees are subject to general supervision while training and eliminate redundancies in the Supervision regulations.

The Board will hold a public hearing on the proposed rule change on March 21, 2024 at 3:00 PM virtually and at the Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. The virtual meeting information will be included on the meeting's public agenda. Written comments should be sent to Jennifer Witte, Administrator of the Delaware Board of Dentistry and Dental Hygiene, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until April 5, 2024.

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

<https://regulations.delaware.gov/register/february2024/proposed/27 DE Reg 584RFA 02-01-24.pdf>

#### 1100 Board of Dentistry and Dental Hygiene (Break in Continuity of Sections)

#### 5.0 Supervision

- 5.1 ~~Conditions Applicable to General Supervision—A licensed dental hygienist, by virtue of having passed a licensure examination and being duly licensed by the State, is capable of performing those services allowed by law under supervision, the following conditions shall exist: Limited license holders may practice under general supervision and subject to the provisions of 24 Del.C. §1132.~~
- 5.2 Licensed dental hygienists must practice under general supervision subject to the following conditions:
- 5-2 ~~5.2.1~~ Advance Notice to Patient - The patient is notified, as soon as it is known, that the dentist will not be present, and is given the option to reschedule to a time when the dentist will be present in the office.
- 5-3 ~~5.2.2~~ Dentist Review of Records - The dentist shall review the treatment records of each patient prior to and following the patient treatment.
- 5-4 ~~5.2.3~~ The dentist must perform at least ~~one~~ 1 clinical examination of the patient within a ~~12-month~~ 12-month period.
- 5-5 ~~5.2.4~~ Patient Contraindications - Patients for whom it is medically or dentally contraindicated, will not be scheduled when the dentist is not present.
- 5-6 ~~5.2.5~~ Office Requirements - A second office employee shall be present in the treatment facility at all times when patient care is performed. This is both for safety and security reasons.
- 5-7 ~~Practice in a Public Health Institution—A licensed dental hygienist, per 24 Del.C. §1121(c), may operate under the general direction of a dentist in an institution, provided that all of the conditions of general supervision are met.~~

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

<https://regulations.delaware.gov/register/february2024/proposed/27 DE Reg 584 02-01-24.htm>

## PUBLIC SERVICE COMMISSION

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

### PUBLIC NOTICE

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

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

PSC REGULATION DOCKET NO. 49

### PUBLIC NOTICE OF PROPOSED REGULATIONS

The Delaware Public Service Commission ("Commission" or "PSC") proposes to revisit the *Rules for Certification and Regulation of Electric Suppliers*, codified at 26 Del. Admin. C. § 3001 ("Reg. 49") for the purpose of clarification and administrative adjustment. The Commission proposes to create two new sections of Title 26 Administrative Code in its proposed amendment to Reg. 49.

You can review the proposed regulations in the February 2024 issue of the *Delaware Register of Regulations*. You can also review the Commission Order and the proposed regulations in the PSC's electronic filing system, Delafile, located at <http://delafile.delaware.gov/> (for docket #, input "Reg. 49"). If you wish to obtain written copies of the Order and proposed regulations, please contact the PSC at (302)736-7500. Copies in excess of the first twenty (20) pages are \$0.25 per page. Payment is expected prior to copying (if you wish the copies to be mailed) or at the time the copies are retrieved (if you retrieve them in person).

Pursuant to 29 Del. C. § 10118(a), written comments on the proposed regulations will be accepted until **March 21, 2024**. Comments should be submitted via email to [PSC@delaware.gov](mailto:PSC@delaware.gov) with the subject line "Regulation Docket No. 49" or mailed to: Crystal Beenick, Public Service Commission, Cannon Building, 861 Silver Lake Blvd., Suite 100, Dover, DE 19904. **There will be a public hearing on the proposed regulations on March 6, 2024 at 1:00 p.m. at the hearing room located at 861 Silver Lake Blvd., Suite 100, Dover, DE 19904. To be considered at the March 6, 2024 hearing, however, written comments must be submitted on or before February 27, 2024.**

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

PSC REGULATION DOCKET NO. 49

**ORDER NO. 10354**

**AND NOW**, this 20th day of December 2023, the Delaware Public Service Commission ("Commission") determines and orders as follows:

**WHEREAS**, under the provisions of 26 Del. C. § 209(a)(1) and 29 Del. C. § 10114, the Commission is authorized to grant or deny proceedings for the adoption, amendment, or repeal of a regulation upon the motion of an agency member; and

**WHEREAS**, Commission Staff ("Staff") has drafted amendments to the Commission's *Rules for Certification and Regulation of Electric Suppliers*, codified at 26 Del. Admin. C. § 3001 ("Reg. 49") which Staff submits are in the interest of administrative efficiency and public reference; and

**WHEREAS**, Commission Staff submits that the regulations pertaining to Electric Suppliers, Community Energy Facility, and Net Energy Metering should each be separated to relieve administrative burden on Staff, as well as provide benefit to the public for ease of reference; and

**WHEREAS**, in summary, the amendments which Staff propose revise the existing regulatory language and will also move portions relating to Community Energy Facilities and Net Energy Metering, currently in 26 Del. C. § 3001, into proposed sections of the administrative code. As such, Staff proposes the adoption of 26 Del. C. §§ 3012 and 3013 in separate dockets, Reg. 65 and Reg. 66. Staff proposes that the portions removed from Reg. 49 which are relevant to Net Energy Metering be moved to proposed 26 Del. Admin. C. § 3012 as detailed in Regulation Docket 65 and that the portions removed from Reg. 49 that are relevant to Community Energy Facilities be moved to proposed 26 Del. Admin. C. § 3013 as detailed in Regulation Docket 66. The amendments to Reg. 49 are attached as Exhibit "A";<sup>1</sup> and

**WHEREAS**, under 29 Del. C. § 10114, the agency at its next regular meeting shall either grant the petition and initiate the proceedings, or deny the petition and give its reasons for doing so.

**WHEREAS**, pursuant to 29 Del. C. § 10114, Commission Staff motions the Commission to either grant and initiate the proceedings pursuant to 26 Del. C. § 209 and 29 Del. C. § 10114, or in the alternative, to deny the petition and give its reasons for doing so; and

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

1. That, for the reasons set forth above, and pursuant to 26 Del. C. § 209 and 29 Del. C. § 10114, the Commission proposes to revise Reg. 49 and to create two new sections of Title 26 Administrative Code, which were last revised by PSC Order No. 10291 (August 23, 2023) and published at 26 Del. Admin. § 3001. A redlined version of the proposed amendments to 26 Del. Admin. C. § 3001 is attached to this Order as Exhibit "A".

2. That, pursuant to 29 Del. C. § 10115(a), the Secretary shall transmit a copy of this Order, with the attached exhibits, to the Registrar of Regulations for publication in the February 1, 2024 edition of the *Delaware Register of Regulations*.

3. That, pursuant to 26 Del. C. § 102A, the Secretary shall cause the form of public notice attached as Exhibit "B" to be published on the Commission's website located at <https://depssc.delaware.gov/>, in the *The News Journal* newspapers, and in the *Delaware State News* newspapers on or before January 15, 2024. In addition, the Secretary shall mail a copy of this Order, with its exhibits, to the Division of the Public Advocate and to all persons or entities who have made written requests for advance notice of this Commission's rule-making proceedings.<sup>2</sup> The Secretary shall file a certification of the completion of these tasks by February 1, 2024.

4. That pursuant to 26 Del. C. § 209(a), the Commission will hold a public hearing on the proposed amendments on Wednesday, March 6, 2024, beginning at 1:00 PM. The Commission will conduct the meeting as set forth in the attached form of public notice. Interested persons or entities may submit written suggestions, compilations of data, briefs, or other written materials concerning these proposed amendments on or before March 21, 2024.<sup>3</sup> **To be considered at the March 6, 2024 hearing, however, written comments must be submitted on or before February 27, 2024.**

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

---

<sup>1</sup>For public reference, the proposed section, 26 Del. C. § 3012, is attached to PSC Order 10355 as Exhibit "A", and the proposed section 26 Del. C. § 3013 is attached to PSC Order 10356 as Exhibit "A"

<sup>2</sup>26 Del. C. § 10115(c).

<sup>3</sup>Pursuant to 29 Del. C. § 10118(a), the opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the *Register of Regulations*. See also 29 Del. C. § 10118(a) "the opportunity for public written comment shall be extended for a minimum of 15 days after the final public hearing on a proposed regulation".

**BY ORDER OF THE COMMISSION:**

Dallas Winslow, Chairman  
Joann Conaway, Commissioner  
/s/ Harold B. Gray, Commissioner  
(Voted via Teleconference pursuant to 29 Del.C.  
§10006(A)(d))  
Manubhai Karia, Commissioner (absent)  
K. F. Drexler, Commissioner

ATTEST: Crystal Beenik, Secretary

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

**\*Please Note:**

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

<https://regulations.delaware.gov/register/february2024/proposed/27 DE Reg 585RFA 02-01-24.pdf>

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

<https://regulations.delaware.gov/register/february2024/proposed/27 DE Reg 585 02-01-24.htm>

---

# PROPOSED REGULATIONS

---

## PUBLIC SERVICE COMMISSION

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

### PUBLIC NOTICE

#### 3012 Rules for Regulation of Net Metering

IN THE MATTER OF THE ADOPTION OF RULES  
AND REGULATIONS TO  
IMPLEMENT THE PROVISIONS OF TITLE 26  
§1014 OF THE DELAWARE CODE RELATING TO  
NET METERING (OPENED OCTOBER 25, 2023)  
(FILED OCTOBER 25, 2023 )

PSC REGULATION DOCKET NO. 65

### PUBLIC NOTICE OF PROPOSED REGULATIONS

The Delaware Public Service Commission ("Commission" or "PSC") proposes to issue regulations governing its regulation of net energy metering, which is currently codified in the *Rules for Certification and Regulation of Electric Suppliers*, at 26 Del. Admin. C. § 3001. The proposed regulations, the *Rules for Regulation of Net Energy Metering* are proposed to be codified at 26 Del. Admin. C. § 3012. In summary, the Commission proposes to remove net energy metering subject matter from *Rules for Certification and Regulation of Electric Suppliers*, at 26 Del. Admin. C. § 3001 into its own section for the purpose of public clarification and administrative efficiency.

You can review the proposed regulations in the February 2024 issue of the *Delaware Register of Regulations*. You can also review the Commission Order and the proposed regulations in the PSC's electronic filing system, Delafile, located at <http://delafile.delaware.gov/> (for docket #, input "Reg. 65"). If you wish to obtain written copies of the Order and proposed regulations, please contact the PSC at (302)736-7500. Copies in excess of the first twenty (20) pages are \$0.25 per page. Payment is expected prior to copying (if you wish the copies to be mailed) or at the time the copies are retrieved (if you retrieve them in person).

Pursuant to 29 Del. C. § 10118(a), written comments on the proposed regulations will be accepted until **March 21, 2024**. Comments should be submitted via email to [PSC@delaware.gov](mailto:PSC@delaware.gov) with the subject line "Regulation Docket No. 65" or mailed to: Crystal Beenick, Public Service Commission, Cannon Building, 861 Silver Lake Blvd., Suite 100, Dover, DE 19904. **There will be a public hearing on the proposed regulations on March 6, 2024 at 1:00 p.m. at the hearing room located at 861 Silver Lake Blvd., Suite 100, Dover, DE 19904. To be considered at the March 6, 2024 hearing, however, written comments must be submitted on or before February 27, 2024.**

IN THE MATTER OF THE ADOPTION OF RULES  
AND REGULATIONS TO  
IMPLEMENT THE PROVISIONS OF TITLE 26  
§1014 OF THE DELAWARE CODE RELATING TO  
NET METERING (OPENED OCTOBER 25, 2023)  
(FILED OCTOBER 25, 2023 )

PSC REGULATION DOCKET NO. 65

### ORDER NO. 10355

**AND NOW**, this 20th day of December 2023, the Delaware Public Service Commission ("Commission") determines and orders as follows:

**WHEREAS**, under the provisions of 26 *Del. C.* § 209(a)(1) and 29 *Del. C.* § 10114, the Commission is authorized to grant or deny proceedings for the adoption, amendment, or repeal of a regulation upon the motion of an agency member; and

**WHEREAS**, Commission Staff ("Staff") has drafted amendments to the Commission's *Rules for Certification and Regulation of Electric Suppliers*, codified at 26 *Del. Admin. C.* § 3001 ("Reg. 49") which Staff submits are in the interest of administrative efficiency and public reference; and

**WHEREAS**, Commission Staff submits that the regulations pertaining to Electric Suppliers, Community Energy Facility, and Net Energy Metering should each be separated to relieve administrative burden on Staff, as well as provide benefit to the public for ease of reference; and

**WHEREAS**, in summary, Staff proposes to the Commission to adopt a new section of Title 26 Administrative Code, Section 3012 ("Section 3012"), to move portions relating to Net Energy Metering in 26 *Del. C.* § 3001 to Section 3012. The proposed Section 3012 is attached as Exhibit "A", and for public reference, the amendments to Reg. 49 are detailed in PSC Docket "Reg. 49", PSC Order 10354; and

**WHEREAS**, under 29 *Del. C.* § 10114, the agency at its next regular meeting shall either grant the petition and initiate the proceedings, or deny the petition and give its reasons for doing so; and

**WHEREAS**, pursuant to 26 *Del. C.* § 209 and 29 *Del. C.* §§ 10111-10118, Staff motions the Commission to either grant and initiate the proceedings or in the alternative, to deny the petition and give its reasons for doing so;

**NOW, THEREFORE, IT IS ORDERED BY THE AFFIRMATIVE**

**VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. That, for the reasons set forth above, and pursuant to 26 *Del. C.* § 209 and 29 *Del. C.* §§ 10111-10118, the Commission proposes to promulgate the *Rules for Regulation of Net Metering* ("Reg. 65") attached hereto as Exhibit "A", which, once adopted, will encompass the Commission's regulations involving net energy metering.

2. That, pursuant to 29 *Del. C.* § 10115(a), the Secretary shall transmit a copy of this Order, with the attached exhibits, to the Registrar of Regulations for publication in the February 1, 2024 edition of the *Delaware Register of Regulations*.

3. That, pursuant to 26 *Del. C.* § 102A, the Secretary shall cause the form of public notice attached as Exhibit "B" to be published on the Commission's website located at <https://depsec.delaware.gov/>, in the *The News Journal* newspapers, and the *Delaware State News* newspapers on or before January 15, 2024. In addition, the Secretary shall mail a copy of this Order, with its exhibits, to the Division of the Public Advocate and to all persons or entities who have made written requests for advance notice of this Commission's rule-making proceedings.<sup>1</sup> The Secretary shall file a certification of the completion of these tasks by February 1, 2024.

4. That pursuant to 26 *Del. C.* § 209(a), the Commission will hold a public hearing on the proposed amendments on Wednesday, March 6, 2024, beginning at 1:00 PM. The Commission will conduct the meeting as set forth in the attached form of public notice. Interested persons or entities may submit written suggestions, compilations of data, briefs, or other written materials concerning these proposed amendments on or before March 21, 2024.<sup>2</sup> **To be considered at the March 6, 2024 hearing, however, written comments must be submitted on or before February 27, 2024.**

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

---

<sup>1</sup>26 *Del. C.* § 10115(c).

<sup>2</sup>Pursuant to 29 *Del. C.* § 10118(a), the opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the *Register of Regulations*. See also 29 *Del. C.* § 10118(a) "the opportunity for public written comment shall be extended for a minimum of 15 days after the final public hearing on a proposed regulation".

**BY ORDER OF THE COMMISSION:**

Dallas Winslow, Chairman  
Joann Conaway, Commissioner  
/s/ Harold B. Gray, Commissioner  
(Voted via Teleconference pursuant to 29 *Del. C.*  
§10006(A)(d))

# PROPOSED REGULATIONS

ATTEST: Crystal Beenik, Secretary

Manubhai Karia, Commissioner (absent)  
K. F. Drexler, Commissioner

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

**\*Please Note:**

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

<https://regulations.delaware.gov/register/february2024/proposed/27 DE Reg 588RFA 02-01-24.pdf>

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

<https://regulations.delaware.gov/register/february2024/proposed/27 DE Reg 588 02-01-24.htm>

## PUBLIC SERVICE COMMISSION

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

### PUBLIC NOTICE

#### 3013 Rules for and Regulation of Community Energy Facilities

IN THE MATTER OF THE ADOPTION OF RULES  
AND REGULATIONS TO  
IMPLEMENT THE PROVISIONS OF SENATE  
BILL NO. 2 (SEPT. 2021) WHICH AMENDED  
TITLES 6, 26, AND 29 OF THE DELAWARE  
CODE RELATING TO COMMUNITY OWNED  
ENERGY GENERATING FACILITIES (OPENED  
OCTOBER 25, 2023)

PSC REGULATION DOCKET NO. 66

### PUBLIC NOTICE OF PROPOSED REGULATIONS

The Delaware Public Service Commission ("Commission" or "PSC") proposes to issue regulations governing its regulation of community energy facilities, which is currently codified in the *Rules for Certification and Regulation of Electric Suppliers*, at 26 Del. Admin. C. § 3001. The proposed regulations, the *Rules for Regulation of Community Energy Facilities* are proposed to be codified at 26 Del. C. § 3013. In summary, the Commission proposes to remove community energy facilities subject matter from Rules for Certification and Regulation of Electric Suppliers, at 26 Del. Admin. C. § 3001 into its own section for the purpose of public clarification and administrative efficiency.

You can review the proposed regulations in the February 2024 issue of the *Delaware Register of Regulations*. You can also review the Commission Order and the proposed regulations in the PSC's electronic filing system, Delafile, located at <http://delafile.delaware.gov/> (for docket #, input "Reg. 66"). If you wish to obtain written copies of the Order and proposed regulations, please contact the PSC at (302)736-7500. Copies in excess of the first twenty (20) pages are \$0.25 per page. Payment is expected prior to copying (if you wish the copies to be mailed) or at the time the copies are retrieved (if you retrieve them in person).

Pursuant to 29 Del. C. § 10118(a), written comments on the proposed regulations will be accepted until March 21, 2024. Comments should be submitted via email to [PSC@delaware.gov](mailto:PSC@delaware.gov) with the subject line "Regulation Docket No. 66" or mailed to: Crystal Beenick, Public Service Commission, Cannon Building, 861 Silver Lake Blvd., Suite

---

100, Dover, DE 19904. **There will be a public hearing on the proposed regulations on March 6, 2024 at 1:00 p.m. at the hearing room located at 861 Silver Lake Blvd., Suite 100, Dover, DE 19904. To be considered at the March 6, 2024 hearing, however, written comments must be submitted on or before February 27, 2024.**

IN THE MATTER OF THE ADOPTION OF RULES  
AND REGULATIONS TO  
IMPLEMENT THE PROVISIONS OF SENATE  
BILL NO. 2 (SEPT. 2021) WHICH AMENDED  
TITLES 6, 26, AND 29 OF THE DELAWARE  
CODE RELATING TO COMMUNITY OWNED  
ENERGY GENERATING FACILITIES (OPENED  
OCTOBER 25, 2023)

PSC REGULATION DOCKET NO. 66

## ORDER NO. 10356

**AND NOW**, this 20th day of December 2023, the Delaware Public Service Commission ("Commission") determines and orders as follows:

**WHEREAS**, under the provisions of 26 *Del. C.* § 209(a)(1) and 29 *Del. C.* § 10114, the Commission is authorized to grant or deny proceedings for the adoption, amendment, or repeal of a regulation upon the motion of an agency member; and

**WHEREAS**, Commission Staff ("Staff") has drafted amendments to the Commission's *Rules for Certification and Regulation of Electric Suppliers*, codified at 26 *Del. Admin. C.* § 3001 ("Reg. 49") which Staff submits are in the interest of administrative efficiency and public reference; and

**WHEREAS**, Commission Staff submits that the regulations pertaining to Electric Suppliers, Community Energy Facility, and Net Energy Metering should each be separated to relieve administrative burden on Staff, as well as provide benefit to the public for ease of reference; and

**WHEREAS**, in summary, Staff proposes to the Commission to adopt a new section of Title 26 Administrative Code, Section 3013 ("Section 3013"), to move portions relating to Community Energy Facilities in 26 *Del. C.* § 3001 to Section 3013. The proposed Section 3013 is attached as Exhibit "A", and for public reference, the amendments to Reg. 49 are detailed in PSC Docket "Reg. 49", PSC Order 10354; and

**WHEREAS**, under 29 *Del. C.* § 10114, the agency at its next regular meeting shall either grant the petition and initiate the proceedings, or deny the petition and give its reasons for doing so; and

**WHEREAS**, pursuant to 26 *Del. C.* § 209 and 29 *Del. C.* §§ 10111-10118, Staff motions the Commission to either grant and initiate the proceedings or in the alternative, to deny the petition and give its reasons for doing so;

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

1. That, for the reasons set forth above, and pursuant to 26 *Del. C.* § 209 and 29 *Del. C.* §§ 10111-10118, the Commission proposes to promulgate the *Rules for Regulation of Community Energy Facilities* ("Reg. 66") attached hereto as Exhibit "A", which, once adopted, will encompass the Commission's regulations involving community energy facilities.

2. That, pursuant to 29 *Del. C.* § 10115(a), the Secretary shall transmit a copy of this Order, with the attached exhibits, to the Registrar of Regulations for publication in the February 1, 2024 edition of the *Delaware Register of Regulations*.

3. That, pursuant to 26 *Del. C.* § 102A, the Secretary shall cause the form of public notice attached as Exhibit "B" to be published on the Commission's website located at <https://depsec.delaware.gov/>, in the *The News Journal* newspapers and in the *Delaware State News* newspapers on or before January 15, 2024. In addition, the Secretary shall mail a copy of this Order, with its exhibits, to the Division of the Public Advocate and to all persons or entities who have made written requests for advance notice of this Commission's rule-making proceedings.<sup>1</sup> The Secretary shall file a certification of the completion of these tasks by February 1, 2024.

4. That pursuant to 26 *Del. C.* § 209(a), the Commission will hold a public hearing on the proposed amendments on Wednesday, March 6, 2024, beginning at 1:00 PM. The Commission will conduct the meeting as set forth in the attached form of public notice. Interested persons or entities may submit written suggestions,



# PROPOSED REGULATIONS

compilations of data, briefs, or other written materials concerning these proposed amendments on or before March 21, 2024.<sup>2</sup> **To be considered at the March 6, 2024 hearing, however, written comments must be submitted on or before February 27, 2024.**

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

<sup>1</sup>26 *Del. C.* § 10115(c).

<sup>2</sup>Pursuant to 29 *Del. C.* § 10118(a), the opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the *Register of Regulations*. See also 29 *Del. C.* § 10118(a) "the opportunity for public written comment shall be extended for a minimum of 15 days after the final public hearing on a proposed regulation".

## BY ORDER OF THE COMMISSION:

Dallas Winslow, Chairman  
 Joann Conaway, Commissioner  
 /s/ Harold B. Gray, Commissioner  
 (Voted via Teleconference pursuant to 29 *Del. C.*  
 §10006(A)(d))  
 Manubhai Karia, Commissioner (absent)  
 K. F. Drexler, Commissioner

ATTEST: Crystal Beenik, Secretary

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

### \*Please Note:

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

<https://regulations.delaware.gov/register/february2024/proposed/27 DE Reg 590RFA 02-01-24.pdf>

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

<https://regulations.delaware.gov/register/february2024/proposed/27 DE Reg 590 02-01-24.htm>

## DEPARTMENT OF TRANSPORTATION DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 21 Delaware Code, Section 4170A (21 **Del.C.** §4170A)

### PUBLIC NOTICE

#### 1207 Electronic Speed Monitoring System

Pursuant to the authority provided by 21 **Del.C.** §4170A, the Delaware Department of Transportation (DelDOT) established an Electronic Speed Monitoring System (ESMS) program along qualifying roadways across the State of Delaware.

The Department, through its Division of Transportation Solutions seeks to adopt this regulation to administer the ESMS program, which is established in support of DelDOT's Highway Safety Improvement Program and, in particular, its Strategic Highway Safety Plan, which has identified speeding as an emphasis area to target the overall program goal of reducing fatalities and serious injuries on all public roads. This new proposed regulation was previously published in the December 2023 issue of the Register (27 **DE Reg.** 416 (12/01/23) (Prop.). After the public comment period closed, revisions were made to the December proposal. This re-proposed regulation replaces the proposed regulation published in December.

---

## Public Comment Period

DelDOT will take written comments on the proposed Regulation 1207 of Title 2, Delaware Administrative Code, from February 1, 2024 through March 4, 2024. The public may submit their comments to:

Peter Haag, P.E.  
Chief of Traffic Engineering  
([Peter.Haag@delaware.gov](mailto:Peter.Haag@delaware.gov)) or in writing to his attention,  
Delaware Department of Transportation  
Division of Transportation Solutions  
169 Brick Store Landing Road  
Smyrna, DE 19977

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

[https://regulations.delaware.gov/register/february2024/proposed/27 DE Reg 592RFA 02-01-24.pdf](https://regulations.delaware.gov/register/february2024/proposed/27%20DE%20Reg%20592RFA%2002-01-24.pdf)

### **1207 Electronic Speed Monitoring System**

#### **1.0 Statement of Purpose**

The purpose of these regulations is to provide for the establishment and administration of an Electronic Speed Monitoring System (ESMS) program along qualifying roadways across the State of Delaware. The Delaware Department of Transportation (DelDOT), the governing body of New Castle County, or any municipality within the State may install and operate an ESMS and assess fines in accordance with 21 Del.C. §4170A. The ESMS program is established in support of DelDOT's Highway Safety Improvement Program (HSIP) and, in particular, its Strategic Highway Safety Plan (SHSP), which has identified speeding as an emphasis area to target the overall program goal of reducing fatalities and serious injuries on all public roads. The ESMS shall be installed and used to record images of a motor vehicle traveling in a work zone, or in a residence district in either New Castle County or a municipality. Work zones and residence districts were selected for implementation in part due to the presence of vulnerable road users (e.g., highway workers and other people walking or biking) which account for a growing share of roadway fatalities. To install and use ESMS, a municipality or New Castle County must pass an ordinance enabling the program. The municipality or New Castle County must also approve the road and extent of the road eligible for electronic speed monitoring. These regulations are being promulgated in accordance with 21 Del.C. §4170A(c), 21 Del.C. §4105, and 84 Del. Laws, c. 74, §1.

#### **2.0 Definitions**

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

"DelDOT" means the Delaware Department of Transportation.

"ESMS" means Electronic Speed Monitoring System.

"Residence district", as defined in 21 Del.C. §101, means the territory contiguous to and including a highway not comprising a business district where 50% or more of the property on such highway for a distance of 300 feet or more is improved with residences or residences and buildings in use for business.

"Work zone", as defined in 21 Del.C. §4105(f)(2), means a highway construction or maintenance area.

#### **3.0 Electronic Speed Monitoring Systems Program Requirements**

3.1 DelDOT may approve the installation and use of an ESMS in a DelDOT work zone or a residence district if the conditions in subsection 3.3 of this regulation are met. The Delaware State Police shall have enforcement authority over the ESMS in all work zones. For ESMS used in residence districts, the police agency with jurisdiction over the road shall have enforcement authority over the ESMS. Prior to DelDOT approval of entities requesting to use the system in residence districts, participating municipalities and New Castle County shall authorize the use of ESMS in their code or ordinance and

# PROPOSED REGULATIONS

sign a memorandum of understanding or an agreement with DeIDOT regarding the operation of the ESMS.

3.2 Once a road is approved for an ESMS, the use of the system will be at the discretion of the police agency with jurisdiction over the residence district or at the discretion of the Delaware State Police in a work zone where the system will be implemented.

3.3 The conditions for installation and operation of an ESMS are as follows:

3.3.1 If in a residence district, unless in a designated work zone, a study must be provided to DeIDOT by the requesting municipality or New Castle County. DeIDOT may perform speed data collection or provide recently collected speed data along state-maintained roadways, based on available resources, and provide the information to the requesting municipality or New Castle County to be included in the required study.

3.3.1.1 The study must be no more than 1 year old from the date of the initial request and approved by DeIDOT.

3.3.1.2 The study must document that the 85th-percentile speed on the road is 5 miles per hour or greater than the posted speed limit.

3.3.1.3 The study must have been overseen by a Delaware Registered Professional Engineer, a sworn law enforcement officer, or a municipal or county official acting in their official capacity.

3.3.1.4 The study must include continuous speed data, collected across a 24-hour window, at minimum.

3.3.2 If in a residence district, the police agency with jurisdiction over the road must approve the road and extent of the road eligible for electronic speed monitoring prior to DeIDOT approval.

3.3.3 If the road is within the boundaries of a municipality, the municipality must approve the road and extent of the road eligible for electronic speed monitoring prior to DeIDOT approval.

3.3.4 The police agency with jurisdiction over the road must notify DeIDOT of the intent to use the ESMS at least 30 calendar days in advance of implementation.

3.3.5 DeIDOT and the police agency with jurisdiction must provide notice on their publicly accessible websites of the intended use of the ESMS at least 14 calendar days prior to its implementation.

3.3.6 Traffic control devices must be in accordance with the Delaware Manual on Uniform Traffic Control Devices, 2 DE Admin. Code 2402.

3.3.7 The ESMS unit and enforcement area of roadway must be within the same jurisdictional boundary.

## 4.0 **Site Selection and Approval**

### 4.1 DeIDOT Work Zones

4.1.1 All roadway functional classifications and all posted speed limits are eligible for use of ESMS in work zones; however, DeIDOT will implement procedures and guidelines to aid the selection of appropriate work zones at which to implement monitoring.

4.1.2 If the road is within the boundaries of a municipality, approval must be obtained as described in subsection 3.3.3 of this regulation.

4.1.3 The posted work zone speed limit may be equal to the normal regulatory speed limit of the roadway or may be reduced to a lower speed limit as determined by DeIDOT.

### 4.2 Residence Districts

4.2.1 A study is required to be provided for each location requested for approval as described in subsection 3.3.1 of this regulation.

4.2.2 If the road is also within the boundaries of a municipality, approval must be obtained as described in subsection 3.3.3 of this regulation.

4.2.3 Sites requested for ESMS will be reviewed and approved by DeIDOT in the order received.

4.2.4 Once installed, ESMS shall remain at the location installed for a minimum of 75 calendar days. While systems may remain at a location longer than 75 calendar days, the municipality or New

---

Castle County may need to relocate the systems or work with the selected vendor to provide additional systems to accommodate approved requests for additional roadways or locations.

## **5.0 Deployment**

An ESMS will be deployed to an approved location by the approved vendor once available either as a new installation or transferred from a current location. The jurisdictional police agency may have a limited number of units available to use based on the approved vendor's supply. The participating police agency may prioritize sites within their boundaries; the police agency may consider crash data in prioritizing locations where the system is to be implemented in addition to the requirements noted in subsection 3.3 of this regulation. Once installed, ESMS shall issue violation warnings without penalty for a 21 calendar day period following activation of the camera.

## **6.0 Installation**

### **6.1 Site Considerations**

- 6.1.1 The ESMS must be installed within the work zone or on the same roadway that the speed study was conducted for approval and in the vicinity of where the speeds were collected.
- 6.1.2 The technology and housing unit installation must comply with typical traffic control device requirements (e.g., Americans with Disabilities Act (ADA) compliance and geometric design policies and manuals).
- 6.1.3 The authorizing legislation establishes an end date for the Electronic Speed Monitoring program; therefore, all installations should be treated as "portable" or "temporary" traffic device installations.
- 6.1.4 The authorizing legislation requires annual reporting as described in Section 7.0 of this regulation. Data from the program will be collected and summarized to determine if any ESMS locations should become permanent installations.

### **6.2 Other Program Requirements**

- 6.2.1 To inform motorists clearly of the posted speed limit and the ESMS enforcement area, a speed limit sign with photo enforced camera symbol or a "PHOTO ENFORCED" plaque mounted directly below must be installed in a location or locations where all motorists passing through the enforcement area would be expected to have seen the posted speed limit sign and photo enforced plaque.
- 6.2.2 Radar speed feedback signs (i.e., "YOUR SPEED" signs), must be used for motorist awareness and as speed data collection units in work zone applications of ESMS. Radar speed feedback signs may be used for motorist awareness and as speed data collection units in residence district applications of ESMS. Due to technological differences between radar speed feedback signs and the ESMS unit, a digital radar speed display may not be used in the immediate proximity of the enforcement area and must comply with DeIDOT policy.

## **7.0 Reporting**

- 7.1 DeIDOT shall be responsible for preparing an annual report on the ESMS as implemented statewide. The report must include the following:
  - 7.1.1 Where and when the system was used. The approved vendor shall maintain a log of ESMS locations and activation and shut-down dates.
  - 7.1.2 Citation data. The approved vendor shall maintain a log of ESMS violations by location, date, and time.
  - 7.1.3 Crash data. DeIDOT shall monitor crashes at a minimum 0.1 miles upstream and downstream of each enforcement area (or to the end of roadway or to outside the influence area of the nearest intersection with a state-maintained roadway, if less than 0.1 miles), for 1 year before enforcement, during enforcement, and up to 1 year after enforcement ends.
  - 7.1.4 Speed data. Readily available speed data should be used when possible. However, speed data is unlikely to be "readily available", thus, speed data collected as part of the site approval process, described in subsection 3.3.1 of this regulation, may be used as "before enforcement" speed data. Data collected from the enforcement units may be used for "after enforcement" speed data.

# PROPOSED REGULATIONS

7.1.5 Financial data, including expenditures and revenues. All financial data and itemized transactions for ESMS locations in residence districts is the sole responsibility of the municipality or New Castle County and the selected vendor.

7.2 Police agencies shall cooperate with DeIDOT regarding the collection of data necessary to prepare the annual report. In the event a police agency does not provide the requested information in a timely manner to DeIDOT, the police agency will no longer be eligible for use of ESMS.

## **8.0 System Approved Vendor**

8.1 DeIDOT utilizes a supporting approved vendor to provide enforcement monitoring systems and assist in administering the program. The approved vendor is selected through an open competitive procurement process which allows for the government and the taxpayer to benefit from improved quality at lower pricing. To assure integrity and propriety, any person involved in the administration or enforcement of the program may not own any interest or equity in the approved vendor used by DeIDOT to support the administrative elements of the program. Any such person with an ownership or equity interest in such approved vendor must divest from this ownership or investment no later than 90 days after the effective date of this act. This restriction applies to anyone with either direct involvement in the administering or enforcement of the program and those in any supervisory capacity above such persons.

8.2 To participate in the program, and in accordance with 29 **Del.C.** §6904, municipalities and New Castle County shall utilize "piggyback" agreements with DeIDOT's selected vendor for speed monitoring as well as collections activities.

## **9.0 Fines**

9.1 Violation notices are sent by the system approved vendor to the registered owner of the vehicle that fails to comply with the posted speed limit or posted work zone speed limit, as evidenced by information obtained from an ESMS and shall be subject to a civil offense rather than a criminal offense. The present violation fine structure is established under 21 **Del.C.** §4169(c). Assessments defined under 21 **Del.C.** §4105, 11 **Del.C.** §4101, 11 **Del.C.** §9016, and 10 **Del.C.** §8505 shall only be assessed for violations occurring in a work zone as defined in 21 **Del.C.** §4170A. No additional assessments or court costs, other than those specified in Section 16.0 of this regulation, shall be assessed or collected against the owner or operator of a vehicle who has violated this regulation.

9.2 The base fine for a vehicle that fails to comply with the posted speed limit or posted work zone speed limit, as evidenced by information obtained from an ESMS, is \$20 for first offense and \$25 for each subsequent offense pursuant to 21 **Del.C.** §4169(c).

9.2.1 A subsequent violation, before being punishable as such, shall have been committed within 24 months after the commission of the prior offense.

9.2.2 Violations occurring in work zones are considered separate from violations occurring in residence districts for the purposes of determining if a subsequent violation occurred.

9.2.3 Prior non-electronic moving violations issued by an officer are considered separate from ESMS violations for the purposes of determining if a subsequent violation occurred.

9.3 Additional speeding fines per mile per hour (mph) in excess of the posted speed limit pursuant to 21 **Del.C.** §4169(c) are as follows:

9.3.1 \$1.00 per mph if the recorded speed was between 11 and 15 mph over the posted speed limit or posted work zone speed limit for the first offense and \$2.00 per mph for subsequent offenses.

9.3.2 \$2.00 per mph if the recorded speed was between 16 and 19 mph over the posted speed limit or posted work zone speed limit for the first offense and \$3.00 per mph for subsequent offenses.

9.3.3 \$3.00 per mph if the recorded speed was 20 mph or more over the posted speed limit or posted work zone speed limit for the first offense and \$4.00 per mph for subsequent offenses.

9.4 For violations occurring in a work zone, the sum total of the base fine plus the additional speeding fine is doubled pursuant to 21 **Del.C.** §4105(f).

9.5 For violations occurring in a work zone the following surcharges will be levied:

9.5.1 A Transportation Trust Fund Surcharge equal to 50% of the sum total of the base fine, the additional speeding fine, and the work zone fine, pursuant to 11 Del.C. §4101, which requires fines or fees levied for violations of Title 21 to include an additional 50% surcharge assessment.

9.5.2 A Violent Crimes Fund Surcharge of \$15 pursuant to 11 Del.C. 4101(h).

9.5.3 An Ambulance Fund Surcharge of \$10 pursuant to 11 Del.C. 4101(j).

## **10.0 Violation Criteria**

For a violation to occur, a motor vehicle must exceed the posted speed limit or posted work zone speed limit by 11 miles per hour or more in the residence district or work zone.

## **11.0 Determination of Violation**

The technology for electronic enforcement utilizes a specialized camera, which detects the movement of vehicles through a defined area of roadway. Sensors detect the speed of the vehicle through the area. If the speed is above the violation criteria, the technology records this movement while simultaneously taking a photograph of the violator's license plate to identify the vehicle. A trained technician, such as a law enforcement officer, employed by a state agency or entity designated by a state agency for this purpose, inspects the evidence. Using this information, a violation notice is generated and sent to the registered owner of the vehicle.

## **12.0 Exemptions**

12.1 Emergency vehicles with active emergency lights and vehicles yielding the right-of-way to emergency vehicles are exempt from receiving a notice of violation.

12.2 No other exemptions are provided for in Delaware Code and no other exemptions will be considered as defenses to the issuance of a violation.

## **13.0 Notice of Violation Content**

13.1 A Notice of Violation shall be sent by the system approved vendor and must contain:

13.1.1 The name and address of the registered owner of the vehicle that committed the violation;

13.1.2 The registration number of the motor vehicle involved in the violation;

13.1.3 The violation charges;

13.1.4 The location where the violation occurred;

13.1.5 The date and time of the violation;

13.1.6 Copies of 2 or more photographs, or microphotographs, or other recorded images, taken as proof of the violation, which also include the distance traveled between the 2 photographs as well as the time gap between the 2 photographs;

13.1.7 The amount of the civil penalty imposed and the date by which the civil penalty shall be paid;

13.1.8 The length of time and location for contesting liability and notice that the failure to pay the civil penalty or to contest liability in a timely manner is an admission of liability and may result in a judgment being entered against the summonsed person and the denial of the registration or renewal of registration of any of the owner's vehicles; and

13.1.9 Notice of the summonsed person's ability, via an enclosed affidavit form, to rebut the presumption under Section 13.0 of this regulation that the summonsed person was the operator of the vehicle at the time of the violation and the manner of rebutting said presumption.

## **14.0 Affidavits**

14.1 If the registered owner of a vehicle who has received a notice of violation contends that the registered owner was not the operator of the vehicle at the time of the violation, the registered owner must furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. Such presumption shall be rebutted if the owner:

---

## PROPOSED REGULATIONS

---

- 14.1.1 Furnishes an affidavit by regular mail to the entity indicated on the summons that the owner was not the operator of the vehicle at the time of the alleged violation and provides the name and address of the person or company who leased, rented, or otherwise had the care, custody, or control of the vehicle, or attaches a certified copy of a police report showing that the vehicle or license plate or plates had been reported to the police as stolen prior to the time of the alleged violation; or
- 14.1.2 Provides proof in court or to the entity handling the administrative appeal process that the owner was not the operator of the vehicle at the time of the alleged violation or that the owner failed to comply with the speed limit or work zone speed limit in order to yield the right-of-way to an emergency vehicle.
- 14.2 An affidavit must be provided by the registered owner of a vehicle receiving a Notice of Violation within 90 days of the issue date of the Notice of Violation or no later than 10 days prior to a hearing if one is requested, whichever date is earlier.
- 14.3 Upon receipt of an affidavit by the entity handling the administrative appeal process or the system approved vendor, the newly implicated person will be mailed a notification of the violation.

### **15.0 Payment of Civil Assessment**

A person electing to pay the civil assessment shall follow the process as outlined on the Notice of Violation.

### **16.0 Procedures to Contest a Violation**

A person receiving a Notice of Violation may request a hearing to contest the violation by notifying in writing the entity designated on the summons, within 20 days of the issue date. Upon timely receipt of a hearing request, a civil hearing will be scheduled and the defendant will be notified of the hearing date by first class mail. A civil hearing shall be held by the Justice of the Peace Court or other court with competent jurisdiction as designated by the Department of Safety and Homeland Security or county or municipality in which the speed camera was located. Court costs, or similar administrative fees, not to exceed \$35, may be imposed against an owner or operator of a motor vehicle who requests a hearing to contest a violation and is either found at fault or admits to fault at the hearing. No costs may be assessed against the prevailing party. There shall be no right to transfer to the Court of Common Pleas, and no right of appeal unless the civil penalty exceeds \$100.

### **17.0 Failure to Pay Civil Assessment**

Failure to pay the civil assessment or to appear for a scheduled hearing may result in the refusal by the Division of Motor Vehicles to renew the registration of the motor vehicle which committed the violation, the suspension of the driver's license of the owner or operator of the motor vehicle, as well as the entry of a civil traffic judgment against the owner or operator of the motor vehicle. See 21 **Del.C.** §4170A(i) and House Bill 244 of the 151st General Assembly.

---

---

## Symbol Key

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

## Final Regulations

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

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

---

## DEPARTMENT OF EDUCATION

### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 3001A-3005A (14 **Del.C.** §§3001A-3005A)  
9 **DE Admin. Code** 105

## REGULATORY IMPLEMENTING ORDER

### 105 Residential Child Care Facilities and Day Treatment Programs

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §3003A, the Secretary of the Department of Education wishes to transfer 9 **DE Admin. Code** 105 to 14 **DE Admin. Code** by creating 935 DELACARE: Regulations for Residential Child Care Facilities and Day Treatment Programs. The Office of Child Care Licensing (OCCL) which oversees these facilities moved from the Department of Services for Children, Youth and Their Families to the Department of Education on July 1, 2020, and this is the final set of regulations that were required to be transferred. The previous 105 regulations are being stricken in their entirety because they were last revised in 1998, new federal legislation (Family First Prevention Services Act) was enacted, and acceptable practices regarding the use of restrictive procedures have also changed. Additional changes were made to ensure alignment with recent changes to background checks and fingerprinting procedures. A task force consisting of stakeholders, licensed facilities, and agency representatives reviewed a draft and provided comments which resulted in the creation of these proposed regulations. Other changes were made to ensure compliance with the *Delaware Administrative Code Drafting and Style Manual*. This regulation was previously proposed in the August 2023 Edition of the *Register of Regulations*.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on December 1, 2023. The Department of Education received the following comments concerning the proposed amendments.

**Issue:** Proposed Section 5.0 mentions that officials from OCCL or other state and local agencies may interview



youth as part of their authority to inspect the licensed facilities. Parents should be notified prior to youth being interviewed.

**Response:** While the DOE appreciates this comment, it still believes that notification to parents when interviewing youth may hinder an investigation. The regulation will remain as written.

**Issue:** Proposed Section 12.0 describes OCCL's actions when it receives a complaint from a youth or parent of a youth at a licensed facility. No specific timeframe is noted by which licensed facilities are required to correct noncompliance found by OCCL as a result of a complaint.

**Response:** While dates for correction of identified non-compliances vary depending on the complexity of the corrective action plan, the written complaint report contains dates for correction. The regulation will remain as written.

**Issue:** Proposed Section 17.0 - Proposed 17.1.2 states that "A photo, video, or recording that reveals a child's identity shall not be used for research, fundraising, or public relations without the written consent of the child's parent or referring agency." It is unclear why the referring agency would (or should) have the authority to consent to the releasing of a young person's identity in such a public manner. It is recommended that "referring agency" be removed from this section.

**Response:** The Department believes that there may be situations where the referring agency would need the authority to provide consent. The regulation will remain as written.

**Issue:** Suggest removal of "collective punishment" as referenced in Section 17.1.8.7.

**Response:** Task force members comprised of DSCYF representatives, other agency partners, and participating residential child care providers supported including this specific exception to the prohibition. The regulation will remain as written.

**Issue:** The Governor's Advisory Council for Exceptional Citizens (GACEC) was not aware of any advocacy or parent groups that were a part of this task force that provided input on the regulation and questions why the GACEC was not invited to be a part of these discussions. GACEC suggests that the taskforce may not have received valuable input from families, consumers or advocates.

**Response:** The task force was composed of representatives from the Office of the State Fire Marshal, Department of Services for Children, Youth and Their Families (DSCYF), Office of Child Care Licensing (OCCL), licensed residential child care facilities, and organizations that partner with licensed residential child care facilities that would be impacted by the regulations. In the future, OCCL will invite the GACAC and SCPD to participate on task forces when regulations are being revised. The regulation will remain as written.

**Issue:** Proposed 17.1.10.8 provides additional requirements for reporting and addressing situations where a child is in time-out more than fifteen times in a 24-hour period. This number seems excessively high. It is recommended that these requirements and actions kick in when a young person has been in time-out for more than five times in a 24-hour period.

**Response:** The number was reduced from the current requirement of more than 25 time-outs for an individual child or a cumulative total of four hours spent in time-out within any consecutive 24-hour period. The regulation will remain as written.

**Issue:** There was no amendment of the requirement for teachers to be qualified for a specific age group to allow for the possibility of mixed age groups in classes.

**Response:** Due to the potential of mixed age groups, requiring a certified teacher for each age group would be burdensome for the facility. The regulation will remain as written.

**Issue:** Request that licensees be provided a written explanation, as well as an oral one in order to avoid confusion and misunderstanding.

**Response:** The Department amended the proposed regulation to include a requirement that a licensee provide reasons for refusal to admit a child which is to occur both orally and in writing. The regulation will remain as written.

**Issue:** Requests specialized training for direct workers be required.

**Response:** Requiring this additional specialized training of direct care workers would be burdensome for the facility. The regulation will remain as written.

**Issue:** Requests that DOE includes a stronger qualifier to reflect the extreme circumstances when restrictive procedures are necessary.

**Response:** The DOE changed and further defined "seriously disruptive" in the proposed regulation. The regulation will remain as written.

**Issue:** Requests that "prone restraints" be added to the list of prohibited interventions.

**Response:** A licensee must receive written permission from OCCL before a facility or program uses the restrictive procedures of chemical restraint, physical restraint, or seclusion. Use of a physical restraint must be reviewed by the facility's chief administrator and forwarded to DSCYF. The regulation will remain as written.

## II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to transfer 9 **DE Admin. Code** 105 to 14 **DE Admin. Code** by creating 935 DELACARE: Regulations for Residential Child Care Facilities and Day Treatment Programs. The Office of Child Care Licensing which oversees these facilities moved from the Department of Services for Children, Youth and Their Families to the Department of Education on July 1, 2020, and this is the final set of regulations that were required to be transferred. The previous 105 regulations are being stricken in their entirety because they were last revised in 1998, new federal legislation (Family First Prevention Services Act) was enacted, and acceptable practices regarding the use of restrictive procedures have also changed. Additional changes were made to ensure alignment with recent changes to background checks and fingerprinting procedures. A task force consisting of stakeholders, licensed facilities, and agency representatives reviewed a draft and provided comments which resulted in the creation of these proposed regulations. Other changes were made to ensure compliance with the *Delaware Administrative Code Drafting and Style Manual*. This regulation was previously proposed in the August 2023 Edition of the *Register of Regulations*.

## III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to transfer 9 **DE Admin. Code** 105 to 14 **DE Admin. Code** and create 935 DELACARE: Regulations for Residential Child Care Facilities and Day Treatment Programs. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 935 Residential Child Care Facilities and Day Treatment Programs attached hereto as *Exhibit "A"* is hereby created. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 935 Residential Child Care Facilities and Day Treatment Programs attached hereby created 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** 935 DELACARE: Regulations for Residential Child Care Facilities and Day Treatment Programs created hereby shall be in the form attached hereto as *Exhibit "A"*, and said regulation shall be cited as 14 **DE Admin. Code** 935 DELACARE: Regulations for Residential Child Care Facilities and Day

Treatment Programs 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 January 11, 2024. 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 11<sup>th</sup> day of January 2024

Department of Education

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

Approved this 11th day of January 2024

\*Please note that no changes were made to the regulation as originally proposed and published in the December 2023 issue of the *Register* at page 370 (27 DE Reg. 370). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

<https://regulations.delaware.gov/register/february2024/final/27 DE Reg 599 02-01-24.htm>

---

#### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122 (14 **Del.C.** §122)  
14 **DE Admin. Code** 705

#### ORDER

#### 705 Leave for Training Camp or Special Duty in the National Guard or the Military Reserves of the United States

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** § 122(e), the Secretary of Education intends to repeal 14 **DE Admin. Code** 705 Leave for Training Camp or Special Duty in the National Guard of the Military Reserves of the United States. The current regulation is unnecessary given the statutory requirements in 29 **Del.C.** §5105 Leave of Absence for Military Service, Pension Right; Terms of Successor Appointees and 14 **Del.C.** §1327 Leave of Absence for Person in Military Service.

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

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

#### II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to repeal 14 **DE Admin. Code** 705 Leave for Training Camp or Special Duty in the National Guard of the Military Reserves of the United States because the regulation is unnecessary given the statutory requirements in 29 **Del.C.** §5105 Leave of Absence for Military Service, Pension Right; Terms of Successor Appointees and 14 **Del.C.** §1327 Leave of Absence for Person in Military Service.

#### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to repeal 14 **DE Admin. Code** 705 Leave for Training Camp or Special Duty in the National Guard of the Military Reserves of the United States. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 705 Leave for Training Camp or Special Duty in the National Guard of the Military Reserves of the United States attached hereto as *Exhibit "A"* is hereby repealed.

#### IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 705 Leave for Training Camp or Special Duty in the National Guard of the Military Reserves of the United States repealed hereby shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin.** 705 Leave for Training Camp or Special Duty in the National Guard of the Military Reserves of the United States 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 January 11, 2024. 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 11th day of January 2024.  
Department of Education

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

Approved this 11<sup>th</sup> day of January 2024.

### 705 Leave for Training Camp or Special Duty in the National Guard or the Military Reserves of the United States

#### ~~4.0 Leave for Training or Special Duty~~

- ~~4.1 Any permanent and full-time employee shall be excused from work with pay to attend training camp or special duty on orders as a member of the military reserves of the United States or the National Guard, not to exceed fifteen (15) days or the equivalent hours as required by the **Delaware Code**, on a prorated basis in any calendar year.~~
  - ~~4.1.1 Such training or special duty leave shall not be deducted from their annual leave or in any other way result in loss of privileges or compensation to said employee.~~
  - ~~4.1.2 Any permanent or full-time employee shall file a request for military leave with their employer at least two weeks prior to their leave, along with a copy of their official orders.~~

~~(Non-regulatory Note: See 29 **Del.C.** §5105 Leave of Absence for Military Service, Pension Right; Terms of Successor Appointees and 14 **Del.C.** §1327 Leave of Absence for Person in Military Service)~~

---

# FINAL REGULATIONS

---

## OFFICE OF THE SECRETARY

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

14 **DE Admin. Code** 1034

### ORDER

#### 1034 DIAA Health and Safety Requirements

##### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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

Notice of the proposed regulation was published in the *Register of Regulations* on November 1, 2023. The DIAA Board of Directors received one written submittal from Kathy Brown of commented that subsection 3.3 is vague. Ms. Brown also questioned why the physical is needed and DIAA needs to keep or see the records. Ms. Brown commented "[t]hat is for a doctor to determine."

##### II. FINDINGS OF FACTS

On December 14, 2023, the DIAA Board considered the written submittal. The DIAA Board found the DIAA office does not keep records of students' physicals. The DIAA Board further found that the limited reexamination requirement in subsection 3.3 is intended for health and safety reasons. The DIAA Board decided not to make changes as a result of the written submittal and voted to propose 14 **DE Admin. Code** 1034 DIAA Health and Safety Requirements, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed regulation relates to interscholastic athletics at the middle and high school levels and is necessary to implement 14 **Del.C.** Ch. 3. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1034 DIAA Health and Safety Requirements.

##### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1034 DIAA Health and Safety Requirements subject to the State Board of Education's approval. On December 14, 2023, the State Board of Education approved amending 14 **DE Admin. Code** 1034 DIAA Health and Safety Requirements. Therefore, pursuant to 14 **Del.C.** §§122(b)(15) and 303, 14 **DE Admin. Code** 1034 DIAA Health and Safety Requirements, attached hereto as Exhibit A, is hereby amended.

##### IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1034 DIAA Health and Safety Requirements amended hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1034 DIAA Health and Safety Requirements in the *Administrative Code of Regulations* for the Department.

##### V. EFFECTIVE DATE OF ORDER

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

IT IS SO ORDERED the 14th day of December, 2023.

## Department of Education

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

Approved this 14th day of December, 2023.

## State Board of Education

/s/ Shawn Brittingham, President

/s/ Wali W. Rushdan, II

/s/ Deborah Stevens, Vice President

/s/ Candice Fifer

Rev. Provey Powell, Jr. (absent)

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

## 1034 DIAA Health and Safety Requirements

### 1.0 Content

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

### 2.0 Definitions

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

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

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

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

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

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

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

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

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

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

**"Qualified Healthcare Provider"** means a Doctor of Medicine (MD), a Doctor of Osteopathic Medicine (DO), a Physician Assistant, an Advanced Practice Registered Nurse, athletic trainer, or sports physical

therapist who is trained and experienced in the evaluation, management, and care of concussions or a licensed psychologist with training in neuropsychology and in the evaluation and management of concussions. Qualified Healthcare Providers shall be licensed by their state and in good standing with the State of Delaware.

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

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

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

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

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

### 3.0 Physical Examinations

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

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

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

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

3.3 For any subsequent sports season in the school year, a limited reexamination shall be performed if any of the following circumstances exist: the student athlete has been treated for an injury during the preceding sports season, the student athlete has been out of school during the preceding sports season with an illness other than the usual minor upper respiratory or gastrointestinal upset, an operation has been performed on the student athlete during the preceding sports season, or the student athlete has a remedial defect.

3.4 The medical history of the student athlete shall be available at the time of each examination.

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

## 4.0 Concussion Protocol

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

## 5.0 High School Wrestling Weight Control Program

- 5.1 For health and safety reasons, the DIAA Wrestling Committee has recommended the Wrestling Weight Control Program which requires each student athlete to establish their minimum weight class via body composition testing. The Wrestling Weight Control Program, as recommended by the DIAA Wrestling Committee, is adopted by the Board. The DIAA Wrestling Committee may recommend amendments to the Board. The program requires hydration testing with a specific gravity not greater than 1.025, which immediately precedes the body composition assessment. A minimum weight class is determined by a body fat assessment. Male student athletes shall not compete at a weight class lower than 7% body fat and female student athletes shall not compete at a weight class lower than 12% body fat. Any student athlete's assessment that is below 7% for males and 12% for females shall require a medical release signed by a licensed physician (MD or DO). The release shall not allow a student athlete to participate at a weight class below that for which the initial assessment allows. The program restricts student athletes to an average weight loss of 1.5% a week, with descent, until the student athlete has reached the minimum weight determined by the initial body composition testing. A 2-pound growth allowance shall be permitted on or after December 26th each year for student athletes who have certified at their approved minimum weight class. Student athletes shall not receive the 2-pound growth allowance until they have certified at their minimum weight.
- 5.2 Student athletes shall certify at their minimum weight class on or before the last competition date for wrestling in order to be eligible to participate at their minimum weight class in the dual meet and state tournaments series, including qualifying tournaments.



- 5.3 The Wrestling Weight Control Program includes an online roster management program utilizing the National Wrestling Coaches Association weight management program. The program creates an "alpha master roster" which must be presented to the opposing coach or tournament director prior to weighing in. Each Member School shall have access to the alpha master roster of all Member Schools.

#### **6.0 Middle School Wrestling Weight Control Program**

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

#### **7.0 Required Medical Personnel in Attendance at All Football Games**

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

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

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

---

---

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

Statutory Authority: 16 Delaware Code, Sections 3001O-3003O (16 Del. C. §§3001O-3003O)

### ORDER

#### 4110 Pharmacists Dispensing and Administering Contraceptives

##### **NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("DHSS"), Division of Public Health ("DPH") initiated proceedings to create new regulation 4110 Pharmacists Dispensing and Administering Contraceptives. These proceedings were initiated pursuant to 29 Del.C. Ch. 101 and the authority as prescribed by 16 Del.C. §3001O-3003O.

On December 1, 2023 (27 DE Reg. 405), DHSS published in the *Delaware Register of Regulations* its notice of this proposed new regulation, pursuant to 29 Del.C. §10115. The notice stated that written materials and suggestions from the public concerning the regulation be delivered to DHSS by January 2, 2024, after which time DHSS would review information, factual evidence, and public comment to the said proposed regulations.

##### **SUMMARY OF EVIDENCE:**

Comments were received by ChristianaCare, and Highmark Blue Cross Blue Shield Delaware, respectfully.

##### **Comments by Meredith Stewart Tweedie, ChristianaCare:**

ChristianaCare appreciates the opportunity to comment on Delaware Division of Public Health (DPH) Proposed Regulation 4110 (the "Proposed Regulation") establishing requirements, standard procedures and conditions under which pharmacists may dispense or dispense and administer contraceptives.

##### **§2.0 Definitions**

While the Proposed Regulation defines "Contraceptives" as "medications approved by the Food and Drug Administration to prevent pregnancy," the medical indications of contraceptives are broader than the prevention of pregnancy. It would be helpful for the Proposed Regulation to clarify in more detail whether the scope of practice for pharmacist dispensing of contraceptives is limited to the clinical indication of pregnancy prevention or can also be extended for other clinical uses (as long as such uses are consistent with the USMEC and standard medical and pharmacy best practices).

While the Proposed Regulation also defines and makes multiple references to the "United States Medical Eligibility Criteria for Contraceptive Use" or "USMEC" as issued by the Centers for Disease Control and Prevention<sup>1</sup>, the website for the USMEC contains multiple links to different iterations of guidance, the most recent version of which appears to have been issued in 2016. It would be helpful for the Proposed Regulation to provide more detail about whether and to what extent the most recent version of the USMEC is intended to govern patient eligibility for this program.

**Agency Response:** DPH thanks you for your comments. After thoughtful consideration, DPH has decided the published proposed definition of "Contraceptives" will remain unchanged. DPH will indicate the criteria currency in the definition of the USMEC to govern patient eligibility for this program.

##### **§3.0 Pharmacist Education and Training**

Proposed Regulation §3.1.1 requires a pharmacist to have completed either "a training program offered from an ACPE-accredited provider of continuing education, or a curriculum-based training program completed in an APCE-eligible or APCE-accredited school of pharmacy." It would be helpful for the Proposed Regulation to clarify whether there is a minimum threshold for the number of training hours required for completion of a program that satisfies the requirements of §§ 3.1.2.1. and 3.1.2.2 and/or clarify that a minimum of two (2) compliant training program hours is sufficient to satisfy this requirement.

For purposes of awareness, clarity and facilitating compliance, we respectfully recommend that the Proposed Regulation is revised to be structured in a manner that is more consistent, to the fullest extent practicable, with the Board of Pharmacy's existing requirements relating to the administration and dispensing of immunizations, in particular the requirements relating to continuing education, documentation, consent, and maintenance of records.

**Agency Response:** DPH thanks you for your comments. After thoughtful consideration, DPH has decided that no changes will be made to this section at this time.

#### 4.0 Patient Eligibility

Proposed Regulation §4.1 provides that "patients eligible for contraception under this regulation are individuals that are determined to be eligible under 13 **Del.C.** §§707 - 710."

The above-referenced provisions in the Delaware Code, 13 **Del. C.** §§ 707 - 710, relate to the legal requirements for consent to health care treatment of minors, which makes it appear as if the Proposed Regulation limits eligibility for the pharmacy-based contraceptive dispensing program exclusively to minors. We respectfully request clarification of the eligibility language in Section 4.0 of the Proposed Regulation.

Section 709 relates to the consent requirements for a minor to donate blood and does not appear to have anything to do with the prescribing or dispensing of contraceptives. Accordingly, for purposes of clarity, we respectfully recommend striking the reference to 13 **Del. C.** § 709.

It would also be helpful for the Proposed Regulation to more specifically address the expectations of pharmacists to comply with the provisions of Section 707 (Consent to health care of minors), Section 708 (Affidavit of Establishment of Power to Relative Caregivers to Consent to Medical Treatment of Minors) and 710 (Minors' consent to diagnostic and lawful therapeutic procedures relating to care and treatment for pregnancy or contagious diseases).

Proposed Regulation §4.2 states that "an individual must confirm that they have seen a healthcare practitioner within 3 years of the initial dispensation or administration of contraception to continue to receive contraception under these regulations." As noted in the above comments to §2.0, the Proposed Regulation to clarify in more detail the specific requirements relating to patient eligibility, including the following:

- "Whether pharmacist dispensing authority and program eligibility extends to patients who have not previously been prescribed contraceptives;
- "Whether a patient remains continuously eligible for contraceptive access and dispensing after providing the required initial verification of having seen a primary care physician within the previous three years.

**Agency Response:** DPH thanks you for your comments, and is responding in the order provided below:

- "DPH will adjust the patient eligibility language to include, "Patients eligible for contraception under this regulation are **[adults and]** individuals who are determined to be eligible under the Delaware Code, 13 Del. C. §§ 707 - 710." After thoughtful consideration, DPH has decided that no changes will be made to the citing of the Delaware code.
- "After thoughtful consideration, DPH has decided that no changes will be made to more precisely address specific expectations of pharmacists to comply at this time.
- "After thoughtful consideration, DPH has decided that no changes will be made to § 4.2 at this time.

#### §5.0 Procedures

Proposed Regulation §5.1.1 requires patients to complete a self-screening tool on an annual basis (at a minimum) in order to receive contraceptives at a pharmacy. We respectfully request that a template screening tool should be developed by DPH in collaboration with the Delaware Board of Pharmacy. The Maryland Board of Pharmacy has a comprehensive assessment tool that is used statewide that could potentially be used as a template for Delaware.

Thank you again for the opportunity to comment on the Proposed Regulation.

**Agency Response:** DPH thanks you for your comments and appreciates this suggestion, however, DPH will not be developing the screening tool. While DPH will not develop the screening tool required to be used for these services, there are many screening tools already developed that meet the requirements of these regulations and will be shared by DPH during implementation.

#### Comments by Tija R. Hilton-Phillips, Highmark Inc.:

Thank you for the opportunity to provide comments on Proposed Regulation 4110: Pharmacists Dispensing and Administering Contraceptives. Highmark Blue Cross Blue Shield Delaware offers the following comments for consideration:

Section 4.1 of the regulation states that "[p]atients eligible for contraception under this regulation are individuals that are determined to be eligible under 13 **Del. C.** §§707-710." However, 13 **Del. C.** §§707-710 addresses consent to health care of minors and related matters so this section, as written, could be interpreted to mean that only minors with the required consent in place are eligible for contraception under the regulation. Please clarify whether that is the Department's intent. If the Department's intent is that both adults and individuals that are determined to be eligible under 13 **Del. C.** §§707-710 are patients eligible for contraception under this regulation, then we suggest that this section of the regulation be amended as follows: "Patients eligible for contraception

under this regulation are adult individuals and individuals who are determined to be eligible under 13 Del. C. §§707-710."

**Agency Response:** DPH will adjust the patient eligibility language to include, "Patients eligible for contraception under this regulation are adults and individuals who are determined to be eligible under the Delaware Code, 13 Del. C. §§707 - 710."

Section 4.2 requires an individual to "confirm that they have seen a healthcare practitioner within 3 years of the initial dispensation or administration of contraception to continue to receive contraception under these regulations." However, the regulation does not appear to require the patient to confirm that they have received counseling from a healthcare practitioner related to contraception specifically. Without such counseling from a healthcare practitioner prior to initial dispensation or administration of contraception, the patient may not be aware of the risks associated with contraception or the recommended screenings, tests, or services. For example, screening regarding sexual activity, testing for sexually transmitted diseases, pelvic exams, and pap smears. Another example is the need for a hypercoagulability work up.

**Agency Response:** DPH thanks you for your comments. After thoughtful consideration, DPH will not be including this recommendation but has made other technical changes to both subsections 4.1 and 4.2, as indicated in the above response

Section 5.1.1 requires patients to be provided with a self-screening tool to complete. It is unclear from the regulation what questions will be included in the self-screening tool and how those questions will be developed.

**Agency Response:** DPH thanks you for your comments and appreciates this suggestion, however, DPH will not be developing the screening tool. DPH thanks you for your comments and appreciates this suggestion, however, DPH will not be developing the screening tool. While DPH will not develop the screening tool required to be used for these services, there are many screening tools already developed that meet the requirements of these regulations and will be shared by DPH during implementation.

Section 5.1.2 requires that "[i]f combined hormonal contraceptives are dispensed, a seated blood pressure management is recorded." However, a seated blood pressure management recording alone may not be sufficient to assess a patient's health and any potential safety risks with combined hormonal contraceptives for a particular patient. For example, if a patient has a family history of blood clots, other tests may be needed before dispensing combined hormonal contraceptives. Or, if a patient has a history of smoking, the counseling regarding non-hormonal contraception may be appropriate.

**Agency Response:** DPH thanks you for your comments. After thoughtful consideration, DPH has decided that no changes will be made to subsection 5.1.2.

Section 5.1.3 states that "[a] pharmacist shall use the screening tool to determine eligibility for contraceptive use." However, it is unclear from the regulation under what circumstances a patient will be considered ineligible based on the answers reported in the self-screening tool. In addition, it does not appear as though there will be any verification with a patient's healthcare practitioner of the answers reported in the self-screening tool. Consideration should be given to verifying the information reported in the self-screening tool for safety reasons. For example, if smoking status is included in the self-screening tool and a patient inaccurately reports such status, that could pose a patient safety risk.

**Agency Response:** DPH thanks you for your comments. After thoughtful consideration, DPH has decided that no changes will be made to subsection 5.1.3.

Section 5.2.4 of the regulation refers to a "written standing order created by the Department." Can the Department address when a written standing order will be created and what, if any stakeholder review and comment will be solicited.

**Agency Response:** DPH thanks you for your comments. The standing order is complete and has been signed by the DPH Medical Director. There are no requirements for public comment.

Finally, please note that without knowing the contents of the self-screening tool referred to in section 5.1.1 and the written standing order referred to in section 5.2.4, it is difficult to assess whether patients will be adequately protected by this proposed regulation.

**Agency Response:** DPH acknowledges and appreciates your comments but has determined that no changes will be made to subsections 5.1.1 or 5.2.4.

Thank you for the opportunity to review and provide comments.

## **FINDINGS OF FACT:**

Technical changes were made to the regulation since publication as proposed. DHSS finds that the proposed

regulation, as amended and set forth in the attached copy, should be adopted in the best interest of the public of the State of Delaware.

**THEREFORE, IT IS ORDERED**, that proposed new regulation 4110 Pharmacists Dispensing and Administering Contraceptives is hereby adopted and shall become effective February 11, 2024 (ten days), after publication of the final regulation in the *Delaware Register of Regulations*.

1/25/2024 | 12:29 PM EST  
Date

Josette D. Manning, Esq.  
DHSS Cabinet Secretary

### **4110 Pharmacists Dispensing and Administering Contraceptives**

#### **1.0 Purpose**

These regulations are adopted by the Secretary of Delaware Health and Social Services pursuant to 16 **Del.C.** §§3001O-3003O. These regulations establish requirements, standard procedures, and conditions under which pharmacists may dispense or dispense and administer contraceptives.

#### **2.0 Definitions**

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

**"Accreditation [~~Counsel~~ Council] for Pharmacy Education"** or **"ACPE"** means the non-profit accreditation national agency recognized by the Council on Higher Education Accreditation and the U.S. Department of Education. The ACPE accredits and pre-accredits schools offering PharmD degrees and providers of continuing pharmacy education.

**"Contraceptives"** means medications approved by the Food and Drug Administration to prevent pregnancy.

**"Healthcare practitioner"** means an individual licensed and authorized to write medical orders for an individual under Title 24 of the Delaware Code.

**"Injectable hormonal contraceptive"** means a medication composed of a hormone or a combination of hormones that is approved by the U.S. Food and Drug Administration to prevent pregnancy and is administered by injection.

**"Pharmacist"** means an individual licensed under 24 **Del.C.** Ch. 25 to engage in the practice of pharmacy.

**"Self-screening tool"** means a patient self-assessment questionnaire.

**"United States Medical Eligibility Criteria for Contraceptive Use"** or **"USMEC"** as issued by the Centers for Disease Control and Prevention, is available [in its current version] at the following link: [https://www.cdc.gov/reproductivehealth/contraception/contraception\\_guidance.htm](https://www.cdc.gov/reproductivehealth/contraception/contraception_guidance.htm)

#### **3.0 Pharmacist Education and Training**

3.1 Prior to dispensing contraceptives or administering injectable hormonal contraception under this regulation, the pharmacist shall have completed education:

3.1.1 Related to dispensing and administering contraceptives, including:

3.1.1.1 Application of the USMEC; and

3.1.1.2 Other guidance on contraception as provided by the Centers for Disease Control and Prevention.

3.1.2 In the form of:

3.1.2.1 A training program offered [from by] from an ACPE-accredited provider of continuing pharmacy education; or

3.1.2.2 A curriculum-based training program completed in an ACPE-eligible or ACPE-accredited school of pharmacy.

#### **4.0 Patient Eligibility**

4.1 Patients eligible for contraception under this regulation are [adults and] individuals that are determined to be eligible under 13 **Del.C.** §§707 - 710.

- 4.2 ~~[An individual~~ **A patient]** must ~~[confirm that they have~~ **attest to having]** seen a healthcare practitioner within 3 years of the initial dispensation or administration of contraception to continue to receive contraception under these regulations.
- 4.3 Ineligible patients. Patients identified by a pharmacist to be ineligible for contraceptives based on the self-screening tool shall:
- 4.3.1 Not receive contraception under these regulations;
  - 4.3.2 Be advised why they are ineligible to receive contraception under these regulations; and
  - 4.3.3 Be referred to their health-care practitioner for further evaluation.

## **5.0** Procedures

- 5.1 Screening and eligibility
- 5.1.1 Patients shall be provided with a self-screening tool to complete.
    - 5.1.1.1 A copy of the completed self-screening tool shall be securely stored within the originating pharmacy or healthcare facility for a period of at least 3 years from the date of dispensation or administration of the contraception.
    - 5.1.1.2 The patient shall complete the self-screening tool annually at minimum.
  - 5.1.2 If combined hormonal contraceptives are dispensed, a seated blood pressure measurement is recorded.
  - 5.1.3 A pharmacist shall use the screening tool to determine eligibility for contraceptive use.
- 5.2 Product selection, dispensation, and administration
- 5.2.1 The pharmacist, in consultation with the patient, may dispense any non-hormonal contraceptive.
  - 5.2.2 The pharmacist, in consultation with the patient, may dispense any hormonal contraceptive listed in the current USMEC for individuals with:
    - 5.2.2.1 Conditions for which there is no restriction for the use of the contraceptive method ("Category 1"); or
    - 5.2.2.2 Conditions for which the advantages of using the method generally outweigh the theoretical or proven risk ("Category 2").
  - 5.2.3 The pharmacist may administer injectable hormonal contraceptives prescribed by healthcare practitioners or dispensed by a pharmacist.
  - 5.2.4 The pharmacist must dispense the contraceptive or dispense and administer the contraceptive as soon as practicable after the pharmacist determines that the patient meets the requirements under the written standing order created by the Department **[of Health and Social Services]**.
- 5.3 Information provided to patient. The pharmacist shall provide the patient with:
- 5.3.1 A record of the encounter, including the patient's self-screening tool;
  - 5.3.2 A record of the contraceptive dispensed or dispensed and administered or the basis for not dispensing or dispensing and administering a contraceptive; and
  - 5.3.3 Written information about the importance of seeing the patient's healthcare practitioner to obtain recommended tests and screenings.
- 5.4 Referrals and follow-up care. A pharmacist shall refer the patient for appropriate follow-up care to the patient's healthcare practitioner or clinic in the following circumstances:
- 5.4.1 Upon dispensing a contraceptive to the patient; or
  - 5.4.2 Upon determining ineligibility for contraception.
- 5.5 Documentation
- 5.5.1 Each contraceptive dispensed or administered by a pharmacist pursuant to this regulation shall be documented in a patient record and securely stored within the originating pharmacy or healthcare facility for a period of at least 3 years from the dispensed date.
  - 5.5.2 A patient medication record shall be maintained in an automated data processing or manual record mode such that the required information under subsection 5.5.1 of this regulation is readily retrievable during the pharmacy's or facility's normal operating hours.

**6.0 Severability**

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

**7.0 Penalty**

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

**DEPARTMENT OF LABOR  
DIVISION OF INDUSTRIAL AFFAIRS**

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

**ORDER****1341 Workers' Compensation Regulations****SUMMARY OF THE EVIDENCE**

1. Title 19, Sections 105 and 2322B of the Delaware Code authorize the Delaware Department of Labor ("Department") to adopt and promulgate rules and regulations for adjustments to the health care payment system following adoption and recommendation by the Workers' Compensation Oversight Panel ("Panel").

2. Pursuant to 19 **Del. C.** §2322B and based on the recommendations of the Panel, the Department intends to amend 19 **DE Admin. Code** 1341 to update several provisions of the fee schedule for the health care payment system concerning workers' compensation.

3. Notice of the proposed regulation change was published in the November 1, 2023 edition of the *Delaware Register of Regulations*, and the public was given thirty (30) days to provide written comment.

4. Three public comments were received for this proposed regulation. The Panel met on December 4, 2023 to discuss the comments and unanimously decided not to change any of the proposed updates.

5. Having provided the opportunity for public comment on the proposed regulations in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101, et. seq., the members of the Panel, signed below, recommend that the Secretary of Labor adopt this proposal as it was published in the *Delaware Register of Regulations*, November 1, 2023 edition.

**RECOMMENDED FINDINGS OF FACT**

1. The Panel continues to recommend that the proposed adjustments to the health care payment system are consistent with administering the statutory directives of the workers' compensation law and no further changes are necessary to the published regulations.

**RECOMMENDATION**

The proposals as published previously are respectfully submitted to the Secretary of Labor for consideration with a recommendation for adoption this 15 day of December 2023.

**Workers' Compensation Oversight Panel**

Joseph J. Rhoades, Esq., Chair

Anthony Frabizzio, Esq.

Barry Basket, D.O

Glenn Brown, MMDC, P.T.

Lee Doston

James Downing

Bruce Rudin, M.D.

Adam Seidner

Bryon Short  
Jennifer Tibbits

Joseph Straight  
Rachel Turney

## DECISION AND ORDER TO AMEND THE REGULATION

Having reviewed and considered the record and recommendations of members of the Workers' Compensation Oversight Panel to adopt revisions of the Fee Schedule Instructions ("Fee Schedule Instructions"), it is appropriate for the Delaware Department of Labor to amend 19 **DE Admin. Code** 1341 in which the text of the final regulation shall be in the form referenced herein and remain unchanged as initially published in the November 1, 2023 *Delaware Register of Regulations*, and therefore the regulation shall be adopted in accordance with this Order. The effective date of this Order shall be ten days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** this 15th day of December 2023.

The Honorable Karryl Hubbard  
Secretary

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

[https://regulations.delaware.gov/register/february2024/final/27 DE Reg 614 02-01-24.htm](https://regulations.delaware.gov/register/february2024/final/27%20DE%20Reg%20614%2002-01-24.htm)

---

## DEPARTMENT OF SAFETY AND HOMELAND SECURITY POLICE OFFICER STANDARDS AND TRAINING COMMISSION

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

### ORDER

### 801 Regulations of the Delaware Council on Police Training

#### NATURE OF THE PROCEEDINGS

At 26 **DE Reg.** 1034 (06/01/23), the Council on Police Training (COPT), pursuant to 11 **Del. C.** §8404 (a)(14), published notice of intent to amend 801 Regulations of the Delaware Council on Police Training to modify COPT's minimum qualifications for police instructors. The proposed amendments were voted on during a public meeting of the COPT on April 11, 2023. The proposed amendments were published in the *Register Regulations* and provided for a public comment period through July 3, 2023. At the same time, the COPT submitted a Regulatory Flexibility Analysis and Impact Statement for this proposed addition to Regulation 801, as required by 29 **Del.C.** Ch. 104.

#### SUMMARY OF THE EVIDENCE

On August 7, 2023, the Governor signed House Bill No. 206, as amended by House Amendment No. 3 (HB 206), into law. HB 206 amended Title 11, Chapter 84, Delaware Police Training Program, the organic statute for COPT. Among other things, HB 206 changed the titles of Chapter 84 and the COPT to the Police Officer Standards and Training Commission (POST). HB 206 also provided that, as of the effective date of the bill, "all powers and duties formerly vested in the [COPT], shall instead be vested in the [POST]." 11 **Del.C.** § 8409. Under HB 206, the membership of the POST is the same as the membership of the COPT with two exceptions. HB 206 increased the public membership from two to three seats and prohibited the public members from being current or former members of law enforcement or affiliated with law enforcement. HB 206 did not affect the quorum of the public body.



# FINAL REGULATIONS

No public comments were received during the public comment period.

The POST considered the proposed amendments to Regulation 801 at its publicly scheduled quarterly meeting on January 9, 2024, and voted to require that they be published as final in the *Register of Regulations*.

## FINDINGS OF FACT

The public was given the required notice of the COPT's intention to adopt the proposed amendments and was given the opportunity to submit comments. The required Regulatory Flexibility Analysis and Impact Statement for the Mandatory Standards was submitted. The POST finds that it has the authority under Chapter 84 of Title 11, as amended by HB 206, to issue a final order proposing the regulation changes as final.

## EFFECTIVE DATE OF THE ORDER

The actions hereinabove referred to were taken by the COPT, now the POST, pursuant to 11 **Del. C.** § 8404(a)(14). The effective date of this Order shall be ten (10) days from the date of this Order is published in the *Register of Regulations*.

## ORDER

NOW THEREFORE, under the statutory authority and for the reasons sent forth above, the Police Officer Standards and Training Commission does hereby ORDER this 9<sup>th</sup> day of January, 2024, that the regulations be, and that they hereby are, adopted to be enacted as set forth below.

**IT IS SO ORDERED**, this 9<sup>th</sup> Day of January 2024,

### Police Officer Standards and Training Commission

/s/ Nathaniel McQueen, Jr.  
Chair, Police Officer Standards and Training  
Commission

/s/ Robert Irwin  
Attorney General/Proxy

/s/ Mayor Nick Smith  
Delaware League of Governments

(absent)  
Chief of Police, Wilmington  
Police Department/Proxy

/s/ Major Benjamin Feldman  
Chief of the New Castle County/Proxy

/s/ Mark Holodick  
Secretary, Department of Education

(absent)  
Representative Franklin Cooke, Jr.  
Chair of the Public Safety Committee  
of the House of Representatives

(absent)  
Senator Marie Pinkney  
Corrections and Public Safety Committee

/s/ Lt. Andrew Rubin  
Newark Police Department/Proxy

/s/ Major Jason Sapp  
Superintendent of State Police/Proxy

/s/ Chief Thomas Johnson  
Dover Police Department

/s/ Mayor Robin Christiansen,  
Dover

/s/ Patrick Ogden  
Chair of Police Chiefs' Council/Proxy

(absent)  
Public Appointee

(not yet appointed)  
Public Appointee

(not yet appointed)  
Public Appointee

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

**\*Please note that no changes were made to the regulation as originally proposed and published in the June 2023 issue of the *Register* at page 1034 (26 DE Reg. 1034). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**<https://regulations.delaware.gov/register/february2024/final/27 DE Reg 615 02-01-24.htm>**

---

## **POLICE OFFICER STANDARDS AND TRAINING COMMISSION**

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

### **ORDER**

#### **803 COPT Firearms Instructors Standards and Requirements**

#### **NATURE OF THE PROCEEDINGS**

At 26 **DE Reg.** 1037 (06/01/23), the Council on Police Training (COPT), pursuant to 11 **Del. C.** §8404 (a)(14), published notice of intent to amend 803 COPT Firearms Instructors Standards and Requirements to modify regulations concerning firearms and master firearms instructor qualifications. The proposed amendments were voted on during a public meeting of the COPT on April 11, 2023. The proposed amendments were published in the Register Regulations and provided for a public comment period through July 3, 2023. At the same time, the COPT submitted a Regulatory Flexibility Analysis and Impact Statement for this proposed addition to Regulation 803, as required by 29 **Del.C.** Ch. 104.

#### **SUMMARY OF THE EVIDENCE**

On August 7, 2023, the Governor signed House Bill No. 206, as amended by House Amendment No. 3 (HB 206), into law. HB 206 amended Title 11, Chapter 84, Delaware Police Training Program, the organic statute for COPT. Among other things, HB 206 changed the titles of Chapter 84 and the COPT to the Police Officer Standards and Training Commission (POST). HB 206 also provided that, as of the effective date of the bill, "all powers and duties formerly vested in the [COPT], shall instead be vested in the [POST]." 11 **Del.C.** § 8409. Under HB 206, the membership of the POST is the same as the membership of the COPT with two exceptions. HB 206 increased the public membership from two to three seats and prohibited the public members from being current or former members of law enforcement or affiliated with law enforcement. HB 206 did not affect the quorum of the public body.

No public comments were received during the public comment period.

The POST considered the proposed amendments to Regulation 803 at its publicly scheduled quarterly meeting on January 9, 2024, and voted to require that they be published as final in the *Register of Regulations*.

#### **FINDINGS OF FACT**

The public was given the required notice of the COPT's intention to adopt the proposed amendments and was given the opportunity to submit comments. The required Regulatory Flexibility Analysis and Impact Statement for the Mandatory Standards was submitted. The POST finds that it has the authority under Chapter 84 of Title 11, as amended by HB 206, to issue a final order proposing the regulation changes as final.

## EFFECTIVE DATE OF THE ORDER

The actions hereinabove referred to were taken by the COPT, now the POST, pursuant to 11 **Del. C. § 8404(a)(14)**. The effective date of this Order shall be ten (10) days from the date of this Order is published in the *Register of Regulations*.

## ORDER

NOW THEREFORE, under the statutory authority and for the reasons sent forth above, the Police Officer Standards and Training Commission does hereby ORDER this 9<sup>th</sup> day of January, 2024, that the regulations be, and that they hereby are, adopted to be enacted as set forth below.

**IT IS SO ORDERED**, this 9th Day of January 2024,

## Police Officer Standards and Training Commission

/s/ Nathaniel McQueen, Jr.  
Chair, Police Officer Standards and Training  
Commission

/s/ Robert Irwin  
Attorney General/Proxy

/s/ Mayor Nick Smith  
Delaware League of Governments

(absent)  
Chief of Police, Wilmington  
Police Department/Proxy

/s/ Major Benjamin Feldman  
Chief of the New Castle County/Proxy

/s/ Mark Holodick  
Secretary, Department of Education

(absent)  
Representative Franklin Cooke, Jr.  
Chair of the Public Safety Committee  
of the House of Representatives

(absent)  
Senator Marie Pinkney  
Corrections and Public Safety Committee

(not yet appointed)  
Public Appointee

/s/ Lt. Andrew Rubin  
Newark Police Department/Proxy

/s/ Major Jason Sapp  
Superintendent of State Police/Proxy

/s/ Chief Thomas Johnson  
Dover Police Department

/s/ Mayor Robin Christiansen,  
Dover

/s/ Patrick Ogden  
Chair of Police Chiefs' Council/Proxy

(absent)  
Public Appointee

(not yet appointed)  
Public Appointee

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

**\*Please note that no changes were made to the regulation as originally proposed and published in the June 2023 issue of the *Register* at page 1037 (26 DE Reg. 1037). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**<https://regulations.delaware.gov/register/february2024/final/27 DE Reg 617 02-01-24.htm>**

## DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

### Board of Nursing

Statutory Authority: 24 Delaware Code, Section 1906(a)(1) (24 Del.C. §1906(a)(1))  
24 DE Admin. Code 1900

#### ORDER

#### 1900 Board of Nursing

#### FINAL ORDER ADOPTING REGULATION CHANGES

The Delaware Board of Nursing pursuant to 24 Del. C. § 1906(a)(1), proposed to revise its regulations. The proposed amendments seek to remove the requirement for nursing employer reference forms, clarify the process for CE providers to renew their approval, and correct minor errors.

#### SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Following publication in the Delaware Register of Regulations on October 1, 2023, a public hearing was held on November 8, 2023. Written comment periods were held open for thirty days, and an additional fifteen days following the public hearing. At the hearing, the Board accepted as evidence and marked as the Board's Exhibits 1 and 2, documentation of publication of the notice of the public hearing in the News Journal and the Delaware State News.

At the time of the deliberations, the Board considered the following documents:

**Board Exhibit 1** - Affidavit of publication of the public hearing notice in the News Journal;

**Board Exhibit 2** - Affidavit of publication of the public hearing notice in the Delaware State News; and

#### FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. There were no public comments provided to the Board during the initial written public comment period, public hearing or fifteen-day period following the public hearing.
3. Pursuant to 24 Del. C. § 1906(a)(1), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed amendments seek to remove the requirement for nursing employer reference forms, clarify the process for CE providers to renew their approval, and correct minor errors.
5. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed changes to the Board's rules and regulations.
6. For the reasons stated above, the Board finds no reason to substantively amend the regulations.

#### DECISION AND ORDER CONCERNING THE REGULATIONS

Having found that the proposed changes to the regulations are necessary as outlined herein, the Board finds that the regulations shall be adopted as final in the form as proposed. The exact text of the regulations, as amended, are attached to this order as Exhibit A. These changes will become effective ten days following publication of this order in the Delaware Register of Regulations.

**IT IS SO ORDERED** this 10th day of January 2024 by the Delaware Board of Nursing.

**Board of Nursing**

/s/ Kimberly Hopkins, RN, President

/s/ Marlo Metz, RN

/s/ Pamela James, RN

/s/ Prameela Kaza, Public Member

/s/ Jacqueline Mainwaring, CRNA

/s/ Tiarra Davis, Public Member

Michael Brother, Public Member (Absent)

Carol Abdill, RN, Vice-President (absent)

/s/ Gayle Melvin, Public Member

/s/ Danielle Lowe, RN

/s/ William Hare, Public Member

/s/ Stephanie Evans-Mitchell, FNP

/s/ Christina Hushen, RN Member

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

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

[https://regulations.delaware.gov/register/february2024/final/27 DE Reg 619 02-01-24.htm](https://regulations.delaware.gov/register/february2024/final/27%20DE%20Reg%20619%2002-01-24.htm)

**DIVISION OF PROFESSIONAL REGULATION****Board of Examiners in Optometry**

Statutory Authority: 24 Delaware Code, Section 2104(a)(1) (24 Del.C. §2401(a)(1))

24 DE Admin. Code 2100

**ORDER****2100 Board of Examiners in Optometry**

The Delaware Board of Examiners in Optometry pursuant to 24 Del. C. § 2104(a)(1), proposed to revise its regulations in order to remove obsolete regulations pertaining to diagnostic licensure and paper applications, clarify the requirements for licensure through reciprocity, and amend the regulations regarding telehealth services.

**SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

After due notice in the Register of Regulations on April 1, 2023 and two Delaware newspapers, a public hearing was held on July 20, 2023. Written comment periods were held open for thirty days, and an additional fifteen days following the public hearing. At the hearing, the Board accepted as evidence and marked as the Board's Exhibits 1 and 2, documentation of publication of the notice of the public hearing in the News Journal and the Delaware State News. In addition, Wallace Lovejoy, the Chair of the Board of Directors of the National Association of Retail Optical Companies testified. At the time of the deliberations, the Board considered the following documents:

**Board Exhibit 1** - Affidavit of publication of the public hearing notice in the News Journal;

**Board Exhibit 2** - Affidavit of publication of the public hearing notice in the Delaware State News;

**Board Exhibit 3** - July 28, 2023 letter from the National Association of Retail Optical Companies reiterating Mr. Lovejoy's testimony about proposed regulation 5.2.4.4, noting the proposed regulations include vague, undefined terms, including "face-to-face" and "initial exam"; and including the Association's proposal for completely new language for the Board's proposed regulations; and

**Board Exhibit 4** - The July 2023 American Telemedicine Association Ocular Telehealth Special Interest Group Statement.

The Board also considered the verbal testimony from Mr. Lovejoy. Mr. Lovejoy objected to proposed regulation

5.2.4.4 because it excludes language from 24 *Del. C.* § 6004, which speaks to what a health care provider must do prior to diagnosing or treating a patient via telehealth. Mr. Lovejoy noted that the Board included three of four options set forth under the law, but unlawfully excluded the fourth.

## FINDINGS OF FACT AND CONCLUSIONS

1. Pursuant to 29 *Del. C.* § 10118, the public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.

2. The proposed changes seek to remove obsolete regulations pertaining to diagnostic licensure and paper applications, clarify the requirements for licensure through reciprocity, and amend the regulations regarding telehealth services to comply with Title 24, Chapter 60.

3. In response to Mr. Lovejoy's written and oral testimony, the Board found that the current standard of care for a comprehensive initial examination mandates an in-person exam, as noted by the American Optometric Association's (AOA) guidelines on telemedicine. Under the proposed regulations and 24 *Del. C.* § 6004(a)(4), before diagnosing and treating a patient via telehealth, a provider is not required to do so in-person if doing so would "meet the standard of service required by applicable professional societies in guidelines developed for establishing a health-care provider-patient relationship." The Board noted that if the AOA guidelines supported Mr. Lovejoy's position that comprehensive initial exams meet the standard of care, there would be no basis for his objection as the regulations as proposed would not preclude optometrists from doing so via telehealth.

4. The Board acknowledged that it excluded 24 *Del. C.* § 6004(a)(3) from its regulations and doing so would not typically comply with principles of administrative law. However, the Board noted that section 6004(a)(3) is wholly ambiguous as a literal interpretation of the language of that provision leads to an absurd result. *In re Port of Wilmington Gantry Crane Litigation*, 238 A. 3d 921, 927 (Del. 2020). Under 24 *Del. C.* § 6004(a)(3) a "health care provider using telemedicine and telehealth technologies to deliver health-care services to a patient **must, prior to diagnosis and treatment . . . make a diagnosis** using audio or visual communication." (emphases added). Read literally this provision states that before a provider can do a particular thing, they must do that particular thing.

5. As further evidence of the ambiguity and absurdity, this reading of 24 *Del. C.* § 6004(a)(3) renders all other provisions of 24 *Del. C.* § 6004(a) surplusage. If it was the legislature's intent to simply allow diagnoses via audio or visual communication, i.e., telehealth, without any guardrails, there would have been no reason to include the three additional subsections under 24 *Del. C.* § 6004(a). A sensible interpretation of 24 *Del. C.* § 6004(a), is that the legislature did *not* intend to allow healthcare providers to diagnose patients via telehealth without any provider in the room, if doing so did *not* "meet the standard of service required by applicable professional societies. . . ." Under Mr. Lovejoy's interpretation, the law is paving the way for providers to shirk their own standard of care.

6. Under canons of statutory interpretation, if a statute is ambiguous, the courts read the statute as a whole to achieve a harmonious result. See *Doroshko, Pasquale, Krawitz & Bhaya v. Nanticoke Memorial Hosp.*, 36 A. 3d 336 (Del. 2012) and *In re Port of Wilmington Gantry Crane Litigation*, 238 A. 3d 921 (Del. 2012). When reading Chapter 60 as a whole, it is clear that while the Legislature intended to facilitate healthcare practice via telehealth, it did not intend to do so without limitation. Under 24 *Del. C.* § 6003(a):

health-care providers may not deliver health-care services by telehealth and telemedicine in the absence of a health-care provider-patient relationship. A health-care provider-patient relationship may be established either in-person or through telehealth and telemedicine but *must* include all of the following:

(1) Thorough verification and authentication of the location and, to the extent possible, identity of the patient.

(2) Disclosure and validation of the provider's identity and credentials.

(3) Receipt of appropriate consent from a patient after disclosure regarding the delivery model and treatment method or limitations, including informed consent regarding the use of telemedicine technologies as required by paragraph (a)(5) of this section.

(4) ***Establishment of a diagnosis through the use of acceptable medical practices, such as patient***

*history, mental status examination, physical examination (unless not warranted by the patient's mental condition), and appropriate diagnostic and laboratory testing to establish diagnoses, as well as identification of underlying conditions or contraindications, or both, for treatment recommended or provided.* (emphases added).

Clearly the law's intent is to allow for the safe, competent practice of telehealth. For example, under 24 Del. C. § 6003(a)(4), telehealth providers must use acceptable medical practices to *establish a diagnosis*. Here, the Board as well as the American Optometric Association have found that in optometry, that means in-person comprehensive initial exams.

7. "The primary objective of the Board of Examiners in Optometry, to which all other objectives and purposes are secondary, is to protect the general public, specifically those persons who are the direct recipients of services...." 24 Del. C. § 2101. The Board noted that eye exams are not that easy through telehealth. They noted that providers used telehealth during the COVID emergency, and it simply was not equivalent or even close to in-person care. The standard of care in optometry to dilate a new patient, and you cannot do that via telehealth. Telehealth only works for patients that providers are already familiar with from previous in-person treatment.

### **DECISION AND ORDER CONCERNING THE REGULATIONS**

Having found that the proposed changes to the regulations are necessary as outlined herein, the Board finds that the regulations shall be adopted as final in the form as proposed. The exact text of the regulations, as amended, are attached to this order as Exhibit A. These changes will become effective ten days following publication of this order in the Delaware Register of Regulations.

**IT IS SO ORDERED** this 15<sup>th</sup> day of December 2023 by the Delaware Board of Examiners in Optometry.

#### **Board of Examiners in Optometry**

/s/ Kevin Brown, O.D., President

Kathering Miller, O.D., Vice President  
(absent)

/s/ Joseph Nestlerode, Secretary

/s/ Daniel Baruffi, O.D.

/s/ Margaret Prouse, Ed.D.

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

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

**<https://regulations.delaware.gov/register/february2024/final/27 DE Reg 620 02-01-24.htm>**

**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**Board of Electrical Examiners**

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

**PUBLIC NOTICE**

**1400 Board of Electrical Examiners**

Pursuant to 24 **Del.C.** §1406(a)(1), the Delaware Board of Electrical Examiners ("Board") has proposed revisions to its Rules and Regulations. The Board proposes these amendments to advance its primary objective, which is to protect the general public, specifically those persons who are the direct recipients of electrical services, regulated by 24 **Del.C.**, Ch. 14.

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

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

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

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

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

These amendments were published on page 414 of the December 1, 2023 issue of the *Delaware Register of Regulations* (27 **DE Reg.** 414 (12/01/23)). The Board planned to hold a hearing on January 3, 2024 at 8:30 a.m., but the hearing was cancelled. As a result, the Board will now hold a public hearing on March 6, 2024, at 8:30 a.m. in conference room A on the second floor of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Electrical Examiners, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address or to [Danielle.Ridgway@delaware.gov](mailto:Danielle.Ridgway@delaware.gov).

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be **March 21, 2024**. The Board will deliberate on all the public comments at its regularly scheduled meeting thereafter.



---

# GENERAL NOTICES

---

## OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER

Statutory Authority: 4 Delaware Code, Section 304 (4 **Del.C.** §304)  
4 **DE Admin. Code** 601

### PUBLIC NOTICE

#### **Rule 601 (Formerly Rule 35.1) Gathering Licenses**

The Delaware Alcoholic Beverage Control Commissioner ("Commissioner") published proposed changes to 4 **DE Admin. Code** 601 in the January 1, 2024 *Delaware Register of Regulations* on page 503 (27 **DE Reg.** 503 1/1/24). During the public comment period, it was learned the email address to submit public comment stated in the published Public Notice was incorrect and an updated email address is needed.

The period for submission of public comments was to close January 31, 2024. While some comments from the public have been received to date, the Commissioner, through this notice, is extending the comment period through March 4, 2024 to ensure all interested parties are able to provide public comment including through the correct email address.

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

Doug Denison  
Deputy Commissioner  
Office of the Delaware Alcoholic Beverage Control Commissioner  
820 N. French St., 10th Floor  
Wilmington, DE 19801

Comments may also be directed via electronic mail to [oabccquestions@delaware.gov](mailto:oabccquestions@delaware.gov). Any written submission in response to this notice and relevant to the proposed regulations must be received by the Delaware Alcoholic Beverage Control Commissioner no later than 4:00 p.m. EST, March 4, 2024. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Office of the Alcoholic Beverage Control Commissioner, 10th floor of the Carvel State Office Building, 820 N. French St., Wilmington, DE 19801.

---

## OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER

Statutory Authority: 4 Delaware Code, Section 304 (4 **Del.C.** §304)  
4 **DE Admin. Code** 701, 702

### PUBLIC NOTICE

#### **Rule 701 (Formerly Rule 51) A Rule Requiring the Biennial Renewal of Wholesale, Retail, and Annual Gathering Licenses**

#### **Rule 702 (formerly Rule 51.1) A Rule Requiring the Biennial Renewal of Supplier's Licenses**

The Delaware Alcoholic Beverage Control Commissioner ("Commissioner") published proposed changes to 4 **DE Admin. Code** 701 and 702 in the January 1, 2024 *Delaware Register of Regulations* on page 506 (27 **DE Reg.** 506 1/1/24). During the public comment period, it was learned the email address to submit public comment stated in the published Public Notice was incorrect and an updated email address is needed.

The period for submission of public comments was to close January 31, 2024. While some comments from the

public have been received to date, the Commissioner, through this notice, is extending the comment period through March 4, 2024 to ensure all interested parties are able to provide public comment including through the correct email address.

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

Doug Denison  
Deputy Commissioner  
Office of the Delaware Alcoholic Beverage Control Commissioner  
820 N. French St., 10th Floor  
Wilmington, DE 19801

Comments may also be directed via electronic mail to [oabccquestions@delaware.gov](mailto:oabccquestions@delaware.gov). Any written submission in response to this notice and relevant to the proposed regulations must be received by the Delaware Alcoholic Beverage Control Commissioner no later than 4:00 p.m. EST, March 4, 2024. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Office of the Alcoholic Beverage Control Commissioner, 10th floor of the Carvel State Office Building, 820 N. French St., Wilmington, DE 19801.

---

**OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER**  
Statutory Authority: 4 Delaware Code, Section 304 (4 **Del.C.** §304)  
4 **DE Admin. Code** 1008

## PUBLIC NOTICE

### **Rule 1008 (Formerly Rule 19.1) Bottle Clubs - Licensing and Operation**

The Delaware Alcoholic Beverage Control Commissioner ("Commissioner") published proposed changes to 4 **DE Admin. Code** 1008 in the January 1, 2024 *Delaware Register of Regulations* on page 511 (27 **DE Reg.** 511 1/1/24). During the public comment period, it was learned the email address to submit public comment stated in the published Public Notice was incorrect and an updated email address is needed.

The period for submission of public comments was to close January 31, 2024. While some comments from the public have been received to date, the Commissioner, through this notice, is extending the comment period through March 4, 2024 to ensure all interested parties are able to provide public comment including through the correct email address.

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

Doug Denison  
Deputy Commissioner  
Office of the Delaware Alcoholic Beverage Control Commissioner  
820 N. French St., 10th Floor  
Wilmington, DE 19801

Comments may also be directed via electronic mail to [oabccquestions@delaware.gov](mailto:oabccquestions@delaware.gov). Any written submission in response to this notice and relevant to the proposed regulations must be received by the Delaware Alcoholic Beverage Control Commissioner no later than 4:00 p.m. EST, March 4, 2024. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Office of the Alcoholic Beverage Control

---

# GENERAL NOTICES

---

Commissioner, 10th floor of the Carvel State Office Building, 820 N. French St., Wilmington, DE 19801.

---

## DEPARTMENT OF TRANSPORTATION

### DIVISION OF TRANSPORTATION SOLUTIONS

#### Traffic Engineering Section

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

#### NOTICE

#### **Senate Bill 89 as amended by Senate Amendment 1 - Oakdale Road (N130590)**

January 2, 2024

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

Ms. Smallwood,

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

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

§4505. Traffic control devices.

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

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

"No Trucks Over 2 Axles Except Local Services" on Oakdale Road (N130590) between Salem Church Road (N348) and the Village Circle/Lan Drive intersection

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

Thank you,  
Peter Haag  
Chief of Traffic Engineering

---

**DELAWARE RIVER BASIN COMMISSION**  
**PUBLIC NOTICE**

The Delaware River Basin Commission will hold a public hearing on Wednesday, February 7, 2024, commencing at 1:30 p.m. The public hearing will be conducted remotely. The draft docket decisions and draft resolutions that will be subjects of the public hearing, along with details about the remote platform and how to attend, will be posted on the Commission's website, [www.drbc.gov](http://www.drbc.gov), at least ten (10) days prior to the meeting date.

The Commission's quarterly business meeting will be held on Wednesday, March 6, 2024, commencing at 10:30 a.m. The business meeting will be held remotely. An agenda will be posted on the Commission's website, [www.drbc.gov](http://www.drbc.gov), at least ten (10) days prior to the meeting date.

For additional information, including links to live streams of these events, please visit the DRBC website at [www.drbc.gov](http://www.drbc.gov) or contact Patricia Hausler at [patricia.hausler@drbc.gov](mailto:patricia.hausler@drbc.gov).

Pamela M. Bush, J.D., M.R.P.  
Commission Secretary and Assistant General Counsel

---

**DELAWARE STATE FIRE PREVENTION COMMISSION**  
**PUBLIC NOTICE**  
**710 Ambulance Service Regulations**

The Delaware State Fire Prevention Commission, pursuant to 16 **Del. C.** § 6604(1), proposes to revise regulation 710, by updating language and labels. The proposed regulations add Emergency Medical Responder and Field Training Officer positions. Finally, the proposed regulations list specific crimes which could result in discipline.

The Board will accept written comments, which should be sent to Sherry Lambertson, Executive Specialist for the Delaware Fire Prevention Commission, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, DE 19904. Written comments may also be sent by email to the following email address: [fire.commission@delaware.gov](mailto:fire.commission@delaware.gov). The Public Comment period will end on Monday, March 4, 2024.

---

**DEPARTMENT OF EDUCATION**  
**PUBLIC NOTICE**

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

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

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

---

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF PUBLIC HEALTH**  
**PUBLIC NOTICE**  
**4306 Stroke System Regulation**

Pursuant to 16 **Del.C.** §9704, the Department of Health and Social Services, Division of Public Health, is proposing new 4306 Stroke System Regulation.

---

A copy of the proposed regulation is available for review in the February 1, 2024 issue of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov>, or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs, or other written materials concerning the proposed regulations must submit them by 4:30 p.m. on Monday, March 4, 2024, to:

Division of Public Health  
417 Federal Street  
Dover, DE 19901  
Email: [DHSS\\_DPH\\_regulations@delaware.gov](mailto:DHSS_DPH_regulations@delaware.gov)  
Phone: (302) 744-4951

---

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

Pursuant to 16 **Del.C.** §122(3)t, the Department of Health and Social Services, Division of Public Health, Health Systems Protection section, is re-proposing revisions to Regulation 4459 Lead Based Paints Hazards. The revisions include:

- Changes to the definition of "Target Housing";
- Technical changes to the soil lead concentration in subsection 5.6.7.1;
- Addition of electronic payments for accreditation of training programs;
- Removal of the requirement for the Secretary to maintain a list of parities whose accreditation has changed status; and
- Addition of the ability for an abatement worker to apply for a 1-year provisional certification.

These amendments were previously published in the December 2023 issue of the Register (27 **DE Reg.** 407 (12/01/23) (Prop.) and are hereby re-proposed to with substantive changes resulting from the public comment received (between December 1, 2023, and January 8, 2024).

Copies of the re-proposed regulations are available for review in the February 1, 2024, issue of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov>, or by calling the Division of Public Health at (302) 744-4700.

Public comments will be received until the close of business Monday, March 4, 2024. Comments will be accepted in written form via email to [DHSS\\_DPH\\_regulations@delaware.gov](mailto:DHSS_DPH_regulations@delaware.gov), or by U.S. mail to the following address:

Vicki Schultes, Hearing Officer  
Division of Public Health  
417 Federal Street  
Dover, DE 19901

---

**DIVISION OF PUBLIC HEALTH**  
**PUBLIC NOTICE**  
**4459A Regulations Governing the Childhood Lead Poisoning Prevention Act**

Pursuant to 16 **Del.C.** §122(3)t, the Department of Health and Social Services, Division of Public Health, Health Systems Protection section, is re-proposing revisions to 4459A Regulations Governing the Childhood Lead Poisoning Prevention Act. The revisions include:

- Amending the age limits for elevated blood lead level screening or testing in subsection 3.2;
- Clarified the acronym "DPH" in subsections 3.6, 5.0, and 10.3.2;

- Amended the use of the word "Program" in subsections 10.3.3.2 and 10.6;
- Amended references to "elevated blood lead levels" in subsection 11.1;
- Addition of the Division's investigation and reporting obligations; and
- Technical and renumbering revisions.

These amendments were previously published in the December 2023 issue of the *Register* (27 **DE Reg.** 409 (12/01/23) (Prop.) and are hereby re-proposed to with substantive changes resulting from the public comment received (between December 1, 2023, and January 8, 2024).

Copies of the re-proposed regulations are available for review in the February 1, 2024, issue of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov>, or by calling the Division of Public Health at (302) 744-4700.

Public comments will be received until the close of business Monday, March 4, 2024. Comments will be accepted in written form via email to [DHSS\\_DPH\\_regulations@delaware.gov](mailto:DHSS_DPH_regulations@delaware.gov), or by U.S. mail to the following address:

Vicki Schultes, Hearing Officer  
Division of Public Health  
417 Federal Street  
Dover, DE 19901

---

**DIVISION OF SOCIAL SERVICES**  
**PUBLIC NOTICE**  
**Food Benefit Certification**

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 Food Benefit Certification.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Division of Social Services (DSS), 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [DHSS\\_DMMA\\_Publiccomment@Delaware.gov](mailto:DHSS_DMMA_Publiccomment@Delaware.gov), or by fax to 302-255-4413 by 4:30 p.m. on March 4, 2024. Please identify in the subject line: Food Benefit Certification.

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

**SUMMARY OF PROPOSAL**

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) is proposing to amend the Division of Social Services Manual (DSSM) regarding Food Benefit Certification.

**Statutory Authority**

7 CFR 273.10 (f)

**Background**

DSSM 9068 is being amended to reflect the changes from 24-month to 12-month certification periods for households in which all members are elderly or disabled, and from 12-month to 6-month certification periods for all other households participating in SNAP. DSS is shortening SNAP certification period lengths to eliminate the SNAP periodic review and to help reduce errors caused when households do not report changes in circumstances during the certification period. DSSM 9068 was also updated with current case processing procedures and DSSM 9068.1 through DSSM 9068.5 will be sunset with relevant information from these policies added to DSSM 9068.

**Summary of Proposal**

## *Purpose*

The purpose of this proposed regulation is to sunset DSSM 9068.1 through DSSM 9068.5 and add relevant information from these policies to DSSM 9068. The proposed policy will also explain the requirements for certification periods in the Supplemental Nutrition Assistance Program (SNAP), including assigning certification periods, when the certification period begins and ends, and adjusting or terminating certification periods based on household circumstances.

## *Summary of Proposed Changes*

Effective for services provided on and after April 11, 2024, Delaware Health and Social Services (DHSS) /Division of Social Services (DSS) proposes to amend the Division of Social Services Manual (DSSM) regarding Food Benefit Certification.

## *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 should be received by 4:30 p.m. on March 4, 2024.

## **Fiscal Impact**

DSSM 9068 is already in effect and there are no new financial responsibilities associated with the regulation.

## DIVISION OF SOCIAL SERVICES

### PUBLIC NOTICE

#### Processing Applications for Child Care

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of 31 **Del. C.** §512, Delaware Health and Social Services ("Department") / Division of Social Services (DHSS/DSS) is proposing to amend the Division of Social Services Manual (DSSM), Policy 11004.1 Processing Applications for Child Care.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to, Division of Social Services (DSS), 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to [DHSS\\_DMMA\\_Publiccomment@Delaware.gov](mailto:DHSS_DMMA_Publiccomment@Delaware.gov), or by fax to 302-255-4413 by 4:30 p.m. on March 4, 2024. Please identify in the subject line: Processing Applications for Child Care

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

### SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Social Services (DSS) is proposing to amend the Division of Social Services Manual (DSSM), Policy 11004.1 Processing Applications for Child Care.

#### **Statutory Authority**

45 CFR 98.20

#### **Background**

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

#### **Summary of Proposal**

##### *Purpose*

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

##### *Summary of Proposed Changes*

Effective for services provided on and after April 11, 2024, Delaware Health and Social Services (DHSS) /Division of Social Services (DSS) proposes to amend the Division of Social Services Manual (DSSM), Policy 11004.1

Processing Applications for Child Care.

*Public Notice*

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

**Fiscal Impact**

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

---

**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**Board of Dentistry and Dental Hygiene**  
**PUBLIC NOTICE**  
**1100 Board of Dentistry and Dental Hygiene**

The Delaware Board of Dentistry and Dental Hygiene, pursuant to 24 **Del. C.** 1106(a)(1), proposes to revise its regulations. The proposed amendments clarify that limited licensees are subject to general supervision while training and eliminate redundancies in the Supervision regulations.

The Board will hold a public hearing on the proposed rule change on March 21, 2024 at 3:00 PM virtually and at the Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. The virtual meeting information will be included on the meeting's public agenda. Written comments should be sent to Jennifer Witte, Administrator of the Delaware Board of Dentistry and Dental Hygiene, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until April 5, 2024.

---

**PUBLIC SERVICE COMMISSION**  
**PUBLIC NOTICE**

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

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

PSC REGULATION DOCKET NO. 49

**PUBLIC NOTICE OF PROPOSED REGULATIONS**

The Delaware Public Service Commission ("Commission" or "PSC") proposes to revisit the *Rules for Certification and Regulation of Electric Suppliers*, codified at 26 *Del. Admin. C.* § 3001 ("Reg. 49") for the purpose of clarification and administrative adjustment. The Commission proposes to create two new sections of Title 26 Administrative Code in its proposed amendment to Reg. 49.

You can review the proposed regulations in the February 2024 issue of the *Delaware Register of Regulations*. You can also review the Commission Order and the proposed regulations in the PSC's electronic filing system, Delafile, located at <http://delafile.delaware.gov/> (for docket #, input "Reg. 49"). If you wish to obtain written copies of the Order and proposed regulations, please contact the PSC at (302)736-7500. Copies in excess of the first twenty



(20) pages are \$0.25 per page. Payment is expected prior to copying (if you wish the copies to be mailed) or at the time the copies are retrieved (if you retrieve them in person).

Pursuant to 29 *Del. C.* § 10118(a), written comments on the proposed regulations will be accepted until **March 21, 2024**. Comments should be submitted via email to [PSC@delaware.gov](mailto:PSC@delaware.gov) with the subject line "Regulation Docket No. 49" or mailed to: Crystal Beenick, Public Service Commission, Cannon Building, 861 Silver Lake Blvd., Suite 100, Dover, DE 19904. **There will be a public hearing on the proposed regulations on March 6, 2024 at 1:00 p.m. at the hearing room located at 861 Silver Lake Blvd., Suite 100, Dover, DE 19904. To be considered at the March 6, 2024 hearing, however, written comments must be submitted on or before February 27, 2024.**

---

**PUBLIC SERVICE COMMISSION**

**PUBLIC NOTICE**

**3012 Rules for Regulation of Net Metering**

IN THE MATTER OF THE ADOPTION OF RULES  
AND REGULATIONS TO  
IMPLEMENT THE PROVISIONS OF TITLE 26  
§1014 OF THE DELAWARE CODE RELATING TO  
NET METERING (OPENED OCTOBER 25, 2023)  
(FILED OCTOBER 25, 2023 )

PSC REGULATION DOCKET NO. 65

**PUBLIC NOTICE OF PROPOSED REGULATIONS**

The Delaware Public Service Commission ("Commission" or "PSC") proposes to issue regulations governing its regulation of net energy metering, which is currently codified in the *Rules for Certification and Regulation of Electric Suppliers*, at 26 *Del. Admin. C.* § 3001. The proposed regulations, the *Rules for Regulation of Net Energy Metering* are proposed to be codified at 26 *Del. Admin. C.* § 3012. In summary, the Commission proposes to remove net energy metering subject matter from *Rules for Certification and Regulation of Electric Suppliers*, at 26 *Del. Admin. C.* § 3001 into its own section for the purpose of public clarification and administrative efficiency.

You can review the proposed regulations in the February 2024 issue of the *Delaware Register of Regulations*. You can also review the Commission Order and the proposed regulations in the PSC's electronic filing system, Delafile, located at <http://delafile.delaware.gov/> (for docket #, input "Reg. 65"). If you wish to obtain written copies of the Order and proposed regulations, please contact the PSC at (302)736-7500. Copies in excess of the first twenty (20) pages are \$0.25 per page. Payment is expected prior to copying (if you wish the copies to be mailed) or at the time the copies are retrieved (if you retrieve them in person).

Pursuant to 29 *Del. C.* § 10118(a), written comments on the proposed regulations will be accepted until **March 21, 2024**. Comments should be submitted via email to [PSC@delaware.gov](mailto:PSC@delaware.gov) with the subject line "Regulation Docket No. 65" or mailed to: Crystal Beenick, Public Service Commission, Cannon Building, 861 Silver Lake Blvd., Suite 100, Dover, DE 19904. **There will be a public hearing on the proposed regulations on March 6, 2024 at 1:00 p.m. at the hearing room located at 861 Silver Lake Blvd., Suite 100, Dover, DE 19904. To be considered at the March 6, 2024 hearing, however, written comments must be submitted on or before February 27, 2024.**

---

**PUBLIC SERVICE COMMISSION****PUBLIC NOTICE****3013 Rules for and Regulation of Community Energy Facilities**

IN THE MATTER OF THE ADOPTION OF RULES  
AND REGULATIONS TO  
IMPLEMENT THE PROVISIONS OF SENATE  
BILL NO. 2 (SEPT. 2021) WHICH AMENDED  
TITLES 6, 26, AND 29 OF THE DELAWARE  
CODE RELATING TO COMMUNITY OWNED  
ENERGY GENERATING FACILITIES (OPENED  
OCTOBER 25, 2023)

PSC REGULATION DOCKET NO. 66

**PUBLIC NOTICE OF PROPOSED REGULATIONS**

The Delaware Public Service Commission ("Commission" or "PSC") proposes to issue regulations governing its regulation of community energy facilities, which is currently codified in the *Rules for Certification and Regulation of Electric Suppliers*, at 26 *Del. Admin. C.* § 3001. The proposed regulations, the *Rules for Regulation of Community Energy Facilities* are proposed to be codified at 26 *Del. C.* § 3013. In summary, the Commission proposes to remove community energy facilities subject matter from Rules for Certification and Regulation of Electric Suppliers, at 26 *Del. Admin. C.* § 3001 into its own section for the purpose of public clarification and administrative efficiency.

You can review the proposed regulations in the February 2024 issue of the *Delaware Register of Regulations*. You can also review the Commission Order and the proposed regulations in the PSC's electronic filing system, Delafile, located at <http://delafile.delaware.gov/> (for docket #, input "Reg. 66"). If you wish to obtain written copies of the Order and proposed regulations, please contact the PSC at (302)736-7500. Copies in excess of the first twenty (20) pages are \$0.25 per page. Payment is expected prior to copying (if you wish the copies to be mailed) or at the time the copies are retrieved (if you retrieve them in person).

Pursuant to 29 *Del. C.* § 10118(a), written comments on the proposed regulations will be accepted until March 21, 2024. Comments should be submitted via email to [PSC@delaware.gov](mailto:PSC@delaware.gov) with the subject line "Regulation Docket No. 66" or mailed to: Crystal Beenick, Public Service Commission, Cannon Building, 861 Silver Lake Blvd., Suite 100, Dover, DE 19904. **There will be a public hearing on the proposed regulations on March 6, 2024 at 1:00 p.m. at the hearing room located at 861 Silver Lake Blvd., Suite 100, Dover, DE 19904. To be considered at the March 6, 2024 hearing, however, written comments must be submitted on or before February 27, 2024.**

---

**DEPARTMENT OF TRANSPORTATION****DIVISION OF TRANSPORTATION SOLUTIONS****PUBLIC NOTICE****1207 Electronic Speed Monitoring System**

Pursuant to the authority provided by 21 **Del.C.** §4170A, the Delaware Department of Transportation (DelDOT) established an Electronic Speed Monitoring System (ESMS) program along qualifying roadways across the State of Delaware.

The Department, through its Division of Transportation Solutions seeks to adopt this regulation to administer the ESMS program, which is established in support of DelDOT's Highway Safety Improvement Program and, in particular, its Strategic Highway Safety Plan, which has identified speeding as an emphasis area to target the overall program goal of reducing fatalities and serious injuries on all public roads. This new proposed regulation was previously published in the December 2023 issue of the Register (27 **DE Reg.** 416 (12/01/23) (Prop.)). After the public comment period closed, revisions were made to the December proposal. This re-proposed regulation replaces the proposed regulation published in December.

**Public Comment Period**

DeIDOT will take written comments on the proposed Regulation 1207 of Title 2, Delaware Administrative Code, from February 1, 2024 through March 4, 2024. The public may submit their comments to:

Peter Haag, P.E.  
Chief of Traffic Engineering  
([Peter.Haag@delaware.gov](mailto:Peter.Haag@delaware.gov)) or in writing to his attention,  
Delaware Department of Transportation  
Division of Transportation Solutions  
169 Brick Store Landing Road  
Smyrna, DE 19977

---