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# Delaware Register of Regulations

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Issue Date: June 1, 2021

Volume 24 - Issue 12, Pages 1021 - 1078

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## IN THIS ISSUE:

Regulations:  
Proposed  
Final

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 May 15, 2021.

*Rehoboth Beach, Delaware*

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

- Governor's Executive Orders
  - Governor's Appointments
  - Agency Hearing and Meeting Notices
  - Other documents considered to be in the public interest.
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## CITATION TO THE DELAWARE REGISTER

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

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

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

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## 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.

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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1023

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*.

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## CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
July 1	June 15	4:30 p.m.
August 1	July 15	4:30 p.m.
September 1	August 16	4:30 p.m.
October 1	September 15	4:30 p.m.
November 1	October 15	4:30 p.m.
December 1	November 15	4:30 p.m.

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# TABLE OF CONTENTS

Cumulative Tables.....	1026
------------------------	------

## PROPOSED

### DELAWARE PUBLIC EMPLOYEES' RETIREMENT SYSTEM

#### Delaware Board of Pension Trustees

2002 State Employees' Pension Plan.....	1033
2003 State Judiciary Pension Plan.....	1033
2004 State Police Pension Plan.....	1033
2005 County and Municipal Employees' Pension Plan.....	1033
2006 County and Municipal Police/Firefighter Pension Plan.....	1033

### DEPARTMENT OF AGRICULTURE

#### Standardbred Breeders' Fund

502 Delaware Standardbred Breeders' Fund Regulations.....	1034
-----------------------------------------------------------	------

### DEPARTMENT OF EDUCATION

#### Office of the Secretary

505 High School Graduation Requirements and Diplomas.....	1041
716 Maintenance of Local School District and Charter School Personnel Records.....	1044
938 Regulations for Youth Camps.....	1046

### DEPARTMENT OF HEALTH AND SOCIAL SERVICES

#### Division of Social Services

Processing Applications for Child Care: DSSM 11004.....	1047
---------------------------------------------------------	------

### DEPARTMENT OF STATE

#### Division of Professional Regulation

3500 Board of Examiners of Psychologists.....	1051
-----------------------------------------------	------

## FINAL

### DELAWARE RIVER BASIN COMMISSION

Comprehensive Plan and Special Regulations with Respect to High Volume Hydraulic Fracturing; Rules of Practice and Procedure Regarding Project Review Classifications and Fees.....	1054
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------

### DEPARTMENT OF EDUCATION

#### Office of the Secretary

915 James H. Groves High School.....	1060
--------------------------------------	------

#### Professional Standards Board

1510 Issuance of Initial License.....	1066
1582 School Nurse.....	1067

### DEPARTMENT OF HEALTH AND SOCIAL SERVICES

#### Division of Medicaid and Medical Assistance

Modified Adjusted Gross Income (MAGI) Methodology: DSSM 16000.....	1072
--------------------------------------------------------------------	------

---

# TABLE OF CONTENTS

1025

---

## DEPARTMENT OF STATE

### Division of Professional Regulation

1700 Board of Medical Licensure and Discipline.....	1074
3500 Board of Examiners of Psychologists.....	1075

---

## CALENDAR OF EVENTS/HEARING NOTICES

Delaware Public Employees' Retirement System, Delaware Board of Pension Trustees; Notice of Public Comment Period.....	1077
Delaware River Basin Commission; Notice of Quarterly Business Meeting.....	1077
Dept. of Agriculture, Standardbred Breeders' Fund; Notice of Public Comment Period.....	1077
Dept. of Education; Notice of Monthly Meeting.....	1078
Dept. of Health and Social Services; Div. of Social Services; Notice of Public Comment Period.....	1078
Dept. of State, Div. of Professional Regulation, Board of Examiners of Psychologists; Notice of Public Hearing and Public Comment Period.....	1078

---

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.).

**CASH MANAGEMENT POLICY BOARD****(Also see listing under "Office of the State Treasurer")**

1201 Statement of Objectives and Guidelines for the Investment of State of Delaware Funds..... 24 **DE Reg.** 716 (Final)

**DELAWARE CRIMINAL JUSTICE INFORMATION SYSTEM**

1301 Delaware Criminal Justice Information System Rules and Regulations..... 24 **DE Reg.** 738 (Prop.)  
24 **DE Reg.** 963 (Prop.)

**DELAWARE SOLID WASTE AUTHORITY**

502 Statewide Solid Waste Management Plan..... 24 **DE Reg.** 624 (Prop.)

**DELAWARE STATE FIRE PREVENTION COMMISSION**

701 Administration and Enforcement..... 24 **DE Reg.** 743 (Prop.)  
702 Fire Protection in Building Construction..... 24 **DE Reg.** 744 (Prop.)  
703 Installation, Operation, Maintenance, Testing and Sales of Signaling Systems, Fire Protection Systems and Fire Extinguishers..... 24 **DE Reg.** 745 (Prop.)  
704 Hazardous Processes and Operations..... 24 **DE Reg.** 745 (Prop.)  
705 General Fire Safety..... 24 **DE Reg.** 751 (Prop.)  
710 Ambulance Service Regulations..... 24 **DE Reg.** 471 (Final)

**DEPARTMENT OF AGRICULTURE****Delaware Agricultural Lands Preservation Foundation**

702 Regulations Governing the Delaware Agricultural Forestlands Preservation Program..... 24 **DE Reg.** 437 (Prop.)  
24 **DE Reg.** 860 (Final)

**Delaware Forest Service**

402 State Forest Regulations..... 24 **DE Reg.** 438 (Prop.)  
24 **DE Reg.** 656 (Final)

**Food Products Inspection**

302 Produce Safety Regulations..... 24 **DE Reg.** 964 (Prop.)

**Harness Racing Commission**

501 Harness Racing Rules and Regulations..... 24 **DE Reg.** 443 (Prop.)  
24 **DE Reg.** 625 (Prop.)  
24 **DE Reg.** 662 (Final)  
24 **DE Reg.** 752 (Prop.)  
24 **DE Reg.** 942 (Final)  
24 **DE Reg.** 943 (Final)

**Plant Industries Section**

805 Rules and Regulations for Delaware Domestic Hemp Production Program 24 **DE Reg.** 627 (Prop.)  
24 **DE Reg.** 861 (Final)  
24 **DE Reg.** 967 (Prop.)

**Thoroughbred Racing Commission**

1001 Thoroughbred Racing Rules and Regulations..... 24 **DE Reg.** 47 (Final)  
Subsection 13.1.3..... 24 **DE Reg.** 968 (Prop.)  
Sections 2.0, 3.0, 6.0, 7.0, 11.0, 14.0, and 15.0..... 24 **DE Reg.** 997 (Prop.)  
Subsections 15.1.3.1.5, 15.1.3.1.6, and 15.2.1.4..... 24 **DE Reg.** 219 (Prop.)



Subsections 15.1.3.1.5, 15.1.3.1.6, and 15.2.1.4.....	24 DE Reg. 961(Errata)
	24 DE Reg. 996 (Final)

**DEPARTMENT OF EDUCATION**

**Office of the Secretary**

101 DELACARE: Regulations for Early Care and Education and School-Age Centers.....	24 DE Reg. 14 (Prop.)
101 DELACARE: Regulations for Early Care and Education and School-Age Centers.....	24 DE Reg. 267 (Final)
103 Regulations for Family and Large Family Care Homes.....	24 DE Reg. 16 (Prop.)
	24 DE Reg. 272 (Final)
201 Child Placing Agencies.....	24 DE Reg. 18 (Prop.)
	24 DE Reg. 274 (Final)
201 District and School Shared Decision Making.....	24 DE Reg. 445 (Prop.)
	24 DE Reg. 770 (Final)
210 District School Board Member Special Education Due Process Hearing Training.....	24 DE Reg. 826 (Prop.)
	24 DE Reg. 998 (Final)
211 Notice to School Boards of Due Process Proceedings.....	24 DE Reg. 828 (Prop.)
	24 DE Reg. 1000 (Final)
230 Promotion.....	24 DE Reg. 831 (Prop.)
252 Required Educational Records and Transfer and Maintenance of Educational Records.....	24 DE Reg. 97 (Prop.)
	24 DE Reg. 348 (Final)
401 Major Capital Improvement Program.....	24 DE Reg. 863 (Final)
401 Major Capital Improvement Programs.....	24 DE Reg. 137 (Final)
	24 DE Reg. 637 (Prop.)
405 Minor Capital Improvement Programs.....	24 DE Reg. 142 (Final)
502 Alignment of Local School District Curricula to the State Content Standards	24 DE Reg. 833 (Prop.)
505 High School Graduation Requirements and Diplomas.....	24 DE Reg. 220 (Prop.)
508 Multi-Tiered System of Support (MTSS).....	24 DE Reg. 663 (Final)
612 Possession, Use or Distribution of Drugs and Alcohol.....	24 DE Reg. 76 (Emer.)
	24 DE Reg. 100 (Prop.)
	24 DE Reg. 474 (Final)
729 School Custodians.....	24 DE Reg. 448 (Prop.)
	24 DE Reg. 667 (Final)
731 School Food Service Employees.....	24 DE Reg. 774 (Final)
738 Financial Goals for Instruction and Instruction-related Expenditures.....	24 DE Reg. 225 (Prop.)
	24 DE Reg. 478 (Final)
817 Medications and Treatments.....	24 DE Reg. 81 (Emer.)
	24 DE Reg. 105 (Prop.)
	24 DE Reg. 351 (Final)
915 James H. Groves High School.....	24 DE Reg. 835 (Prop.)
922 Children with Disabilities Subpart A, Purposes and Definitions.....	24 DE Reg. 11 (Prop.)
	24 DE Reg. 671 (Final)
925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs.....	24 DE Reg. 13 (Prop.)
	24 DE Reg. 673 (Final)
934 Regulations for Family and Large Family Child Care Homes.....	24 DE Reg. 453 (Prop.)
	24 DE Reg. 677 (Final)
1008 DIAA Junior High and Middle School Interscholastic Athletics.....	24 DE Reg. 19 (Prop.)
1009 DIAA High School Interscholastic Athletics.....	24 DE Reg. 21 (Prop.)
	24 DE Reg. 969 (Prop.)
1010 Interscholastic Athletic during the COVID-19 Pandemic.....	24 DE Reg. 87 (Emer.)
	24 DE Reg. 302 (Emer.)
	24 DE Reg. 208 (Emer.)
	24 DE Reg. 429 (Emer.)

1011 Interscholastic Athletics during the COVID-19 Pandemic.....	24 DE Reg. 313 (Prop.)
1150 School Transportation.....	24 DE Reg. 971 (Prop.)
1203 Scholarship Incentive Program (ScIP).....	24 DE Reg. 145 (Final)
1203 Scholarship Incentive Program (ScIP).....	24 DE Reg. 753 (Prop.)
<b>Professional Standards Board</b>	
1501 Salary Supplements for Educators.....	24 DE Reg. 867 (Final)
1503 Educator Mentoring.....	24 DE Reg. 146 (Final)
1510 Issuance of Initial License.....	24 DE Reg. 906 (Prop.)
1510 Issuance of Initial License.....	24 DE Reg. 642 (Prop.)
1520 Early Childhood Teacher.....	24 DE Reg. 227 (Prop.)
1520 Early Childhood Teacher.....	24 DE Reg. 678 (Final)
1521 Elementary Teacher.....	24 DE Reg. 357 (Final)
1531 Middle Level English Language Arts Teacher.....	24 DE Reg. 111 (Prop.)
1531 Middle Level English Language Arts Teacher.....	24 DE Reg. 683 (Final)
1533 Middle Level Science Teacher.....	24 DE Reg. 22 (Prop.)
1533 Middle Level Science Teacher.....	24 DE Reg. 363 (Final)
1540 Secondary English Language Arts Teacher.....	24 DE Reg. 115 (Prop.)
1540 Secondary English Language Arts Teacher.....	24 DE Reg. 687 (Final)
1543 Secondary Science Teacher.....	24 DE Reg. 915 (Prop.)
1559 Skilled and Technical Sciences Teacher.....	24 DE Reg. 973 (Prop.)
1561 Bilingual Teacher.....	24 DE Reg. 920 (Prop.)
1562 Teacher of English Learners.....	24 DE Reg. 926 (Prop.)
1570 Early Childhood Exceptional Children Special Education Teacher.....	24 DE Reg. 27 (Prop.)
1570 Early Childhood Exceptional Children Special Education Teacher.....	24 DE Reg. 367 (Final)
1571 Special Education Teacher of Students with Disabilities.....	24 DE Reg. 48 (Final)
1572 Teacher of Students Who Are Gifted or Talented.....	24 DE Reg. 152 (Final)
1573 Teacher of Students with Autism or Students with Severe Intellectual Disabilities.....	24 DE Reg. 372 (Final)
1574 Teacher of Students Who Are Deaf or Hard of Hearing.....	24 DE Reg. 931 (Prop.)
1580 School Library Media Specialist.....	24 DE Reg. 454 (Prop.)
1580 School Library Media Specialist.....	24 DE Reg. 775 (Final)
1581 School Reading Specialist.....	24 DE Reg. 458 (Prop.)
1581 School Reading Specialist.....	24 DE Reg. 643 (Prop.)
1581 School Reading Specialist.....	24 DE Reg. 981 (Prop.)
1582 School Nurse.....	24 DE Reg. 649 (Prop.)
1583 School Psychologist.....	24 DE Reg. 758 (Prop.)
1583 School Psychologist.....	24 DE Reg. 936 (Prop.)
1584 School Social Worker.....	24 DE Reg. 871 (Final)
1591 School Principal and Assistant School Principal.....	24 DE Reg. 232 (Prop.)
1592 Certified Central Office Personnel.....	24 DE Reg. 238 (Prop.)
1593 Superintendent or Assistant Superintendent.....	24 DE Reg. 245 (Prop.)
1594 Special Education Director.....	24 DE Reg. 251 (Prop.)

**DEPARTMENT OF ELECTIONS****Office of the State Election Commissioner**

101 Procedures for Addressing Post-Election Voting Machine Audit Discrepancies.....	24 DE Reg. 987 (Prop.)
-------------------------------------------------------------------------------------	------------------------

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES****Delaware Health Care Commission**

Delaware Health Insurance Individual Market Stabilization Reinsurance Program and Fund.....	24 DE Reg. 841 (Prop.)
Delaware Health Insurance Individual Market Stabilization Reinsurance Program and Fund.....	24 DE Reg. 1003 (Final)

**Division of Health Care Quality**

3102 Long Term Care Transfer, Discharge and Readmission Procedures.....	24 DE Reg. 275 (Final)
3201 Skilled and Intermediate Care Nursing Facilities.....	24 DE Reg. 304 (Emer.)



3201 Skilled and Intermediate Care Nursing Facilities.....	24 DE Reg. 315 (Prop.)
3225 Assisted Living Facilities.....	24 DE Reg. 306 (Emer.)
	24 DE Reg. 317 (Prop.)
3230 Rest (Residential) Home Regulations.....	24 DE Reg. 308 (Emer.)
	24 DE Reg. 320 (Prop.)
	24 DE Reg. 692 (Final)
4404 Free Standing Emergency Centers.....	
<b>Division of Medicaid and Medical Assistance</b>	
Modified Adjusted Gross Income (MAGI) Methodology: DSSM 16000.....	24 DE Reg. 847 (Prop.)
Title XIX Medicaid State Plan - Adult Dental.....	24 DE Reg. 784 (Final)
Title XIX Medicaid State Plan - Drug Utilization Review (DUR) - Opioid Provision.....	24 DE Reg. 989 (Prop.)
Title XIX Medicaid State Plan - Medication-Assisted Treatment (MAT).....	24 DE Reg. 851 (Prop.)
Title XIX Medicaid State Plan - Non-Emergency Medical Transportation (NEMT)	24 DE Reg. 779 (Final)
Title XIX Medicaid State Plan - Streamline Application.....	24 DE Reg. 848 (Prop.)
Title XXI Delaware Healthy Children's Program State Plan - Health Services Initiatives - Vision Services - School-Based Initiative.....	24 DE Reg. 480 (Final)
<b>Division of Public Health</b>	
4202 Control of Communicable and Other Disease Conditions.....	24 DE Reg. 434 (Emer.)
	24 DE Reg. 464 (Prop.)
	24 DE Reg. 732 (Emer.)
	24 DE Reg. 791 (Final)
4458 State of Delaware Food Code Regulations.....	24 DE Reg. 158 (Final)
4462 Public Drinking Water Systems.....	24 DE Reg. 322 (Prop.)
	24 DE Reg. 794 (Final)
	24 DE Reg. 904 (Errata)
4470 State of Delaware Medical Marijuana Code.....	24 DE Reg. 258 (Prop.)
	24 DE Reg. 485 (Final)
<b>Division of Social Services</b>	
Application Processing and Copay for the Child Care Subsidy Program: DSSM 11004.....	24 DE Reg. 120 (Prop.)
Case Processing Procedures - Fraudulent Receipt of Benefits in Multiple States: DSSM 2024.....	24 DE Reg. 1009 (Final)
Child Care for Families Receiving Temporary Assistance for Needy Families (TANF): DSSM 11003.....	24 DE Reg. 991 (Prop.)
Child Care Subsidy Program Terms: DSSM 11002.....	24 DE Reg. 55 (Final)
Defining Family Size for Child Care; DSSM 11003.9.3.....	24 DE Reg. 323 (Prop.)
	24 DE Reg. 700 (Final)
Determining Special Needs and Income Eligibility for Child Care: DSSM 11003	24 DE Reg. 164 (Final)
	24 DE Reg. 704 (Final)
POC - Changing Providers and Charging Fees: DSSM 11004.9.3 and 11006.4.2.....	24 DE Reg. 326 (Prop.)
	24 DE Reg. 696 (Final)
Terminating Food Benefits due to Substantial Lottery or Gambling Winnings: DSSM 9072.....	24 DE Reg. 259 (Prop.)
<b>DEPARTMENT OF INSURANCE</b>	
<b>Office of the Commissioner</b>	
902 Prohibited Unfair Claim Settlement Practices.....	24 DE Reg. 330 (Prop.)
903 Prompt Payment of Settled Claims.....	24 DE Reg. 32 (Prop.)
	24 DE Reg. 283 (Final)
1214 Suitability in Annuity Transactions.....	24 DE Reg. 798 (Final)
1319 Arbitration of Disputes Between Carriers and Primary Care and Chronic Care Management Providers.....	24 DE Reg. 56 (Final)
1409 Insurance Coverage for Telemedicine and Telehealth.....	24 DE Reg. 488 (Final)
1411 Registration of Pharmacy Benefits Managers.....	24 DE Reg. 167 (Final)

**DEPARTMENT OF LABOR****Division of Unemployment Insurance**

1201 Unemployment Insurance Appeal Board Regulations (§4.2.1).....	24 DE Reg. 88 (Emer.)
	24 DE Reg. 286 (Final)
	24 DE Reg. 800 (Final)
1201 Unemployment Insurance Appeal Board Regulations (§4.7.4).....	24 DE Reg. 91 (Emer.)
1202 Unemployment Insurance Regulations.....	24 DE Reg. 173 (Final)

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL****Division of Air Quality**

1124 Control of Volatile Organic Compound Emissions.....	24 DE Reg. 61 (Final)
Section 33.0 Solvent Cleaning and Drying.....	24 DE Reg. 465 (Prop.)
Section 36.0 Vapor Emission Control at Gasoline Dispensing Facilities.....	24 DE Reg. 466 (Prop.)
	24 DE Reg. 944 (Final)
1151 Prohibitions on Use of Certain Hydrofluorocarbons in Specific End-Uses	24 DE Reg. 876 (Final)

**Division of Fish and Wildlife**

3502 Striped Bass Spawning Season and Area Restrictions.....	24 DE Reg. 803 (Final)
3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit.....	24 DE Reg. 6 (Emer.)
	24 DE Reg. 175 (Final)
	24 DE Reg. 207 (Errata)
	24 DE Reg. 803 (Final)
3504 Striped Bass Possession Size Limit; Exceptions.....	24 DE Reg. 6 (Emer.)
	24 DE Reg. 175 (Final)
	24 DE Reg. 207 (Errata)
3801 Shellfish Aquaculture.....	24 DE Reg. 310 (Emer.)
	24 DE Reg. 736 (Emer.)

**Division of Waste and Hazardous Substances**

1301 Regulations Governing Solid Waste.....	24 DE Reg. 333 (Prop.)
1302 Regulations Governing Hazardous Waste.....	24 DE Reg. 127 (Prop.)
	24 DE Reg. 711 (Final)
1351 Underground Storage Tank Systems.....	24 DE Reg. 467 (Prop.)
	24 DE Reg. 806 (Final)

**Division of Watershed Stewardship**

7201 Regulations Governing the Control of Water Pollution.....	24 DE Reg. 468 (Prop.)
	24 DE Reg. 882 (Final)
	24 DE Reg. 904 (Errata)

**DEPARTMENT OF SAFETY AND HOMELAND SECURITY****Delaware Council on Police Training**

801 Regulations of the Delaware Council on Police Training.....	24 DE Reg. 763 (Prop.)
	24 DE Reg. 1012 (Final)

**Delaware Sex Offender Management Board**

1100 Delaware Sex Offender Management Board.....	24 DE Reg. 995 (Prop.)
--------------------------------------------------	------------------------

**Division of State Police**

1300 Board of Examiners of Private Investigators & Private Security Agencies	24 DE Reg. 179 (Final)
2400 Board of Examiners of Constables.....	24 DE Reg. 180 (Final)

**DEPARTMENT OF STATE****Division of Professional Regulation**

100 Board of Accountancy.....	24 DE Reg. 490 (Final)
1100 Board of Dentistry and Dental Hygiene.....	24 DE Reg. 181 (Final)
1700 Board of Medical Licensure and Discipline.....	24 DE Reg. 857 (Prop.)
1770 Respiratory Care Practice Advisory Council.....	24 DE Reg. 713 (Final)
1900 Board of Nursing.....	24 DE Reg. 334 (Prop.)
	24 DE Reg. 379 (Final)

1900 Board of Nursing.....	24 DE Reg. 886 (Final)
2000 Board of Occupational Therapy Practice.....	24 DE Reg. 941 (Prop.)
2600 Examining Board of Physical Therapists and Athletic Trainers.....	24 DE Reg. 380 (Final)
	24 DE Reg. 37 (Prop.)
	24 DE Reg. 263 (Prop.)
	24 DE Reg. 491 (Final)
2900 Real Estate Commission.....	24 DE Reg. 128 (Prop.)
	24 DE Reg. 493 (Final)
2925 Real Estate Commission Education Committee.....	24 DE Reg. 95 (Emer.)
	24 DE Reg. 335 (Prop.)
	24 DE Reg. 715 (Final)
2930 Council on Real Estate Appraisers.....	24 DE Reg. 64 (Final)
	24 DE Reg. 265 (Prop.)
	24 DE Reg. 947 (Final)
3100 Board of Funeral Services.....	24 DE Reg. 65 (Final)
3500 Board of Examiners of Psychologists.....	24 DE Reg. 858 (Prop.)
3800 Board of Dietetics/Nutrition.....	24 DE Reg. 340 (Prop.)
	24 DE Reg. 764 (Prop.)
5300 Board of Massage and Bodywork.....	24 DE Reg. 9 (Emer.)
<b>Office of the State Bank Commissioner</b>	
801 Application to Become a Delaware Bank Holding Company.....	24 DE Reg. 382 (Final)
1101 Election to be Treated for Tax Purposes as a “Subsidiary Corporation” of a Delaware Chartered Banking Organization or Trust Company, National Bank Having its Principal Office in Delaware, or Out-of-State Bank That Operates a Resulting Branch in Delaware.....	24 DE Reg. 385 (Final)
1104 Estimated Franchise Tax Report.....	24 DE Reg. 387 (Final)
1105 Final Franchise Tax Report.....	24 DE Reg. 388 (Final)
1107 Estimated Franchise Tax Report Federal Savings Banks Not Headquartered in Delaware.....	24 DE Reg. 389 (Final)
1108 Final Franchise Tax Report Federal Savings Banks Not Headquartered in Delaware.....	24 DE Reg. 390 (Final)
1111 Estimated Franchise Tax Report for Resulting Branches in this State of Out-of-State Banks.....	24 DE Reg. 391 (Final)
1112 Final Franchise Tax Report for Resulting Branches in this State of Out-of-State Banks.....	24 DE Reg. 392 (Final)
1114 Alternative Franchise Tax.....	24 DE Reg. 394 (Final)
1201 Policies and Procedures Regarding FOIA Requests.....	24 DE Reg. 400 (Final)
<b>Public Service Commission</b>	
3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard (Opened August 23, 2005).....	24 DE Reg. 1014 (Final)
8002 Rules to Establish an Excavation Damage Prevention Program.....	24 DE Reg. 40 (Prop.)
8003 Natural Gas Service Reliability and System Planning Standards.....	24 DE Reg. 405 (Final)
<b>DEPARTMENT OF TRANSPORTATION</b>	
<b>Division of Motor Vehicles</b>	
2222 School Bus Driver Qualifications and Endorsements.....	24 DE Reg. 129 (Prop.)
	24 DE Reg. 407 (Final)
2224 Defensive Driving Course, Providers, and Instructors.....	24 DE Reg. 654 (Prop.)
	24 DE Reg. 859 (Prop.)
	24 DE Reg. 1016 (Final)
<b>Division of Transportation Solutions</b>	
2404 Delaware Traffic Calming Design Manual.....	24 DE Reg. 408 (Final)

**OFFICE OF THE STATE TREASURER**

**Cash Management Policy Board**

1201 Statement of Objectives and Guidelines for the Investment of State of  
Delaware Funds.....

24 **DE Reg.** 345 (Prop.)

## 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.

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

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

### **PUBLIC NOTICE**

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

The Delaware Public Employees' Pension System ("DPERS") hereby give notice of its intention to adopt amended regulations pursuant to the General Assembly's delegation of authority to adopt such measures found at 29 Delaware Code, §8308(c)(1) and in compliance with Delaware's Administrative Procedures Act, 29 **Del.C.** §§10115 and 10117. The proposed regulations are reorganized to provide for clarity, to delete obsolete language, to bring the regulations into compliance with changes in federal law, and to incorporate current practices. Identical update and formatting changes are made in each set of regulations. The State Police and Country and Municipal Police/Firefighter Plans include updated standards for PTSD work related disability claims which are consistent with federal law and current practice.

DPERS solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty days (30) after these proposed amended regulations are published in the Delaware Register of Regulations.

Any such submissions should be mailed or delivered to Joanna Adams, State of Delaware Office of Pensions, State of Delaware, Office of Pensions, McArdle Building, 860 Silver Lake Blvd., Suite #1, Dover, DE 19904-2402.

#### **\*Please Note:**

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

**<http://regulations.delaware.gov/register/june2021/proposed/24 DE Reg 1033RFA 06-01-21.pdf>**

(2) Due to the size of the proposed regulations, they are not being published here. Copies of the regulations are available at:

**2002 State Employees' Pension Plan**

<http://regulations.delaware.gov/register/june2021/proposed/24 DE Reg 1033 06-01-21.pdf>

**2003 State Judiciary Pension Plan**

<http://regulations.delaware.gov/register/june2021/proposed/24 DE Reg 1033a 06-01-21.pdf>

**2004 State Police Pension Plan**

<http://regulations.delaware.gov/register/june2021/proposed/24 DE Reg 1033b 06-01-21.pdf>

**2005 County and Municipal Employees' Pension Plan**

<http://regulations.delaware.gov/register/june2021/proposed/24 DE Reg 1033c 06-01-21.pdf>

**2006 County and Municipal Police/Firefighter Pension Plan**

<http://regulations.delaware.gov/register/june2021/proposed/24 DE Reg 1033d 06-01-21.pdf>

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

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

**PUBLIC NOTICE**

**502 Delaware Standardbred Breeders' Fund Regulations**

The State of Delaware, Department of Agriculture's Standardbred Breeders' Fund ("the Fund") hereby gives notice of its intention to adopt an amended regulation pursuant to the General Assembly's delegation of authority to do so found at 29 *Del.C.* §4815(b)(4)b.2 and in compliance with Delaware's Administrative Procedures Act at 29 *Del.C.* §10115. The proposed amended regulation eliminates the restriction on private treaty breeding and allows for later payment of registration fees for the Fund's program pertaining to the registration of stallions. This proposal is an attempt to allow greater flexibility and simplicity for participation in the Fund's program.

The Fund solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty days (30) after these proposed amended regulations are promulgated in the *Delaware Register of Regulations*. Any such submissions should be mailed or hand-delivered to Ms. Judy Davis-Wilson, Administrator, Delaware Standardbred Breeders' Fund Program whose address is State of Delaware, Department of Agriculture, 2320 South duPont Highway, Dover, Delaware 19901 by July 1, 2021.

Delaware Standardbred Breeders' Fund

Judy Davis-Wilson, Executive Director

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

<http://regulations.delaware.gov/register/june2021/proposed/24 DE Reg 1034RFA 06-01-21.pdf>

**502 Delaware Standardbred Breeders' Fund Regulations**

**1.0 Introduction**

- 1.1 These regulations are authorized pursuant to 29 Del.C. §4815(b)(3)b.2.D, which established in the State of Delaware a Delaware Standardbred Breeder's Breeders' Program (herein "the Program") for:
  - 1.1.1 Standardbred horses;
  - 1.1.2 that are bred in a manner prescribed in Section 2.0;
  - 1.1.3 that are the product of a registered Delaware stallion;
  - 1.1.4 that are registered, and whose sire is registered with the Administrator of the Program; and,
  - 1.1.5 listed in their registry books.
- 1.2 Horses eligible to race in Delaware Standardbred Breeder's Breeders' Fund Program races shall include the foal of any registered Delaware sire standing at a Delaware breeding farm. A registered Delaware sire is one that stands the full season on a breeding farm located in Delaware. If a registered Delaware sire is leased, a copy of such lease shall be filed with the United States Trotting Association and the Administrator of the Delaware Standardbred Breeders' Fund Program.
- 1.3 The Board of the Delaware Standardbred Breeder's Breeders' Program (herein "the Board") is authorized to do all that is reasonable and necessary for the proper administration of the Program and shall prepare, issue and promulgate rules and regulations providing for:
  - 1.3.1 Classes and divisions of races, eligibility of horses and owners therefor and purses and bonuses to be awarded;
  - 1.3.2 Nominating, sustaining and entry fees on horses and races;
  - 1.3.3 Such temporary programs including eligibility of horses, breeding, and other matters as may be necessary to make the Program operable as soon as possible;
  - 1.3.4 Registration and certification of Delaware stallions, mares bred to such stallions and foals produced thereby; and,
  - 1.3.5 Such other matters as the board determines to be necessary and appropriate for the proper administration and implementation of the Program.
- 1.4 The funds for the Program and any nominating, sustaining and entry fees provided for herein shall be administered by the Delaware Department of Agriculture by deposit in a trust account entitled Delaware Standardbred Breeders' Fund. The Board of the Delaware Standardbred Breeder's Breeders' Program shall approve an annual budget including the payment of purses and awards, cost of administration, reimbursement of expenses of members of the Board, promotional expenses, and any other appropriate expenses. The budget shall be administered by the Secretary of Agriculture or his designee in consultation with the Board and in a manner consistent with state laws and procedures. A report shall be prepared and filed annually by the Secretary of Agriculture with the Delaware Harness Racing Commission and the Board of the Breeder's Breeders' Program Fund setting forth an itemization of all deposits to and expenditures from said fund.
- 1.5 Races in the Program shall be contested at each licensed harness track in the State of Delaware. Purses and awards for program races, shall be in compliance with the rules and regulations of the Board and the Delaware Harness Racing Commission.
- 1.6 The Board can propose to amend these regulations by the affirmative vote of eight of its eleven members. Changes to the rules of eligibility for the Program will be effective at the beginning of the next breeding season and the corresponding racing season.

## 2.0 Definitions

The following words and terms, when used in this part for purposes of the Delaware Standardbred Breeder's Breeders' Fund Program, have the following meanings, unless the context clearly indicates otherwise. Such definitions shall not affect the use of that term by the Delaware Harness Racing Commission for purposes other than for the Breeder's Breeders' Fund Program.

**"Bred"** means any form of insemination inside the State of Delaware by a Delaware sire, including insemination using semen transported within the State of Delaware, provided that such semen is not frozen or desiccated in any way or at any time. Bred shall also refer to foals of mares bred outside the State of Delaware by a Delaware sire through interstate semen transportation when such semen is not frozen or desiccated in any way or at any time, provided that owners of mares that produce foals from



Delaware sires eligible for this program that are bred through interstate semen transportation shall not be eligible for bonuses paid to owners of mares under the Delaware Standardbred ~~Breeder's~~ Breeders' Program set forth in Section 4 herein. This qualification shall also apply to the same mare owner (s) and official owner (s) or legal entities of record, of four (4) year olds beginning in 2012.

**"Breeder"** means the owner of the dam at the time of breeding.

**"Breeding Season"** is the season during which reproduction occurs and which runs from February 1st to August 1st of the calendar year.

**"Delaware-bred Horse"** means a Standardbred by a Delaware sire and registered with the Administrator by May 15th of the yearling year.

**"Delaware Resident"** means a person as defined in 3 Del.C. §10032.

**"Delaware Sire"** means a Standardbred stallion that regularly stands for a breeding season in Delaware and is registered with the Administrator of the Delaware Standardbred ~~Breeder's~~ Breeders' Fund Program. A Delaware sire may be: 1) owned by a resident of the State of Delaware if it stands for the entire breeding season in the State of Delaware; or 2) owned or leased by a resident of a state other than Delaware if it stands for the entire breeding season in the State of Delaware.

**"Owner"** means any person(s) or legal entity listed on the horse's registration papers as the official owner at the time of the race.

~~**"Private Treaty"** No stallion participating in the Program may be offered for service under private treaty. Each stallion registered in the Program must make public the breeding fee.~~

**"Registrant"** is a horse owner, the horse owner's agent of record or trainer of record, or the lessee of a horse.

**"Satisfactory Performance Line"** means the path of the Standardbred on the racetrack as charted by the licensed charter at Dover Downs and/ or Harrington Raceway during which the horse does not break stride for any reason.

**"Stand"** means that a Delaware sire is available for reproductive services.

### 3.0 Eligibility for Delaware-bred Races

- 3.1 To be eligible for races under the Program for race year 2004, the horse shall be a Delaware sired 2-year old registered with the Administrator by May 15th of its yearling year or a 3-year old product of a 100% wholly owned mare at the time of breeding through foaling by a Delaware resident, which mare shall have been registered with the Department of Agriculture by March 1, 2000 and said 3-year old registered with the Administrator by May 15th of its yearling year.
- 3.2 To be eligible for races under the Program for race year 2005 and thereafter, the horse shall be a Delaware sired 2 or 3-year old registered with the Administrator by May 15th of its yearling year.

### 4.0 Eligibility of Breeders for Bonus Payments

- 4.1 Bonus payments of eight percent (8%) of money earned in the Program by a foal shall be paid to the owner of the mare at the time of breeding that is bred to Delaware sires to produce that foal. Bonus payments of two percent (2%) of money earned in the Program by a foal shall be paid to owners of stallions standing in Delaware. In order for a Delaware-bred horse to be eligible to earn an award for its breeder, in a race conducted by a licensed harness race track in Delaware, the foals, mares, and stallions shall be registered in accordance with these regulations with the Administrator of the ~~Breeder's~~ Breeders' Program prior to entry for the race. In race year 2002, bonus payments shall be restricted to 2 year olds.
- 4.2 Beginning in race year 2018, the four year old bonus program will be terminated.

### 5.0 Eligibility of Owners of Delaware Sires for Awards

In order for a Delaware sire to be eligible to earn an award for its owner, the sire shall have been registered as a sire of Delaware with the Administrator of the ~~Breeder's~~ Breeders' Program during each breeding season when the sire inseminated the dams that, as a result of that insemination,

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produced Delaware-breds. To be eligible for a sire award, it is necessary that the foal entitling the sire owner to the award be itself registered in accordance with these regulations.

## **6.0 Records of Registration**

Foals and sires eligible for registration shall be registered on official registration forms approved and maintained by the Administrator of the Program. The Administrator shall certify thereon the name and address of the Owner, or agent. If registration is made by an agent, the name and address of the owner shall also be provided. Breeding information must include name, color, sex, gait, sire, and dam. For sires, the address and contact information for the breeding farm where the stallion will be collected, and current phone number, address and contact information for where the stallion actually resides, if different from where semen collection occurs. The registration records shall be maintained by the Administrator of the Program and be open to public inspection during normal business days and hours at the State Department of Agriculture. Immediately upon completion and filing of the form, the Administrator of the Program shall cause a correct copy of it to be filed with the offices of the State Department of Agriculture.

## **7.0 Duties and Powers of the Fund Administrator; Public Hearings; Appeals**

- 7.1 In addition to the duties of the Fund's Administrator that are set forth elsewhere in these regulations, the Administrator is charged with receiving and reviewing for compliance with all rules and regulations of the Fund, information submitted by registrants who are seeking to register or renew the registration of horses for participation in the Program.
- 7.2 If, after performing the review set forth in the immediately preceding section, the Administrator determines, in his or her sole discretion, that the information supplied by a registrant is incomplete or false, the Administrator has the power to: deny any application for registration; deny an application to renew an existing registration; and to suspend or revoke an existing registration.
- 7.3 The Administrator must provide the registrant with a written decision explaining the reason(s) why the registration, or application for renewal of registration, has been denied, suspended or revoked. Such written decision shall inform the registrant of the right to file a request for an administrative hearing before the Fund. Such a request for a hearing shall be considered timely filed with the Fund if it is received by the Fund within ten (10) days of the date the Administrator mails his or her written decision to the registrant. Such a request for a hearing challenging the Administrator's written decision must state with specificity the ground(s) upon which the Administrator's written decision is being contested.
- 7.4 No more than thirty (30) days after receiving a registrant's request a public hearing before the Fund will be scheduled and at which the registrant will be permitted to subpoena, call and cross-examine witnesses, and to introduce documentary evidence challenging the Administrator's decision. The formal rules of evidence will not apply to such proceeding. The proceeding will be conducted in such a way as to allow for the creation of a verbatim transcript of the proceeding should either party wish to obtain one, the cost of such a transcript to be born by the requestor.
- 7.5 The Fund will, after considering all the evidence, and within thirty (30) days from the close of the public hearing, mail a written decision to the Administrator of the Fund and to the registrant stating its Findings of Fact and Conclusions of Law. An appeal from the decision by the Fund will be to the Superior Court of the State of Delaware on the record made before the Fund.

## **8.0 Records of Expenses**

The Administrator of the Breeders' Program shall maintain a complete record of reasonable and necessary expenses and will submit bills to the Department of Agriculture following the normal procedures of the State of Delaware as set forth by the Finance Department within the Department of Agriculture. The Secretary of Agriculture has the responsibility to authorize all travel and major purchases.

**9.0 Purses and Bonus Awards**

- 9.1 A purse or bonus awarded under this section shall be in accordance with the standards for purses at each racing meet as approved by order of the Commission. The Administrator shall send a confirmation to the Department of Agriculture on a race week basis which will state the amount owed for purses of the Program.
- 9.2 Administrator of the Program shall compile bonus payments earned by breeders of Delaware Sires and Dams and maintain a separate ledger of them. Starting in race year 2018, the four year old Bonus and the Consolation race bonus will be terminated. Bonus payments will be paid out at the end of the racing year.
- 9.3 A person interested in the bonus payments and objecting to calculations or determinations thereof as shown on the records of the Administrator of the Program shall be responsible for taking written appeals to the Board in the manner provided for appeals from decisions of the Administrator pertaining to registrations.
- 9.4 Records, funds and accounts of funds, prizes, purses, allowances and awards under this program shall be maintained separate from other records, funds and accounts and may not become co-mingled with other matters. The records, funds and accounts shall be kept continuously open for inspection by the Administrator of the Program.

**10.0 Responsibilities of Owners or Lessees of Delaware Sires**

- 10.1 An owner or lessee of a standardbred stallion who desires to use him for breeding purposes and to have him qualify for the Delaware Standardbred Breeders' Fund Program, shall register the stallion by December 1st of the approaching breeding season with the Administrator of the Program or by January 1st, February 1st, and March 1st of the approaching breeding season with an additional supplemental fee ~~equal to the standard registration fee~~ as set forth in subsection 11.4 of this regulation. Unless the stallion is contracted to stand at stud in the southern hemisphere, the stallion shall stand in the State of Delaware for the remainder of the breeding season. If a stallion is contracted to stand at stud in the southern hemisphere, a copy of said contract must be provided to the Administrator of the Program at the time of application for registration in the Program or, in the event the contract is entered into at a subsequent date, within ten days of entering into the contract. A virgin standardbred stallion entering stud for the first time shall be registered prior to his first breeding and shall stand in the State of Delaware the remainder of the breeding season, unless he is contracted to stand at stud in the southern hemisphere. A stallion shall be registered on an application established by the Administrator of the Program.
- 10.2 The owner or lessee of a Delaware sire that is eligible to register for the Delaware Standardbred Breeders' Fund Program shall designate an authorized agent who shall be responsible for the registrations and records of the Delaware sire; for the records of the breeding farm; and complying with the requirements of the Delaware Standardbred Breeders' Fund Program. The "authorized agent" name, current phone number and mailing address shall be incorporated into the Delaware sire's registration form and be filed with the Administrator of the Delaware Standardbred Breeders' Fund Program. A Delaware sire may compete for purses within the State of Delaware at any time. However, a Delaware sire may compete for purses outside the State of Delaware, or enter claiming races inside or outside the State of Delaware, only after the breeding season in the State of Delaware ends. A violation of this regulation will disqualify the Delaware sire from registering for racing in the Delaware Standardbred Breeders' Fund Program for the racing season of the year following the violation.
- ~~10.3 No stallion participating in the Delaware Standardbred Breeder's Program may be offered under private treaty. Each stallion registered in the Delaware Standardbred Breeder's Program must make public the maximum possible breeding fee.~~

**11.0 Sire Registration Fees**

- 11.1 Sires shall initially register for the Delaware Standardbred ~~Breeder's~~ Breeders' Program no later than December 1st of the approaching breeding season, or no later than January 1st, February 1st, and

March 1st with an additional supplemental registration fee equal to the regular registration fee as set forth in subsection 11.4 of this regulation.

- 11.2 All fees must accompany this registration and must be submitted by registered or certified mail.
- 11.3 Registration fees for the Delaware Standardbred ~~Breeder's~~ Breeders' Program are non-refundable.
- 11.4 Sire registration fee for a stallion shall be \$500.00. The supplemental registration fee shall be \$1,000.00 for January 1st, \$2,000.00 for February 1st, and \$3000.00 for March 1st.
- 11.5 The annual stallion registration fees may be used to offset reasonable expenses related to administering and promoting the Delaware Standardbred ~~Breeder's~~ Breeders' Program. Any fees beyond reasonable expenses shall be invested in the endowment account of the Program.
- 11.6 An owner of a Standardbred stallion registered with the Administrator shall submit by September 1st after the breeding season which the stallion serviced mares a copy of the USTA "Mares Bred Report."

## 12.0 Sire Renewal Fees

- 12.1 The registration of a stallion that remains in the state for more than one (1) breeding season shall be renewed annually.
- 12.2 The annual renewal fee for registration of stallions to the Delaware Standardbred Breeders' Fund Program shall be \$500.

## 13.0 Races

- 13.1 The purses for all races for two and three year old horses under this ~~Breeder's~~ Breeders' Program shall be distributed on the following percentage basis: 50-25-12-8-5. Walkovers receive 50% of the purse. Points to qualify for the finals shall be distributed on the same percentage basis. In fields with more than five horses, places six through eight shall receive 4-3-2 points, respectively.
- 13.2 In the case of a tie in points, the fastest time in either elimination shall determine the horse eligible to enter the final. In the case of horses tied in points that have recorded identical times, the amount of the horses' lifetime earnings will decide the horse eligible to enter the final. In the case where points, times, and lifetime earnings are equal, the eligible horse shall be drawn by lot. All horses must start in one elimination in order to start in the final. All horses shall be on the gate in eliminations and the final.
- 13.3 The percentage basis established by subsection (1) of this section shall apply at each of the associations licensed by the Delaware Harness Racing Commission.
- 13.4 If circumstances prevent the racing of an event, and the race is not drawn, all stake payments shall be refunded to the purse account of the Program.
- 13.5 The monies provided for purses and bonus payments shall be distributed evenly between the races of each:
  - 13.5.1 Age;
  - 13.5.2 Sex; and
  - 13.5.3 Gait.
- 13.6 Beginning in 2004, the minimum purse for elimination races for 2 and 3-year old trotters and pacers shall be \$15,000.00 and the finals shall be \$100,000.00. The Board of the Program, pursuant to a recommendation from the Administrator of the Program, may agree to increase purses should funds and other conditions permit, or decrease purses in the event of insufficient funds.
  - 13.6.1 Consolation races will be held by gait and sex if at least five horses declare to start. If there are at least five horses declared, but fewer than eight horses of the same sex, horses of the other sex shall be drawn in to complete a full field of eight, provided there is no consolation race for that sex. Eligibility in a combined consolation race for that sex which did not have enough entries for a separate consolation race will be based on the point system used to determine eligibility within its own division.
  - 13.6.2 If fewer than five horses declare to start in both sexes of the same gait, the sexes shall be combined provided there are at least five horses declared to start after the sexes are combined.

# PROPOSED REGULATIONS

- 13.6.3 Horses of opposite sex shall be combined per the above unless the owner or his/her agent notes at time of declaration that the declaration be withdrawn should the sexes be combined.
- 13.6.4 Any horse qualifying for the final is not eligible for the consolation.
- 13.6.5 Consolation races shall race for the same purse as a leg.
- 13.7 No horse is eligible to declare unless it has at least one charted satisfactory performance line within 60 days of declaration and must meet the following qualifying standards:
- | <b>2 Year Olds</b> |          | <b>3 Year Olds</b> |          |
|--------------------|----------|--------------------|----------|
| Pacers             | Trotters | Pacers             | Trotters |
| 2:08               | 2:10     | 2:06               | 2:09     |
- 13.8 Horses that meet the qualifying standards for a preliminary leg at each racetrack are qualified for all subsequent legs consolation and the final at that racetrack.
- 13.9 The Administrator of the Program shall be responsible for races conducted under the Program and shall ensure that:
- 13.9.1 each track declares the time specified for races under this program by proper notice and racing dates are issued for sires stakes after the track's race dates are set.
- 13.9.2 entry for races run under the Program is required to be received by the Racing Office at the date and time specified on the track condition sheet.
- 13.9.3 The eligibility and class of all horses participating in races is carefully screened.
- 13.9.4 The Administrator, or his/her designee, is present for the race draw by the Judges for all races conducted under the Program.

## 14.0 Nomination and Sustaining Payments

- 14.1 Nomination and sustaining payments shall be made to the Program in U.S. funds.
- 14.2 A fee payment required by this section shall be postmarked no later than the due date that is specified for the fee by this section. If the date due is on a Sunday and/or a legal federal holiday which falls on a Saturday, payment is due by the following Monday. If the due date falls on a Monday that is a legal holiday, such payment is due on Tuesday. Payment made by commercial delivery services shall be treated the same as those made by letters bearing a postmark.
- 14.3 Beginning with the yearlings of 2001, the yearling nomination fee shall be:
- 14.3.1 Forty (40) dollars each; and
- 14.3.2 Due by May 15th of the yearling year.
- 14.4 A nomination shall be accompanied by a photocopy of the United States Trotting Association registration certificate. Supplemental fees of \$25 shall be assessed if the USTA registration certificate does not accompany the nomination. No nomination shall be accepted where a USTA registration certificate is not obtained and submitted within 60 days of nomination to the Delaware Standardbred Breeder's Program.
- 14.5 If the May 15th deadline to nominate a yearling is missed, a late supplemental payment of \$350 shall be required. The late supplemental payment shall be accepted if it is received by March 15th of the two (2) year old year. This payment is in addition to the regular sustaining payment due on March 15th.
- 14.6 Sustaining payments shall be as follows:
- 14.6.1 Two (2) Year Old payments
- |                 |                                                                    |
|-----------------|--------------------------------------------------------------------|
| March 15th      | \$100 (must be made to ensure eligibility as a three (3) year old) |
| May 15th        | \$200                                                              |
| Declaration Fee | \$500 (for each track)                                             |
- 14.6.2 Three (3) Year Old payments
- |                           |                        |
|---------------------------|------------------------|
| February 15 <sup>th</sup> | \$300                  |
| Declaration Fee           | \$500 (for each track) |

**15.0 Investment Plan and Use of Fees**

- 15.1 All proceeds received pursuant to 29 **Del.C.** §4815(b)(3)b.2.D., which established in the State of Delaware a Delaware Standardbred Breeder's Program and any interest earned on these monies shall be invested in an endowment account until race year 2002.
- 15.2 For race year 2002, five hundred thousand dollars (\$500,000) of the proceeds received pursuant to 29 **Del.C.** §4815(b)(3)b.2.D., which established in the State of Delaware the Program and any interest earned on that money in the preceding twelve (12) months shall be deposited in a separate purse account for purses and bonus for that race year. For race year 2002, one million five hundred thousand dollars (\$1,500,000) of the proceeds pursuant to 29 **Del.C.** §4815(b)(3)b.2.D., which established in the State of Delaware the Program, shall be deposited in the endowment account.
- 15.3 For race year 2003, two million dollars (\$2,000,000) of the proceeds received pursuant to 29 **Del.C.** §4815(b)(3)b.2.D., which established in the State of Delaware the Program and any interest earned on the endowment fund in the preceding twelve (12) months shall be deposited in a separate purse account for purses and bonus for that race year.
- 15.4 For the year 2004 and each race year thereafter, three million dollars (\$3,000,000) of the proceeds received pursuant to 29 **Del.C.** §4815(b)(3)b.2.D., which established in the State of Delaware the Program and any interest earned on the endowment fund in the preceding (12) twelve months shall be deposited in a separate purse account for purses and bonuses for that race year.
- 15.5 Any monies from the purse account for the Program at the end of the race year shall revert to the endowment account of the Program.
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**DEPARTMENT OF EDUCATION  
OFFICE OF THE SECRETARY**

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

**PUBLIC NOTICE**

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

**505 High School Graduation Requirements and Diplomas****A. TYPE OF REGULATORY ACTION REQUIRED**

Amendment to Existing Regulation

**B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION**

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

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before July 2, 2021 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOEregulations.comment@doe.k12.de.us](mailto:DOEregulations.comment@doe.k12.de.us). A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml) or obtained at the Department of Education's Office of the Secretary, located at the address above.

**C. IMPACT CRITERIA**

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

measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? Will the amended regulation help ensure that all students receive an equitable education? The amended regulation does not impact the education received by any student. It impacts students who have met graduation requirements.

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

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

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

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

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

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no material costs to the Department or local school boards for implementing this amended regulation as all costs are to be passed along to the individual requesting a duplicate diploma.

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

<http://regulations.delaware.gov/register/june2021/proposed/24 DE Reg 1041RFA 06-01-21.pdf>

## 505 High School Graduation Requirements and Diplomas (Break in Continuity of Sections)

### 3.0 Credit Requirements Beginning with the Graduation Class of 2015 (Freshman Class of 2011-2012)

- 3.1 For the graduating class of 2015, a public school student shall be granted a State of Delaware Diploma when such student has successfully completed a minimum of twenty four (24) credits ~~in order~~ to graduate including: four (4) credits in English Language Arts, four (4) credits in Mathematics, three (3) credits in Science, three (3) credits in Social Studies, two (2) credits in a World Language, one (1) credit in Physical Education, one-half (1/2) credit in Health Education, three (3) credits in a Career Pathway, and three and one-half (3 ½) credits in elective courses.

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

#### 3.2 World Language:

- 3.2.1 Students may fulfill the two (2) credit World language requirement by either:

- 3.2.1.1 Earning a minimum of two (2) World Language credits in the same ~~language or~~ language:  
or

### 4.0 Credit Requirements Beginning with the Graduation Class of 2016 (Freshman Class of 2012-2013)

- 4.1 Beginning with the graduating class of 2016, a public school student shall be granted a State of Delaware Diploma when such student has successfully completed a minimum of twenty four (24) credits ~~in order~~ to graduate including: four (4) credits in English Language Arts, four (4) credits in Mathematics, three (3) credits in Science, three (3) credits in Social Studies, two (2) credits in a World



Language, one (1) credit in Physical Education, one-half (1/2) credit in Health Education, three (3) credits in a Career Pathway, and three and one-half (3 ½) credits in elective courses.

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

4.2 World Language:

4.2.1 Students may fulfill the two (2) credit World Language requirement by either:

4.2.1.1 Earning a minimum of two (2) World Language credits in the same language ~~or, language;~~  
or

**5.0 Credit Requirements for State of Delaware Diploma - Beginning with the Graduation Class of 2019 (Freshman Class of 2015-2016)**

5.1 Beginning with the graduating class of 2019, a public school student shall be granted a State of Delaware Diploma when such student has successfully completed a minimum of twenty-four (24) credits ~~in order to graduate including:~~ four (4) credits in English Language Arts, four (4) credits in Mathematics, three (3) credits in Science, three (3) credits in Social Studies, two (2) credits in a World Language, one (1) credit in Physical Education, one-half (1/2) credit in Health Education, three (3) credits in a Career Pathway, and three and one-half (3 ½) credits in elective courses.

***(Break in Continuity of Sections)***

**10.0 State of Delaware Diplomas and State of Delaware – Diplomas of Alternate Achievement Standards**

10.1 Diplomas from one (1) school year shall not be issued after September 15 of the next school year.

10.2 ~~Duplicate diplomas or certificates of performance~~ State of Delaware Diplomas or Diplomas of Alternate Achievement Standards will not be issued, but legitimate requests for validation of the diploma or the certificate of performance will be satisfied through a letter of certification issued upon validated request. Requests for diploma information duplicate diplomas from graduates of Delaware High Schools should be directed to the High School the student was attending at the time of graduation. If the school is no longer open or does not have the records, the student should contact the Department for a notarized letter of certification that contains the name of the applicant, the name of the school, the date of graduation, and the diploma registry number (if available) of Education. Fees for duplicate diplomas will be assessed at the High School's or Department of Education's cost. The requesting student will pay all associated fees.

10.3 State High School Diploma for Veterans serving during times of war or conflict, pursuant to 14 **Del.C.** §159

10.3.1 The Department shall provide a High School ~~diploma~~ Diploma to any Veteran who:

10.3.1.1 Left a Delaware High School prior to graduation ~~in order to serve in the armed forces of the United States.~~ States;

10.3.1.2 Did not receive a High School ~~diploma~~ Diploma, or received a G.E.D., as a consequence of such ~~service and,~~ service; and

**11.0 Exceptions for Homeless Youth and Students in DSCYF Custody**

11.1 A Any student who experiences homelessness or is placed in DSCYF custody while the student is in high school, including a Homeless Youth or a Student in DSCYF custody who transfers into a district or charter school shall be permitted to graduate based on the successful completion of the Department's graduation requirements as defined in this regulation in lieu of the district's or charter school's specific requirements permitted by Section 9.0.

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

**505 High School Graduation Requirements and Diplomas**

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# PROPOSED REGULATIONS

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## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(a) (14 Del.C. §122(a))  
14 DE Admin. Code 716

### PUBLIC NOTICE

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

#### 716 Maintenance of Local School District and Charter School Personnel Records

#### A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

#### B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

Pursuant to 14 Del. C. §122 (a), the Secretary of Education intends to amend 14 DE Admin. Code 716 Maintenance of Local School District and Charter School Personnel Records. The Department has reviewed the regulation in order to comply with 29 Del.C. §10407 which requires regulations to be reviewed on a recurring basis every four years. The proposed amendments being made to: correct grammar, to clarify that the regulation applies to both district and charter schools and the word "Local" is no longer needed, and are made to ensure compliance with the *Delaware Administrative Code and Drafting and Style Manual*.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before July 2, 2021 to Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOEregulations.comment@doe.k12.de.us](mailto:DOEregulations.comment@doe.k12.de.us). A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml), or obtained at the Department of Education, located at the address listed above.

#### C. IMPACT CRITERIA

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

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

<http://regulations.delaware.gov/register/june2021/proposed/24 DE Reg 1044RFA 06-01-21.pdf>

## 716 Maintenance of Local School District and Charter School Personnel Records

### 1.0 Definitions

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

~~"Delaware Public Archives (DPA)"~~ **"Delaware Public Archives"** or **"DPA"** means the division within the Department of State that is charged with administering, implementing and enforcing all provisions of the Delaware Public Records Law.

**"Employee"** means any person whose terms of employment are adequate to qualify the employee for the earning of credit toward pension.

**"Termination"** means, not only retirement, but any reason the employee leaves the ~~district~~ district or charter school.

### 2.0 Records Retention

- 2.1 Records for all school district and charter school employees shall be kept up to date including:
  - 2.1.1 Salary data records for each year of employment in the school district or charter school. (Total salary paid identified as fiscal or calendar year); and
  - 2.1.2 Records that show sick leave days earned and used and the number of days available at any time; and
  - 2.1.3 The record of vacation time for those employees whose terms of employment provide for earned vacation.
  - 2.1.4 All forms and documents that become part of the Delaware Performance Appraisal System II (DPAS II) shall be retained in the individual's personnel file until there are at least five (5) complete ~~summative~~ summative evaluations. The oldest complete set of evaluation forms and documents may be purged from the personnel file once the sixth set is complete.

### 3.0 Records Retention

- 3.1 Each school district and charter school shall keep the records referred to in Section 2.0 above for all employees' inactive personnel files for at least fifty (50) years following termination of employment.
- 3.2 For the security of records and the protection of the personnel for whom the information is recorded, it is recommended that original records are to be maintained at the school district or charter school for three (3) years after termination of an employee and a successful audit of such records. Records shall be purged in accordance with the *Delaware Public Archives School Districts General Records Retention Schedule* and prepared for storage according to the *Delaware Public Archives Records Management Handbook Preparation of Records for Short-Term Storage*. Records shall remain in their original format and shall then be transferred to DPA and retained in storage for the balance of the fifty (50) required years. ~~Local~~ District and charter school records officers and authorized agents may request files from storage in accordance with DPA's procedures for requesting files. At the end of the retention period, the documents will be destroyed in accordance with DPA's destruction procedures.
- 3.3 The style and form of the records shall be at the discretion of the ~~local~~ school districts or charter schools, except that records transferred to the ~~Delaware Public Archives~~ DPA for storage shall be in a format acceptable to DPA. Individual ~~local~~ school districts and charter schools may elect to have their records recorded onto a different type of media at district expense, in accordance with DPA guidelines.
  - 3.3.1 The information referred to above shall be maintained and available for any employee or former employee seeking information concerning their own employment records for a period of fifty (50) years after termination of employment. It is recommended that for the convenience of employees

and former employees that school districts and charter schools develop an alphabetically arranged file showing the name of each employee and the disposition of his or her records.

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**OFFICE OF THE SECRETARY**

Statutory Authority: 29 Delaware Code, Section 9003(a)(7) and 14 Delaware Code, Sections 3001A-3005A (29 **Del.C.** §9003(a)(7) & 14 **Del.C.** §§3001A-3005A)

**PUBLIC NOTICE**

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

**938 Regulations for Youth Camps****A. TYPE OF REGULATORY ACTION REQUIRED**

New Regulation

**B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION**

Pursuant to 29 **Del.C.** §9003(a)(7) and 14 **Del.C.** §§3001A-3005A, the Secretary of Education wishes to add 14 **DE Admin. Code** 938 Regulations for Youth Camps. This regulation was created to comply with the Child Care and Development Block Grant Act (CCDBG) by requiring camps who accept Purchase of Care to become licensed. Currently, the Division of Public Health issues permits for camps after they receive an exemption letter from the Office of Child Care Licensing. This permitting process alone does not meet the requirements of CCDBG because it does not include health and safety training and comprehensive background checks for staff members, an unannounced monitoring visit, complaint investigations, and full inspection reports posted publically online. These new regulations include the permitting process as well as the additional requirements of CCDBG. The creation of this regulation will allow youth camps to apply for and receive Purchase of Care funding from the Department of Health and Social Services (DHSS) for eligible children.

Interested parties wishing to offer comments, suggestions, data, briefs, or other materials concerning the proposed regulation may submit them in writing by the close of business on or before July 2, 2021, to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOEregulations.comment@doe.k12.de.us](mailto:DOEregulations.comment@doe.k12.de.us). A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml) or obtained at the Department of Education's Office of the Secretary, located at the address above.

**C. IMPACT CRITERIA**

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

2. Will the regulation help ensure that all students receive an equitable education? The new regulation does not involve education.

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

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

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

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

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

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no costs to State or local school boards for compliance with this new regulation.

**\*Please Note:**

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

<http://regulations.delaware.gov/register/june2021/proposed/24 DE Reg 1046RFA 06-01-21.pdf>

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

[938 Regulations for Youth Camps](#)

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF SOCIAL SERVICES**  
Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)  
16 **DE Admin. Code** 11004

**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) regarding Purchase of Care, specifically, to update the formatting and text to provide clear child care application requirements and procedures for DSS staff, stakeholders, and the public.

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 [Nicole.M.Cunningham@delaware.gov](mailto:Nicole.M.Cunningham@delaware.gov), or by fax to 302-255-4413 by 4:30 p.m. on July 1, 2021. 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/Division of Social Services (DHSS/DSS) is proposing to amend Division of Social Services Manual (DSSM) regarding Purchase of

Care, specifically, to update the formatting and text to provide clear child care application requirements and procedures for DSS staff, stakeholders, and the public.

#### Statutory Authority

- 45 C.F.R 98.20
- 31 Del. C. §503(e)
- 31 Del. C. §508
- 31 Del. C. §512(1)

#### Background

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

#### Summary of Proposal

##### *Purpose*

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

##### *Summary of Proposed Changes*

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

#### Fiscal Impact

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

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

<http://regulations.delaware.gov/register/june2021/proposed/24 DE Reg 1047RFA 06-01-21.pdf>

#### **POLICY AMENDMENT**

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

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

##### 45 C.F.R 98.20

The application process will always consist of the following:

- A. ~~a Case Manager, parent/caretaker interview; (in person or over the phone)~~
- B. ~~a review and verification of eligibility requirements;~~
- C. ~~a review of the parent information about child care certificates;~~
- D. ~~a determination of eligibility along with written parent/caretaker notification of the eligibility decision;~~
- E. ~~completion of the Application for Child Care Assistance;~~

- ~~F. as necessary, a determination of the child care fee;~~
- ~~G. creation of a case in the DCIS II Child Care Sub system;~~
- ~~H. as appropriate, completion of the Service Authorization Form;~~
- ~~I. completion of the Child Care Payment Agreement; and~~
- ~~J. a review of the parent/caretaker's rights and responsibilities, such as keeping their Case Manager informed of changes.~~

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

1. DSS will provide child care assistance for eligible children when a parent or caretaker:
  - Participates in a TANF or Food Benefit Employment and Training (E&T) program;
  - Participates in the TANF Transitional Work Program (TWP);
  - Is employed or accepts an offer of employment;
  - Receives protective services from the Division of Family Services (DFS); or
  - Verifies a special need.
2. A parent or caretaker may apply for child care:
  - In person at any DSS location;
  - Over the phone with a DSS case worker;
  - By mailing, faxing, or emailing a completed application to the local DSS office; or
  - Online through Delaware ASSIST or other online application methods.
3. DSS will interview the applicant and process the signed child care application within two business days. The filing date will be the effective begin date for assistance.
4. A parent or caretaker must verify household income and the need for child care during the application process.
  - A. A parent or caretaker must verify the last 30 days of earned and unearned income received prior to the date of application for DSS to determine financial eligibility.
    - i. Earned income may be verified by:
      - a. Wage stubs;
      - b. A signed employer statement on employer letterhead noting the employee's name, start date, work schedule, earnings, and frequency of pay;
      - c. Verification of Employment (Form 170); or
      - d. A data match confirming employment and income.
    - ii. Unearned income may be verified by:
      - a. Award letters;
      - b. Pension statements;
      - c. Court order documentation;
      - d. Other forms of documentation from sources verifying the gross unearned income amount; or
      - e. A data match confirming unearned income.
  - B. A parent or caretaker must verify their need for child care by providing:
    - i. Wage verification or an offer of employment that includes the amount of work hours;
    - ii. A schedule, proof of registration, or statement from an authorized education program verifying the start date, days and hours of attendance, and expected completion date;
    - iii. A schedule, proof of registration, or statement from an authorized training program verifying the start date, days and hours of attendance, and expected completion date;
    - iv. A DFS referral for protective care; or
    - v. Child Care Medical Certification Form (Form 611) or written documentation completed by a physician or medical professional that verifies a special need and the required care.



- C. Presumptive child care may open when a parent or caretaker reports income and a need for child care but has not provided all mandatory verifications in accordance with DSSM 11004.8.
5. A parent or caretaker must provide all mandatory verifications, complete an intake interview, and make a provider selection within 30 days from the application date for child care to become effective on the application filing date.
- A. If information is returned after 30 days of the application date, but before 60 days, child care will begin on the date verifications are received.
- B. If information is not returned before 60 days from the application date, the parent or caretaker must reapply for child care.
6. DSS must inform parents and caretakers of their:
- Eligibility determination;
  - Monthly parent copayment amount; and
  - Rights and responsibilities for the Child Care Subsidy Program.
7. DSS must give parents and caretakers a Subsidized Child Care Client Agreement (Form 626) when child care approval cannot be generated from the eligibility system.

**POLICY AMENDMENT**

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

**11004.8 Defining Presumptive Child Care Services****31 Del.C. §503(e), 508, and 512(1)**

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

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

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

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

1. Parents and caretakers may self-declare income and the need for child care at the time of application and receive presumptive child care services if they are determined eligible pending verifications.
2. Presumptive child care is limited to a one- or two-month eligibility and authorization period.

- A. If a case is pending verifications prior to adverse action, child care will be approved for the current month only.
  - B. If a case is pending verifications after adverse action, child care will be approved for the current month and the next month only.
3. Parents and caretakers are not eligible for presumptive child care if they:
- Received child care assistance in the previous month;
  - Were open in presumptive child care in their previous eligibility determination; or
  - Were denied for presumptive child care in their previous eligibility determination.
4. DSS case workers will:
- A. Process the child care application and complete the intake interview within two business days for parents and caretakers in need of presumptive child care services.
  - B. Enter the application information and select "pending verification" for missing mandatory verifications in the eligibility system. The eligibility system will automatically open presumptive child care if the parent or caretaker is eligible in accordance with section (3) of this policy.
  - C. Enter the presumptive child care authorization period of one or two months after the child care has been confirmed.
  - D. Inform the parent or caretaker in writing of the mandatory verifications required to complete the eligibility determination for child care.
  - E. Update the mandatory verifications in the eligibility system to "verified" once the parent or caretaker provides the mandatory verifications.
    - i. The case worker will also update the authorization to the next review period, which will be 12 months from the application filing date, unless a shorter authorization period was requested in writing in accordance with DSSM 11004.5.
  - F. Update the mandatory verifications in the eligibility system to "not verified" one day after the requested return date if the parent or caretaker fails to provide the mandatory verifications.
    - i. The child care case will close at the end of the presumptive child care authorization period.
- 

## DEPARTMENT OF STATE

### DIVISION OF PROFESSIONAL REGULATION

### 3500 BOARD OF EXAMINERS OF PSYCHOLOGISTS

Statutory Authority: 24 Delaware Code, Section 3506(a)(1) (24 Del.C. §3506(a)(1))  
24 DE Admin. Code 3500

#### PUBLIC NOTICE

#### 3500 Board of Examiners of Psychologists

The Delaware Board of Examiners of Psychologists, pursuant to 24 Del. C. § 3506(a)(1), proposes to add a requirement that all licensees complete three continuing education credits in cultural inclusion, equity, and diversity. Psychologists will still be required to complete 40 CEs per renewal period, and psychological assistants will still be required to complete 20 CEs per renewal period, but of those totals, three must be in cultural inclusion, equity, and diversity.

The Board will hold a virtual public hearing on July 26, 2021 at 9:00 a.m. Written comments should be sent to Danielle Cross, Administrator of the Delaware Board of Examiners of Psychologists, Cannon Building, 861 Silver Lake Blvd, Suite 203, Dover, DE 19904. Written comments will be accepted until August 10, 2021.

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

<http://regulations.delaware.gov/register/june2021/proposed/24 DE Reg 1051RFA 06-01-21.pdf>

## 3500 Board of Examiners of Psychologists (Break in Continuity of Sections)

### 5.0 Procedures for Licensure

#### (Break in Continuity Within Section)

5.4 Inactive Status: A licensee may be placed on inactive status by the Board for a period of no more than five years. Requests for inactive status shall be made, in writing, to the Board and requests which exceed one year shall be renewed biennially at the time of regular license renewals.

5.4.1 To apply for reactivation of an inactive license, a licensee shall:

#### (Break in Continuity Within Section)

5.4.1.3 ~~Be required to be fingerprinted by the State Bureau of Identification and provide all other necessary information in order to obtain a criminal background check; and~~

5.4.1.45.4.1.3 Submit proof of completion of the continuing education requirements below;

5.4.1.4.15.4.1.3.1 Inactive status for one year or less: 20 CE hours, including three hours of continuing education in ethics and three hours in cultural inclusion, equity, and diversity;

5.4.1.4.25.4.1.3.2 Inactive status for more than one year: 40 CE hours, including three hours of continuing education in ethics and three hours in cultural inclusion, equity, and diversity, completed within 24 months prior to reapplication.

#### (Break in Continuity of Sections)

### 10.0 Continuing Education

10.1 Hours required.

#### (Break in Continuity Within Section)

10.1.2 Psychologists must obtain 40 hours of continuing education during each biennial licensing period in order to be eligible for renewal of license. A minimum of ten hours of continuing education credit must be obtained via face to face or live webinar. Effective as of the license renewal period beginning August 1, ~~2009~~ 2021, all psychologists must complete three hours of continuing education in ethics and three hours in cultural inclusion, equity, and diversity.

10.1.3 Psychological assistants must obtain 20 hours of continuing education during each biennial licensing period for re-registration. Effective as of the license renewal period beginning August 1, ~~2009~~ 2021, all psychological assistants must complete three hours of continuing education in ethics and three hours in cultural inclusion, equity, and diversity.

10.1.4 A “**continuing education hour**” is defined as one sixty-minute period, unless otherwise specified.

10.2 Proration of CE Requirement for New and Reactivating Licensees

10.2.1 The CE requirement ~~for a licensee's initial licensing period~~ shall be prorated as follows:

10.2.1.1 If an applicant is granted a psychologist license or reactivates a license during the first six months of a license period, i.e., between July 31 of an odd-numbered year and January 31 of the next year, the new licensee must complete 30 CEs. An applicant granted a psychological assistant license in the same time period must complete 15 CEs in the initial licensing period.

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- 10.2.1.2 If an applicant is granted a psychologist license or reactivates a license during the second six months of a license period, i.e., between February 1 of an even-numbered year and July 31 of that same year, the new licensee must complete 20 CEs. An applicant granted a psychological assistant license in the same time period must complete 10 CEs in the initial licensing period.
- 10.2.1.3 If an applicant is granted a psychologist license or reactivates a license during the third six months of a license period, i.e., between the dates of August 1 of an even-numbered year and January 31 of the next year, the licensee must complete 10 CEs. An applicant granted a psychological assistant license in the same time period must complete 5 CEs in the initial licensing period.
- 10.2.1.4 Any applicant granted a license or licensee who has reactivated a license during the last six months of a license period, i.e., between the dates of February 1 of an odd-numbered year and July 31 of that same year, need not complete any CEs during that period.

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

**3500 Board of Examiners of Psychologists**

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**Symbol Key**

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

**Final Regulations**

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

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

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**DELAWARE RIVER BASIN COMMISSION**

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

**FINAL RULE****Comprehensive Plan and Special Regulations with Respect to High Volume Hydraulic Fracturing; Rules of Practice and Procedure Regarding Project Review Classifications and Fees**

**Proposed:** *Delaware Register of Regulations* on January 1, 2018 (21 DE Reg. 526-528)

**Adopted:** February 25, 2021, by the Delaware River Basin Commission, Pamela M. Bush, Esq., Commission Secretary.

**Filed:** April 27, 2021 as a final regulation.

**Effective:** May 21, 2021 (30 days from publication of the final rule in the Federal Register, which occurred on April 21, 2021).

**Summary:** By Resolution No. 2021-01 on February 25, 2021, the Delaware River Basin Commission amended its Comprehensive Plan and adopted new regulations to prohibit high volume hydraulic fracturing in hydrocarbon-bearing rock formations within the Delaware River Basin. The Commission simultaneously adopted unrelated amendments to its rules concerning the classification of projects for review under Section 3.8 of the Compact and regulatory program fees.

**Contact:** Pamela M. Bush, Esquire, 609-477-7203, [pam.bush@drbc.gov](mailto:pam.bush@drbc.gov).

**Supplementary Information:** The Delaware River Basin Commission ("DRBC" or "Commission") is a Federal-interstate compact agency charged with managing the water resources of the Delaware River Basin on a regional basis without regard to political boundaries. Its members are the governors of the four basin states-Delaware, New Jersey, New York and Pennsylvania-and the North Atlantic Division Commander of the U.S. Army Corps of Engineers, representing the Federal Government. The Commission is not subject to the requirements of the Delaware Administrative Procedure Act. The purpose of this notice is to advise the public that duly adopted regulations of the Commission have been filed with the state in accordance with Section 14.2 of the Delaware River Basin Compact.

*Background.* When the potential for developing natural gas from tight shale formations within the Basin using high volume hydraulic fracturing ("HVHF") and horizontal drilling techniques and the risks to water resources posed by such activities became known to the Commission, Commission staff undertook a scientific, technical, regulatory, and policy analysis to determine the appropriate response in light of the Commission's statutory mission and Comprehensive Plan.

An important milestone occurred on September 13, 2017, when the DRBC Commissioners by a Resolution for the Minutes directed the Executive Director to prepare and publish for public comment a revised set of draft regulations, to include, among other things, "prohibitions relating to the production of natural gas utilizing horizontal drilling and hydraulic fracturing within the basin." In accordance with the Commissioners' directive, the Commission proposed amendments to its Comprehensive Plan and to its Special Regulations at 18 CFR part 440, including a prohibition on HVHF within the Basin. The Commission simultaneously proposed amendments to its Administrative Manual-Rules of Practice and Procedure, 18 CFR part 401, concerning the classification of projects for review under Section 3.8 of the Compact (§ 401.35) and regulatory program fees (§ 401.43). See, 21 DE Reg. 526, January 1, 2018. Also see, 83 Fed. Reg. 1586, January 12, 2018; 50 N.J.R. 717, February 5, 2018; NYS Register, January 3, 2018 p. 5; and 48 Pa. B. 255, January 13, 2018. Some of the proposed amendments to part 401 were related to the new part 440 and others were not; however, only the changes unrelated to part 440 have been adopted as final rules.

The changes unrelated to HVHF do not substantively alter Commission requirements or fees, but better align the rules with the Commission's practices, eliminate unnecessary language, clarify language that has been misconstrued, and in instances replace the discretion of the Executive Director with that of the Commission. The changes to project review classifications: 1) retain Commission review of alterations to wetlands of less than 25 acres where a state or a federal level review and permit system is not in effect, while eliminating additional triggers for such review; 2) remove the provision for review of regional wastewater treatment plans developed pursuant to the Federal Water Pollution Control Act because the basin states have effective programs for the transparent development and implementation of such plans; 3) replace the discretion of the Executive Director with that of the Commission to require review under Section 3.8 of the Compact of any project having a potential substantial water quality impact on waters classified as Special Protection Waters; and 4) clarify that the Commission as a whole, not merely any single agency of a signatory party, may determine that a project in an excluded classification is required to be submitted for review under Section 3.8 of the Compact. The changes to regulatory program fees replace the term "docket application fee" with the more accurate term "application fee," because project review does not always involve a "docket."

Extensive opportunity for public input on the proposed rules was provided during the public comment period that took place from November 30, 2017 to March 30, 2018. In addition to accepting written comments, the Commission accepted oral comment at six public hearings, one of which was conducted through an operator-assisted toll-free teleconference to avoid the need for travel to a hearing location. During the comment period, the Commission received a total of 8,903 comment submissions (8,680 in writing and 223 at public hearings). In many cases, a single comment submission included numerous detailed comments. A Comment and Response Document was prepared and adopted by the Commission to address the comments received from the public.

Together with the other materials gathered during the development of its regulation, the Commission reviewed the extensive public comments, including consultant reports, scientific literature and other statements and materials submitted, and examined the experience of other jurisdictions with HVHF. Based upon its review, the Commission by Resolution No. 2021-01 on February 25, 2021, found and determined that:

1. As the scientific and technical literature and the reports, studies, findings and conclusions of other government agencies reviewed by the Commission have documented, and as the more than a decade of experience with high volume hydraulic fracturing in regions outside the Delaware River Basin have evidenced, despite the dissemination of industry best practices and government regulation, high volume hydraulic fracturing

and related activities have adversely impacted surface water and groundwater resources, including sources of drinking water, and have harmed aquatic life in some regions where these activities have been performed.

2. The region of the Delaware River Basin underlain by shale formations is comprised largely of rural areas dependent upon groundwater resources; sensitive headwater areas considered to have high water resource values; and areas draining to DRBC Special Protection Waters.

3. The geology of the region in which shale formations potentially containing natural gas are located in the Basin is characterized by extensive geologic faults and fractures providing preferential pathways for migration of fluids (including gases).

4. If commercially recoverable natural gas is present in the Delaware River Basin and if HVHF were to proceed in the Basin, then:

a. Spills and releases of hydraulic fracturing chemicals, fluids and wastewater would adversely impact surface water and groundwater, and losses of well integrity would result in subsurface fluid (including gas) migration, impairing drinking water resources, and other uses established in the Comprehensive Plan.

b. The fluids released or migrating would contain pollutants, including salts, metals, radioactive materials, organic compounds, endocrine-disrupting and toxic chemicals, and chemicals for which toxicity has not been determined, impairing the water uses protected by the Comprehensive Plan.

c. HVHF activities and their impacts would be dispersed over and adversely affect thousands of acres of sensitive water resource features, including, among others, forested groundwater infiltration areas, other groundwater recharge locations, and drainage areas to Special Protection Waters, where few existing roads are designed to safely carry the heavy industrial traffic required to support HVHF, prevent dangerous spills or provide access to remediate spills that occur.

5. For these reasons and other grounds described in the administrative record for this rulemaking:

a. High-volume hydraulic fracturing and related activities pose significant, immediate and long-term risks to the development, conservation, utilization, management, and preservation of the water resources of the Delaware River Basin and to Special Protection Waters of the Basin, considered by the Commission to have exceptionally high scenic, recreational, ecological, and/or water supply values.

b. Controlling future pollution by prohibiting high volume hydraulic fracturing in the Basin is required to effectuate the Commission's Comprehensive Plan, avoid injury to the waters of the Basin as contemplated by the Comprehensive Plan and protect the public health and preserve the waters of the Basin for uses in accordance with the Comprehensive Plan.

The Commission's Comment and Response Document responds to comments regarding the risks to water resources posed by HVHF, and the potential and observed adverse impacts of HVHF and related activities on water resources. In addition, it addresses comments concerning: the Commission's authority; the intersection of Commission, state and Federal rules; the proposed rule text; basis and background documents; economic impacts; the relationship of HVHF and related activities to DRBC's Comprehensive Plan, rules and policies; public health; chemical disclosures; climate change; renewable energy; policies and reports on the Susquehanna River Basin; the public input process; compliance and enforcement; constitutional challenges and other matters.

*Changes from the draft rule.* Upon adopting its final rules concerning HVHF, the Commission withdrew proposed § 440.4 - Exportation of water for hydraulic fracturing of oil and natural gas wells and § 440.5 - Produced Water (and importation of wastewater), and revised § 440.2 - Definitions to eliminate terms associated solely with the two deleted sections. Within part 401, comprising the Commission's Rules of Practice and Procedure, proposed amendments to § 401.35 - Classification of Projects for Review concerning the importation and exportation of water and wastewater into and from the Basin were withdrawn. Also, within part 401, proposed amendments to § 401.43 - Regulatory Program Fees related to wastewater treatability studies were withdrawn. The final rules were revised to eliminate all references to the deleted sections, and public comments specific to these sections are not addressed in the Commission's Comment and Response document. The topics of water exportation and wastewater importation will be addressed as appropriate through one or more separate Commission actions.

The Comprehensive Plan amendments and final rules replace the Executive Director Determinations of May 19, 2009, June 14, 2010 and July 23, 2010. The Resolution for the Minutes of May 5, 2010, which postponed the Commission's consideration of well pad projects until the adoption of final rules, expires by its own terms.

*Additional materials.* Additional materials can be found on the Commission's website, [www.drbc.gov](http://www.drbc.gov), at [https://www.state.nj.us/drbc/about/regulations/final-rule\\_hvhf.html](https://www.state.nj.us/drbc/about/regulations/final-rule_hvhf.html). These include links to Resolution No. 2021-01 of



February 25, 2021 adopting the final rule; the Commission's Comment and Response Document; a mark-up comparing the final to the proposed rule text for 18 CFR part 440; and mark-ups comparing the amended to the existing rule text for 18 CFR 401.35 and 401.43. The Commission's notice of proposed rulemaking, proposed rule text, written comments received, and transcripts of public hearings also can be found on the Commission's website at [https://www.nj.gov/drbc/meetings/proposed/notice\\_hydraulic-fracturing.html](https://www.nj.gov/drbc/meetings/proposed/notice_hydraulic-fracturing.html).

A summary of Commission actions with respect to hydraulic fracturing for oil and gas extraction prior to the Commission's September 13, 2017 directive is available at: <https://www.nj.gov/drbc/programs/natural/archives.html>.

For the reasons set forth in the preamble, the Delaware River Basin Commission amends 18 CFR chapter III as follows:

**PART 401 - RULES OF PRACTICE AND PROCEDURE**

1. The authority citation for part 401 continues to read as follows:  
Authority: Delaware River Basin Compact (75 Stat. 688), unless otherwise noted.

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

2. Amend § 401.35 as follows:
  - a. Revise paragraphs (a) introductory text, (a)(2) and (15), and (b)(14) through (17);
  - b. Remove paragraph (b)(18);
  - c. Revise paragraph (c);
  - d. Remove paragraph (d).

The revisions read as follows:

**§ 401.35 Classification of projects for review under section 3.8 of the Compact.**

(a) Except as the Commission may specially direct by notice to the project owner or sponsor, a project in any of the following classifications will be deemed not to have a substantial effect on the water resources of the Basin and is not required to be submitted under Section 3.8 of the Compact:

\* \* \* \* \*

(2) A withdrawal from ground water when the daily average gross withdrawal during any 30 consecutive day period does not exceed 100,000 gallons;

\* \* \* \* \*

(15) Draining, filling, or otherwise altering marshes or wetlands when the area affected is less than 25 acres; provided, however, that areas less than 25 acres shall be subject to Commission review and action where neither a state nor a Federal level review and permit system is in effect;

\* \* \* \* \*

(b) \* \* \*

- (14) Landfills and solid waste disposal facilities affecting the water resources of the Basin;
- (15) State and local standards of flood plain regulation;
- (16) Electric generating or cogenerating facilities designed to consumptively use in excess of 100,000 gallons per day of water during any 30-day period; and
- (17) Any other project that the Commission may specially direct by notice to the project sponsor or land owner as having a potential substantial water quality impact on waters classified as Special Protection Waters.

(c) Regardless of whether expressly excluded from review by paragraph (a) of this section, any project or class of projects that in the view of the Commission could have a substantial effect on the water resources of the basin may, upon special notice to the project sponsor or landowner, be subject to the requirement for review under section 3.8 of the Compact.

3. Amend § 401.43 as follows:
  - a. Revise paragraphs (b)(1) introductory text, (b)(1)(iii) introductory text, (b)(2)(i), (b)(4)(iii), and (c); and
  - b. In paragraph (e), in table 1, revise the table heading and the heading for the middle column.

The revisions read as follows:

**§ 401.43 Regulatory program fees.**

\* \* \* \* \*

(b) \* \* \*

(1) *Application fee.* Except as set forth in paragraph (b)(1)(iii) of this section, the application fee shall apply to:  
\* \* \* \* \*

(iii) *Exemptions.* The application fee shall not apply to:  
\* \* \* \* \*

(2) \* \* \*

(i) Except as provided in paragraph (b)(2)(ii) of this section, an annual monitoring and coordination fee shall apply to each active water allocation or wastewater discharge approval issued pursuant to the Compact and implementing regulations in this part, regardless of whether the approval was issued by the Commission in the form of a docket, permit or other instrument, or by a Signatory Party Agency under the One Permit Program rule (§ 401.42).  
\* \* \* \* \*

(4) \* \* \*

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

(c) *Indexed adjustment.* On July 1 of every year, beginning July 1, 2017, all fees established by this section will increase commensurate with any increase in the annual April 12-month Consumer Price Index (CPI) for Philadelphia, published by the U.S. Bureau of Labor Statistics during that year.<sup>1</sup> In any year in which the April 12-month CPI for Philadelphia declines or shows no change, the application fee and annual monitoring and coordination fee will remain unchanged. Following any indexed adjustment made under this paragraph (c), a revised fee schedule will be published in the Federal Register by July 1 and posted on the Commission's website. Interested parties may also obtain the fee schedule by contacting the Commission directly during business hours.  
\* \* \* \* \*

(e) \* \* \*

TABLE 1 TO § 401.43 - APPLICATION FEES

* * *	Application fee	* * *
* * * * *		

\* \* \* \* \*

4. Add part 440 to read as follows:

**PART 440 - HIGH VOLUME HYDRAULIC FRACTURING**

Sec.

440.1 Purpose, authority, and relationship to other requirements.

440.2 Definitions.

440.3 High volume hydraulic fracturing (HVHF).

**Authority:** Delaware River Basin Compact (75 Stat. 688).

**§440.1 Purpose, authority, and relationship to other requirements.**

(a) *Purpose.* The purpose of this part is to protect and conserve the water resources of the Delaware River Basin. To effectuate this purpose, this section establishes standards, requirements, conditions, and restrictions to prevent or reduce depletion and degradation of surface and groundwater resources and to promote sound practices of water resource management.

(b) *Authority.* This part implements Sections 3.1, 3.2(a), 3.2 (b), 3.6(b), 3.6(h), 4.1, 5.2, 7.1, 13.1 and 14.2(a) of the Delaware River Basin Compact.

1. Consumer Price Index - U/ Series ID: CUURA102SA0 / Not Seasonally Adjusted / Area: Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD / Item: All items / Base Period: 1982-84=100.

(c) *Comprehensive Plan*. The Commission has determined that the provisions of this part are required for the immediate and long range development and use of the water resources of the Basin and are therefore incorporated into the Commission's Comprehensive Plan.

(d) *Relationship to other Commission requirements*. The provisions of this part are in addition to all applicable requirements in other Commission regulations in this chapter, dockets, and permits.

(e) *Severability*. The provisions of this part are severable. If any provision of this part or its application to any person or circumstances is held invalid, the invalidity will not affect other provisions or applications of this part, which can be given effect without the invalid provision or application.

(f) *Coordination and avoidance of duplication*. In accordance with and pursuant to section 1.5 of the Delaware River Basin Compact, to the fullest extent it finds feasible and advantageous the Commission may enter into an Administrative Agreement (Agreement) with any Basin state or the Federal Government to coordinate functions and eliminate unnecessary duplication of effort. Such Agreements will be designed to: effectuate intergovernmental cooperation, minimize the efforts and duplication of state and Commission staff resources wherever possible, ensure compliance with Commission-approved requirements, enhance early notification of the general public and other interested parties regarding proposed activities in the Basin, indicate where a host state's requirements satisfy the Commission's regulatory objectives, and clarify the relationship and project review decision making processes of the states and the Commission for projects subject to review by the states under their state authorities and by the Commission under Section 3.8 and Articles 6, 7, 10 and 11 of the Compact.

## **§440.2 Definitions.**

For purposes of this part, the following terms and phrases have the meanings provided. Some definitions differ from those provided in regulations of one or more agencies of the Commission's member states and the Federal Government.

*Basin* is the area of drainage into the Delaware River and its tributaries, including Delaware Bay.

*Commission* is the Delaware River Basin Commission (DRBC) created and constituted by the Delaware River Basin Compact.

*Fracturing fluid(s)* is a mixture of water (whether fresh or recycled) and/or other fluids and chemicals or other additives, which are injected into the subsurface and which may include chemicals used to reduce friction, minimize biofouling of fractures, prevent corrosion of metal pipes or remove drilling mud damage within a wellbore area, and propping agents such as silica sand, which are deposited in the induced fractures.

*High volume hydraulic fracturing (HVHF)* is hydraulic fracturing using a combined total of 300,000 or more gallons of water during all stages in a well completion, whether the well is vertical or directional, including horizontal, and whether the water is fresh or recycled and regardless of the chemicals or other additives mixed with the water.

*Hydraulic fracturing* is a technique used to stimulate the production of oil and natural gas from a well by injecting fracturing fluids down the wellbore under pressure to create and maintain induced fractures in the hydrocarbon-bearing rock of the target geologic formation.

*Person* is any natural person, corporation, partnership, association, company, trust, Federal, state, or local governmental unit, agency, or authority, or other entity, public or private.

*Water resource(s)* is water and related natural resources in, on, under, or above the ground, including related uses of land, which are subject to beneficial use, ownership, or control within the hydrologic boundary of the Delaware River Basin.

## **§440.3 High volume hydraulic fracturing (HVHF).**

(a) *Determination*. The Commission has determined that high volume hydraulic fracturing poses significant, immediate and long-term risks to the development, conservation, utilization, management, and preservation of the water resources of the Delaware River Basin and to Special Protection Waters of the Basin, considered by the Commission to have exceptionally high scenic, recreational, ecological, and/or water supply values. Controlling future pollution by prohibiting such activity in the Basin is required to effectuate the Comprehensive Plan, avoid injury to the waters of the Basin as contemplated by the Comprehensive Plan, and protect the public health and preserve the waters of the Basin for uses in accordance with the Comprehensive Plan.

(b) *Prohibition*. High volume hydraulic fracturing in hydrocarbon bearing rock formations is prohibited within the Delaware River Basin.

Dated: April 27, 2021.

Pamela M. Bush, Esq.  
Commission Secretary and Assistant General Counsel

**DEPARTMENT OF EDUCATION**  
**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 915

**REGULATORY IMPLEMENTING ORDER**

**915 James H. Groves High School**

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

Pursuant to 14 **Del. C.** §122(b), the Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 915 James H. Groves High School. This regulation is being updated to amend language related to the age of a student in the In School Credit (ISC) Program. Specifically, there is no longer a requirement that the ISC Program mirror federal regulations since Groves does not receive federal funding. This change to the regulation will be in effect until June 30, 2022 as it is the result of the COVID-19 pandemic. Other minor changes were made to the regulation to comply with the *Delaware Administrative Code Style Manual*.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on March 1, 2021. In addition, notice was published in *The News Journal* and the *Delaware State News* on March 1, 2021, in the form hereto attached as *Exhibit "A"*. One comment was received from the Governor's Advisory Council for Exceptional Citizens which was in support of the proposed amended regulation.

**II. FINDINGS OF FACTS**

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 915 James H. Groves High School updated to amend language related to the age of a student in the In School Credit (ISC) Program. Specifically, there is no longer a requirement that the ISC Program mirror federal regulations since Groves does not receive federal funding. This change to the regulation will be in effect until June 30, 2022 as it is the result of the COVID-19 pandemic. Other minor changes were made to the regulation to comply with the *Delaware Administrative Code Style Manual*.

**III. DECISION TO AMEND THE REGULATION**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 915 James H. Groves High School. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 915 James H. Groves High School attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 915 James H. Groves High School hereby amended shall be in effect for a period of one year 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** 915 James H. Groves High School amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 915 James H. Groves High School 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 April 22, 2021. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 22nd day of April 2021.

**Department of Education**

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

Approved this 22nd day of April 2021

## State Board of Education

/s/ Whitney Townsend Sweeney, President	/s/ Vincent Lofink
/s/ Wali W. Rushdan, II, Vice President	/s/ Audrey J. Noble, Ph.D.
/s/ Shawn Brittingham	Provey Powell, Jr. (absent)
/s/ Candace Fifer	

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

## 915 James H. Groves High School

### 1.0 Definitions

~~“Certificate of Educational Attainment (CEA3)”~~ **“Certificate of Educational Attainment”** or **“CEA3”** means that the holder of the certificate has passed the designated assessments with the required scores in each sub test area and has written an approved Groves content area research paper.

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

**“Groves Leadership Team”** means an advisory group composed of the Groves Center administrators, the State Director of Adult Education, a representative from the Groves student association and prison education teacher supervisor(s) ~~supervisors~~. The Associate Secretary, Student Supports shall be an ex officio member of the leadership team.

**“James H Groves Center”** or ~~“Center(s)”~~ **“Center”** or **“Centers”** means the specific location in a school district, agency or organization where instruction is provided for the James H. Groves High School program.

**“James H. Groves High School”** or **“Groves”** means an adult high school established by the State of Delaware to provide the opportunity for adults and out of school youth to earn and obtain a high school diploma. The James H. Groves High School is a single school with multiple centers established and operated through a proposal application process. The James H. Groves High School is administered by the Delaware Department of Education.

**“Sex Offender”** means an offender convicted of offenses specified in 11 Del.C. §4121(a)(4).

### 2.0 Admission Criteria and Process

2.1 The following individuals may enroll in the James H. Groves High School:

~~2-42.1.1~~ An adult 18 years of age and older, who resides in the State of Delaware or is a resident of another state and is currently employed in Delaware and has been so employed for a minimum of six (6) months prior to enrollment.

~~2-4.142.1.1.1~~ The applicant shall:

~~2-4.1.42.1.1.1.1~~ Submit an application on forms approved by the Department;

~~2-4.1.22.1.1.1.2~~ Qualify as meeting secondary level skills, as determined by the Department, on a standardized assessment.

~~2-22.1.2~~ Out of school youth 16 to 17 years of age, who have officially withdrawn from a day school and who have not been expelled or have an expulsion pending shall enroll under a waiver process.

~~2-2.12.1.2.1~~To apply for an age waiver, the prospective student shall submit to the Groves Center administrator the following.

~~2-2.1.42.1.2.1.1~~ A letter of request for admission with the rationale for granting a waiver;

~~2-2.1.22.1.2.1.2~~ A letter of recommendation from the high school of record;

~~2-2.1.32.1.2.1.3~~ Proof of exit from high school; and

~~2-2.1.42.1.2.1.4~~ Proof of age.

- ~~2.2-22.1.2.2~~ The prospective student seeking the age waiver shall be subject to subsection ~~2.4.4~~ 2.1.1.1.
- ~~2.2-32.1.2.3~~ The decision regarding admission shall be made by the Center administrator.
- ~~2.2-42.1.2.4~~ The names of all students receiving an age waiver shall be forwarded within five (5) working days of approval by the Center administrator or designee to the Department's Director of Adult and Prison Education Resources for reporting purposes.
- ~~2.32.2~~ High school students who are at least ~~16~~ 14 years of age ~~age~~, have completed at least one semester of high school and enrolled for at least one (1) credit in their high school of record may earn an unrestricted number of credits in the Groves In School Credit Program and still graduate from their high school of record until June 30, 2022.
- ~~2.3-42.2.1~~ To enroll in this program, students shall have the permission of their high school of record, their ~~parent(s), guardian(s)~~ parent, guardian or ~~Relative Caregiver~~ relative caregiver and the Groves High School principal or designee.
- ~~2.3-22.2.2~~ All students enrolled in the Groves In School Credit Program shall be included in the September 30th unit count of their high school of record.
- ~~2.3-32.2.3~~ Students who withdraw from their high school of record and transfer to the Groves High School shall no longer be considered a student in the Groves In School Credit Program and shall be assessed the materials fee for that semester.
- ~~2.3-42.2.4~~ Students in the Groves In School Credit program shall not receive instruction during the school's regularly scheduled school day.
- ~~2.42.3~~ Individuals expelled or pending expulsion from a local school district or charter school shall not be enrolled in Groves High School during the period of expulsion or pending expulsion without a waiver from the Department. Individuals who enroll without a waiver shall lose credits earned during the expulsion period.
- ~~2.4-42.3.1~~ An applicant for an expulsion or pending expulsion waiver shall meet the following requirements:
- ~~2.4.1-42.3.1.1~~ Be 16 or 17 years of age;
  - ~~2.4.1-22.3.1.2~~ Intend to graduate from the ~~James H.~~ James H. Groves High School;
  - ~~2.4.1-32.3.1.3~~ Be expelled or be pending expulsion for a nonviolent reason and not be a security threat;
  - ~~2.4.1-42.3.1.4~~ Submit a letter of recommendation signed by the principal or designee of their high school of record;
  - ~~2.4.1-52.3.1.5~~ Meet with the Department's Director of Adult and Prison Education Resources or designee to orally present ~~his or her~~ their case for entry into Groves. The decision regarding admission shall be made by the Director or designee; and
  - ~~2.4.1-62.3.1.6~~ Meet the requirements in subsection ~~2.4.4~~ 2.1.1.1.
- ~~2.52.4~~ An adult 18 years of age and older who is a registered Sex Offender and who resides in the State of Delaware or is a resident of another state and is currently employed in Delaware and has been continuously employed in Delaware for a minimum of six (6) months prior to enrollment shall:
- ~~2.5-42.4.1~~ Present a letter to the Groves Center administrator from a licensed counselor, psychologist or physician including a summary of past behavior and a statement that the individual does not pose a safety threat to students or staff. The letter shall be dated within two (2) months prior to enrollment in the Groves Center.
  - ~~2.5-22.4.2~~ An adult 18 years of age and older who is a registered Sex Offender may be enrolled in the Diploma-At-A-Distance without the letter described in subsection ~~2.5.4~~ 2.4.1.
  - ~~2.5-32.4.3~~ The names of all students that are registered Sex Offenders and enrolled in the James H. Groves Adult High School shall be reported to the State Director within five (5) working days.

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## 3.0 Acceptable Methods for Offering Units of Credit and Granting Units of Credit for the James H. Groves High School Diploma

- 3.1 The Groves School is authorized to offer credit for the following methods or any combination of the following methods of accruing credit that were used prior to enrollment as well as while enrolled in the Groves program:
- 3.1.1 High school classroom courses;
  - 3.1.2 Summer school courses offered through a district or charter school;
  - 3.1.3 Groves classroom courses;
  - 3.1.4 Distance learning courses;
  - 3.1.5 Independent study courses;
  - 3.1.6 Correspondence courses;
  - 3.1.7 Courses completed through schools in foreign countries and evaluated in terms of content equivalent to the State's high school graduation requirements;
  - 3.1.8 Career technical courses and apprenticeship courses;
  - 3.1.9 Higher education courses;
  - 3.1.10 Internships designed to provide practical ~~real-life~~ real-life experiences and based on the skills gained and the length of time of the experience;
  - 3.1.11 Military ~~Experience~~ experience based on military training and experience;
  - 3.1.12 Employment or training experience based on the length of employment, the level of job responsibility and the scope of work;
  - 3.1.13 Community ~~Service~~ service that recognizes the community life experiences of the student and encourages the student to assume civic responsibility. The emphasis is upon volunteer service within a non-profit or governmental agency given freely for the betterment of the community and other persons and is based on verification of length of service;
  - 3.1.14 The knowledge assessments approved by the Groves Leadership Team for students to demonstrate their knowledge of course content; and
  - 3.1.15 The Certificate of Educational Attainment (~~CEA3~~) that may provide up to ~~40~~ ten (10) units of credit toward graduation.

## 4.0 Attendance, Grading and Graduation Criteria

- 4.1 A graduation plan shall be developed for each student enrolled in the James H. Groves High School by the Groves Administrator or ~~his or her~~ the student's designee.
- 4.2 Students enrolled in James H. Groves High School courses which have an attendance requirement, shall attend a minimum of 85% of the course hours ~~in order~~ to receive a unit of credit. No provision is made for excused absences.
- 4.3 The grading system for the James H. Groves High School shall be based on a ~~40~~ ten (10) point numeric scale. An alpha conversion chart to determine level of performance shall be:
- 4.3.1 Students receiving a grade of "A" (90 to 100) demonstrate superior understanding of the content and have demonstrated knowledge and competence at the highest level.
  - 4.3.2 Students receiving a grade of "B" (80-89) demonstrate better than average understanding of the content and have demonstrated above average knowledge and competence.
  - 4.3.3 Students receiving a grade of "C" (70-79) demonstrate average understanding of the content and have demonstrated knowledge and competence.
  - 4.3.4 Students receiving a grade of "D" (60-69) demonstrate satisfactory understanding of the content and have demonstrated knowledge and competence.
  - 4.3.5 No credit is awarded for grades less than 60.
- 4.4 Groves High School students shall be eligible to receive a State of Delaware diploma when they have met the State graduation requirements, pursuant to 14 **DE Admin. Code** 505 High School Graduation Requirements and Diplomas, in effect at the time of their graduation, except as noted ~~below~~ below:

- 4.4.1 Physical education is waived in lieu of another credit.
- 4.4.2 ~~Students who were or would have been a first time 9<sup>th</sup> grader in the 2011-2012 school year or after shall be subject to 14 DE Admin. Code 505 High School Graduation Requirements and Diplomas.~~
- 4.4.3 ~~Students who were or would have been a first time 9<sup>th</sup> grader in the 2010-2011 school year or prior shall be subject to 14 DE Admin. Code 505 High School Graduation Requirements and Diplomas.~~
- 4.4.4.4.2 All course content shall be based on the State Content Standards. Notwithstanding the above, students enrolled in the James H. Groves High School shall successfully complete and receive credit for a minimum of one (1) Groves course in order to receive a State of Delaware diploma.
- 4.4.5.4.3 The James H. Groves High School must offer at least one (1) computer science course pursuant to 14 Del.C. §4139 and 14 DE Admin. Code 505 High School Graduation Requirements and Diplomas.

## 5.0 Fees

All fees for the James H. Groves High School shall be set by the Delaware Secretary of Education.

## 6.0 Students Rights and Responsibilities

Students enrolled in each Center shall have such rights and be subject to such responsibilities as set forth in the *James H. Groves Student Rights and Responsibilities* document, and as such may be amended from time to time by the Department.

## 7.0 Establishing a Center

- 7.1 A school district, agency or organization may seek to establish a James H. Groves Center for service delivery by following the process outlined below. No district, agency or organization shall have more than one (1) Groves Center.
- 7.1.1 An affiliation shall be established with an existing Groves Center as a satellite site or obtain approval from the Groves Leadership Team to establish a pilot Center.
- 7.1.2 After a two (2) year affiliation as a satellite Center of an existing Groves Center or two (2) year success as a pilot Center, the Department may grant full Center status to the satellite site or the pilot Center.
- 7.1.2.1 A formal request for full Center status shall be made to the Department at the end of ~~year~~ one the first year as a satellite or pilot Center. The request shall include:
- 7.1.2.1.1 A needs assessment documenting program need for services in the district's adult community, potential population to be served, impact on existing Centers, and rationale for requesting a Groves Center;
- 7.1.2.1.2 A description of the district, agency or organization's experience and success in adult program delivery;
- 7.1.2.1.3 An explanation of the commitment to the Groves adult education program and assurances;
- 7.1.2.1.4 Budget requirements including in kind contributions;
- 7.1.2.1.5 Submission of an annual performance report; and
- 7.1.2.1.6 Submission of the State Evaluation Report completed in the tenth month of the first year.
- 7.1.3 The district agency or organization representatives shall meet with the Groves Leadership Team to review the Center request.
- 7.1.4 The Groves Leadership Team shall make a recommendation for Center status through the Department's Director for Adult Education to the Secretary of Education.
- 7.1.5 Approval or denial shall be communicated to the district, agency or organization by the Department within 60 days of the Center status application.



- 7.1.6 If approved, the Department shall apply for Center funding in the upcoming State budget cycle. If State funding is allocated for the additional Center, full Center status shall be given to the program provided the annual performance report and State Evaluation Report are satisfactory.
- 7.1.7 Appeal Process: In the event Center status is denied by the Department a hearing may be requested by the district, agency or organization. The hearing shall be conducted by the Secretary of Education or ~~his or her~~ the Secretary's designee.

## 8.0 Closing a Center

- 8.1 Voluntary Closing: A school district, agency or organization shall close a James H. Groves Center in their service delivery area by following the process outlined below. For a voluntary closing, a school district, agency or organization shall announce by November its intention to discontinue service at the end of the fiscal year. The following steps shall be followed:
- 8.1.1 Within two (2) months of closing, the district, agency or organization shall:
- 8.1.1.1 Notify all current students of the Center closing and provide them with information to transfer to another Center. Records of active students shall be sent to the new Center;
  - 8.1.1.2 Provide all current and past student and administrative records to the Department;
  - 8.1.1.3 Send all equipment purchased for the Center to the Department or to the designated Centers for redistribution; and
  - 8.1.1.4 Return unspent funds to the Department.
- 8.1.2 District, agency or organization representatives shall meet with the Groves Leadership Team at the monthly meetings to implement a smooth closing.

## 9.0 ~~Non-Voluntary~~ Non-Voluntary Closing

- 9.1 A ~~non-voluntary~~ non-voluntary closing shall be made by the Secretary of Education when:
- 9.1.1 There is insufficient enrollment or graduates to sustain a Center; or
  - 9.1.2 The Center does not follow the policies, procedures, rules, ~~regulations~~ regulations, or instructional program set forth for the James H. Groves High School; or
  - 9.1.3 The Secretary of Education determines the Center is not providing a quality instructional program to the students at that Center.
- 9.2 The Secretary of Education shall provide notice to the school district, ~~agency~~ agency, or organization of the closing by November giving eight (8) months to close the Center.
- 9.2.1 Within two (2) months of closing, the district, ~~agency~~ agency, or organization shall:
- 9.2.1.1 Notify all current students of the Center closing and provide them with information to transfer to another Center.
  - 9.2.1.2 Provide all current and past student and administrative records to the Department;
  - 9.2.1.3 Send all equipment purchased for the Center to the Department or to the designated Centers for redistribution; and
  - 9.2.1.4 Return unspent funds to the Department.
- 9.3 The District, agency or organization representatives shall meet with the James H. Groves Leadership Team at the monthly meetings to implement a smooth closing.
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# FINAL REGULATIONS

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## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b) and 1210 (14 **Del.C.** §§1203, 1205(b) & 1210)  
14 **DE Admin. Code** 1510

### REGULATORY IMPLEMENTING ORDER

#### 1510 Issuance of Initial License

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

Pursuant to 14 **Del.C.** §§1203, 1205(b), and 1210, the Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education (“Department”), developed amendments to 14 **DE Admin. Code** 1510 Issuance of Initial License. The regulation concerns the requirements for an Initial License in accordance with 14 **Del.C.** §1210. The proposed amendments include revising the title of the regulation; clarifying that the regulation applies to both the issuance and retention of an Initial License in Section 1.0; adding and striking defined terms in Section 2.0; clarifying the requirements for issuing an Initial License in Section 3.0; specifying the requirements for an applicant to obtain an Initial License in Section 4.0; adding reciprocity requirements in Section 5.0; specifying the requirements for applicants whose Delaware Initial License expired in Section 6.0; specifying application requirements in Section 7.0; adding Section 8.0, which concerns the validity of an Initial License; specifying the requirements for extensions for exigent circumstances and leaves of absence in Sections 9.0 and 10.0, respectively; revising Section 11.0, which concerns requests for the Secretary of Education to review applications for an Initial License; adding Section 12.0, which specifies the requirements for retaining an Initial License; adding Section 13.0, which concerns disciplinary actions; specifying the requirements for educators who intend to apply for a Continuing License in Section 15.0; revising Section 16.0, which concerns recognizing past Initial Licenses that were issued by the Department; and adding Section 17.0, which specifies that the effective date of the regulation would be July 1, 2021.

Notice of the proposed regulation was published in the *Register of Regulations* on January 1, 2021. The Professional Standards Board did not receive any written submittals concerning the proposed amendments.

#### II. FINDINGS OF FACTS

On March 4, 2021, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1510 Issuance of Initial License, 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 amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1510 Issuance of Initial License.

#### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1510 Issuance of Initial License subject to the State Board of Education’s approval. Therefore, pursuant to 14 **Del.C.** §§1203, 1205(b), and 1210, 14 **DE Admin. Code** 1510 Issuance of Initial License, attached hereto as Exhibit A, is hereby amended.

#### IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1510 Issuance of Initial License adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1510 Initial License in the *Administrative Code of Regulations* for the Department.

## V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be July 1, 2021.

**IT IS SO ORDERED** the 22nd day of April, 2021.

### Department of Education

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

Approved this 22nd day of April, 2021.

### State Board of Education

/s/ Whitney Sweeney, President

/s/ Vincent Lofink

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

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

/s/ Shawn Brittingham

Provey Powell, Jr. (absent)

/s/ Candace Fifer

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

**\*Please note that no changes were made to the regulation as originally proposed and published in the January 2021 issue of the *Register* at page 642 (24 DE Reg. 642). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1510 Issuance of Initial License**

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## PROFESSIONAL STANDARDS BOARD

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

14 DE Admin. Code 1582

## REGULATORY IMPLEMENTING ORDER

**1582 School Nurse**

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

Pursuant to 14 Del.C. §§1203 and 1205(b), the Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1582 School Nurse. The regulation concerns the requirements for a School Nurse Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include amending the definition of "Supervised Clinical Nursing Experience" in Section 2.0; adding the multi-state compact registered nurse license; and amending Section 10.0, which concerns requests for the Secretary of Education to review standard certificate applications.

Notice of the proposed regulation was published in the *Register of Regulations* on January 1, 2021. The Professional Standards Board did not receive any written submittals concerning the proposed amendments.

### II. FINDINGS OF FACTS

On March 4, 2021, the Professional Standards Board voted to propose 14 DE Admin. Code 1582 School Nurse, 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 amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1582 School Nurse.

### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1582 School Nurse subject to the State Board of Education's approval. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1582 School Nurse, attached hereto as Exhibit A, is hereby amended.

### IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1582 School Nurse adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1582 School Nurse 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 22nd day of April, 2021.

#### Department of Education

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

Approved this 22nd day of April, 2021.

#### State Board of Education

/s/ Whitney Sweeney, President

/s/ Vincent Lofink

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

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

/s/ Shawn Brittingham

Provey Powell, Jr. (absent)

/s/ Candace Fifer

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

#### 1582 School Nurse

#### 1.0 Content

This regulation shall apply to the issuance of a ~~Standard Certificate~~, School Nurse Standard Certificate pursuant to 14 **Del.C.** ~~§1220(a), for an Educator. §1220(a).~~ This Certification The School Nurse Standard Certificate is required for all school nurses providing services to children in Delaware public schools.

#### 2.0 Definitions

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

~~"Certification" means the issuance of a Standard Certificate, which may occur regardless of a recipient's assignment or employment status.~~

"Department" means the Delaware Department of Education.

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

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

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

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

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

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

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

**"Supervised Clinical Nursing Experience"** means that the ~~Educator~~ applicant has worked as a licensed Registered Nurse in a clinical setting providing care to patients and that ~~educator~~ the applicant was supervised and evaluated by a licensed Registered Nurse supervisor or other healthcare provider. For the purpose of this regulation, other healthcare provider means a licensed physician, advanced practice registered nurse, ~~nurse practitioner~~, or physician assistant.

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

### **3.0 Issuance of a Standard Certificate**

- 3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a School Nurse Standard Certificate to an applicant who:
  - 3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License or a Professional Status Certificate issued by the Department prior to August 31, 2003 and meets the requirements set forth in Section 4.0 of this regulation; or
  - 3.1.2 Has met the requirements for licensure in Delaware and presents proof of a Valid and Current License or Certificate as a school nurse from another state or jurisdiction whose requirements are substantially similar to the requirements in Section 4.0 of this regulation; or
  - 3.1.3 Has met the requirements for licensure in Delaware and meets the requirements set forth in Section 5.0 of this regulation.
- 3.2 Notwithstanding any provision to the contrary herein, the Department shall not act on an application for ~~Certification~~ a School Nurse Standard Certificate if the applicant is under official investigation by any national, state, or local authority with the power to issue educator licenses or certifications. The Department shall not act where the ~~alleged~~ allegations include but are not limited to ~~conduct~~ involves ~~allegations of such as~~ Immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty, or falsification of credentials, until the applicant provides evidence of the investigation's resolution.

**4.0 Prescribed Education, Knowledge, and Skill Requirements**

- 4.1 The Department may issue a School Nurse Standard Certificate to an applicant who has satisfied the requirements in subsections 4.1.1 through 4.1.4.
- 4.1.1 The applicant shall hold a bachelor's degree in nursing (BSN) from a Regionally Accredited college or university.
- 4.1.2 The applicant shall hold a an active, unencumbered license to practice as a registered nurse issued by the Delaware Board of Nursing ~~that is in good standing~~ or an active, unencumbered multi-state compact registered nurse license.
- 4.1.3 The applicant shall hold valid and current certification in cardiopulmonary resuscitation (CPR) and automatic external defibrillator (AED) use.
- 4.1.4 The applicant shall have completed ~~3~~ three years of Supervised Clinical Nursing Experience as a registered nurse consisting of a minimum of 500 hours per year for a total of 1,500 hours during the ~~3-year~~ three-year period. This requirement shall not be met in a school setting.

**5.0 Reciprocity**

- 5.1 If an applicant is already licensed or certified as a school nurse in a state or jurisdiction whose requirements are not substantially similar to the requirements in Section 4.0, the applicant shall have satisfied the requirements in subsections 5.1.1 through 5.1.4 in order for the Department to issue a School Nurse Standard Certificate:
- 5.1.1 The applicant shall hold a Valid and Current License or Certificate as a school nurse.
- 5.1.2 The applicant shall hold a bachelor's degree in nursing (BSN) from a Regionally Accredited college or university.
- 5.1.3 The applicant shall hold a an active, unencumbered license to practice as a registered nurse issued by the Delaware Board of Nursing ~~that is in good standing~~ or an active, unencumbered multi-state compact registered nurse license.
- 5.1.4 The applicant shall hold valid and current certification in cardiopulmonary resuscitation (CPR) and automatic external defibrillator (AED) use.

**6.0 Application Requirements**

- 6.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with an application for an Initial License, and the applicant shall also provide all required documentation for the License.
- 6.2 For applicants who are applying for the School Nurse Standard Certificate under subsection 3.1.1, the following documentation is required:
- 6.2.1 Official transcript from the applicant's Regionally Accredited college or university.
- 6.2.1.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
- 6.2.1.2 Sealed paper transcripts may be submitted.
- 6.2.1.3 The Department will not accept copies of transcripts; and
- 6.2.2 Documentation that the applicant ~~is licensed to practice and is in good standing as a registered nurse issued by the Delaware Board of Nursing~~ holds an active, unencumbered license to practice as a registered nurse issued by the Delaware Board of Nursing or an active, unencumbered multi-state compact registered nurse license; and
- 6.2.3 Documentation that the applicant holds a valid and current certification in cardiopulmonary resuscitation (CPR) and automatic external defibrillator (AED) use; and
- 6.2.4 If applicable, the Department-approved form verifying the applicant's completion of the clinical experience as provided in subsection 4.1.4; and
- 6.2.5 Additional documentation as required by the Department.
- 6.3 For applicants who are applying for the School Nurse Standard Certificate under subsection 3.1.2, the following documentation is required:

- 6.3.1 An official copy of the Valid and Current License or Certificate; and
  - 6.3.2 Documentation that the applicant ~~is licensed to practice and is in good standing as a registered nurse issued by the Delaware Board of Nursing~~ holds an active, unencumbered license to practice as a registered nurse issued by the Delaware Board of Nursing or an active, unencumbered multi-state compact registered nurse license; and
  - 6.3.3 Documentation that the applicant holds a valid and current certification in cardiopulmonary resuscitation (CPR) and automatic external defibrillator (AED) use; and
  - 6.3.4 Additional documentation as required by the Department.
- 6.4 For applicants who are applying for the School Nurse Standard Certificate under subsection 3.1.3, the following documentation is required:
- 6.4.1 An official copy of the Valid and Current License or Certificate; and
  - 6.4.2 Official transcript from the applicant's Regionally Accredited college or university.
    - 6.4.2.1 Electronic transcripts may be submitted by the Employing Authority or by the applicant's Regionally Accredited college or university; or
    - 6.4.2.2 Sealed paper transcripts may be submitted.
    - 6.4.2.3 The Department will not accept copies of transcripts; and
  - 6.4.3 Documentation that the applicant ~~is licensed to practice and is in good standing as a registered nurse issued by the Delaware Board of Nursing~~ holds an active, unencumbered license to practice as a registered nurse issued by the Delaware Board of Nursing or an active, unencumbered multi-state compact registered nurse license; and
  - 6.4.4 Documentation that the applicant holds a valid and current certification in cardiopulmonary resuscitation (CPR) and automatic external defibrillator (AED) use; and
  - 6.4.5 Additional documentation as required by the Department.

## 7.0 Validity of a Standard Certificate

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

## 8.0 Requirements Related to the Retention of a School Nurse Certificate

- 8.1 In order to retain a School Nurse Standard Certificate, the Educator shall:
  - 8.1.1 Complete a training program approved by the Department within two school years of the date the School Nurse Standard Certificate is issued; and
  - 8.1.2 Hold a an active, unencumbered license to practice as a registered nurse issued by the Delaware Board of Nursing ~~that is in good standing~~ or an active, unencumbered multi-state compact registered nurse license; and
  - 8.1.3 Hold a valid and current certification in cardiopulmonary resuscitation (CPR) and automatic external defibrillator (AED) use; and
  - 8.1.4 Annually affirm and document to the Department that the Educator satisfies the requirements in subsections 8.1.2 and 8.1.3.
- 8.2 If an Educator fails to meet any of the requirements related to retaining a School Nurse Standard Certificate, the Educator shall immediately notify the Department in writing.
- 8.3 The requirements set forth in subsections 8.1.2, 8.1.3, and 8.1.4 apply to all Educators regardless of the date the School Nurse Standard Certificate was issued to them.

## 9.0 Disciplinary Action

- 9.1 An Educator's School Nurse Standard Certificate may be revoked, suspended, or limited for cause as provided in 14 **DE Admin. Code** 1514 Limitation, Suspension, and Revocation of Licenses,

Certificates, and Permits or for the Educator's failure to comply with the requirements related to the retention of a School Nurse Standard Certificate as provided in Section 8.0.

- 9.2 An Educator's School Nurse Standard Certificate shall be revoked if the Educator's Initial, Continuing, or Advanced License or Professional Status Certificate is revoked or the Educator made a materially false or misleading statement in the Educator's application in accordance with 14 **Del.C.** §1222.
- 9.3 An Educator whose certificate is noticed for disciplinary action is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with 14 **DE Admin. Code** 1515 Hearing Procedures and Rules.

**10.0 Secretary of Education Review**

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

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

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

**11.0 Past Certificate Recognized**

The Department shall recognize a School Nurse Standard Certificate that was issued prior to the effective date of this regulation. An ~~educator~~ Educator holding such a Standard Certificate ~~issued by the Department before the effective date of this regulation~~ shall be considered certified to practice as a school nurse.

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

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)  
16 **DE Admin. Code** 16000

**ORDER**

**MAGI Methodology**

BEFORE DELAWARE HEALTH AND SOCIAL SERVICES  
IN THE MATTER OF

REVISION OF THE REGULATION )  
OF DELAWARE'S )  
TITLE XIX MEDICAID STATE PLAN )  
SECTIONS 16100, 16500.1, 16500.1.1, 16500.2 and 16500.3 )

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Delaware Social Services Manual (DSSM) regarding Modified Adjusted Gross Income (MAGI) Methodology, specifically, to align with recently issued federal guidance. The Department's proceedings to amend its regulations were initiated pursuant to 29 *Del. C.* § 10114 and its authority as prescribed by 31 *Del. C.* § 512.

The Department published its notice of proposed regulation changes pursuant to 29 *Del. C.* § 10115 in the March 2021 *Delaware Register of Regulations*, requiring written materials and suggestions from the public



concerning the proposed regulations to be produced by March 31, 2021 at which time the Department would receive information, factual evidence, and public comment to the said proposed changes to the regulations.

## SUMMARY OF PROPOSAL

### Purpose

The purpose of this proposed regulation is to revise Modified Gross Income (MAGI)-based income methodologies to align with the most recently issued federal guidance.

### Summary of Proposed Changes

Effective for services provided on and after June 11, 2021 Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend sections 16100, 16500.1, 16500.1.1, 16500.2 and 16500.3 of the Delaware Social Services Manual (DSSM) regarding MAGI Methodology, specifically, to align with federal guidance.

## Background

Section 1902(e)(14) of the Act requires that state Medicaid agencies generally use "modified adjusted gross income" and "household income," as defined at section 36B(d)(2) of the Internal Revenue Code of 1986 (the IRC) to determine Medicaid eligibility. There have been recent legislative changes to MAGI-based methodologies: the Tax Cuts and Jobs Act (Pub. L. No. 115-97, "TCJA"), enacted on December 22, 2017; the Bipartisan Budget Act of 2018 (Pub. L. No. 115-123, "BBA of 2018"), enacted on February 9, 2018; and the Helping Ensure Access for Little Ones, Toddlers, and Hopeful Youth by Keeping Insurance Delivery Stable Act (Pub. L. No. 115-120, "HEALTHY KIDS Act"), enacted on January 22, 2018.

## Statutory Authority

- Section 1902(e)(14) of the Social Security Act
- Tax Cuts and Jobs Act (Pub. L. No. 115-97, "TCJA"), enacted on December 22, 2017

## Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 447.205 and the *state* public notice requirements of Title 29, Chapter 101 of the Delaware Code, DHSS/ DMMA gives public notice and provides an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on March 31, 2021.

## Provider Manuals and Communications Update

A newsletter system is utilized to distribute new or revised manual material and to provide any other pertinent information regarding manual updates. Updates are available on the Delaware Medical Assistance Portal website: <https://medicaid.dhss.delaware.gov/provider>

## Fiscal Impact Statement

There is no anticipated fiscal impact.

## Summary of Comments Received with Agency Response and Explanation of Changes

No comments were received.

## FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the March 2021 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Delaware Social Services Manual (DSSM) regarding Modified Adjusted Gross Income (MAGI) Methodology, specifically, to align with recently issued federal guidance, is adopted and shall be final effective June 11, 2021.

5/14/2021

Date of Signature

Molly K. Magarik, MS, Secretary, DHSS

\*Please note that no changes were made to the regulation as originally proposed and published in the March 2021 issue of the *Register* at page 847 (24 DE Reg. 847). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**MAGI Methodology**

## DEPARTMENT OF STATE

### DIVISION OF PROFESSIONAL REGULATION

#### 1700 BOARD OF MEDICAL LICENSURE AND DISCIPLINE

Statutory Authority: 24 Delaware Code, Section 1713(a)(12) (24 Del.C. §1713(a)(12))  
24 DE Admin. Code 1700

#### FINAL ORDER ADOPTING REGULATION CHANGES

#### 1700 Board of Medical Licensure and Discipline

The Delaware Board of Medical Licensure and Discipline pursuant to 24 Del. C. §§ 1713(a)(12) proposed to add a new regulation, clarifying the circumstances under which a prescriber regulated by Title 24, Chapter 17 can request a waiver from the Board of the electronic prescribing requirements recently passed by the General Assembly.

#### SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Following publication in the *Delaware Register of Regulations* on March 1, 2021, a public hearing was held on April 6, 2021. 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 Exhibit 1 documentation of publication of the notice of the public hearing in the *News Journal* and the *Delaware State News*. During the written public comment period, no written comments were received, and during the public hearing, no verbal comments were received. After public deliberation at its meeting on May 4, 2021, the Board determined that the regulations should be adopted as proposed.

#### SUMMARY OF THE FINDINGS OF FACT

Pursuant to discussions held at open public Board meetings, the Board proposed to adopt regulations clarifying the circumstances under which a prescriber regulated by Title 24, Chapter 17 can request a waiver from the Board of the electronic prescribing requirements recently passed by the General Assembly. As drafted, the legislation requires the Board to promulgate regulations outlining the waiver requirements that will be used when granting a waiver for no longer than one year.

#### DECISION OF THE BOARD

Having found that the proposed changes to the regulations are necessary as outlined herein, the Board finds that the regulations shall be published as final in the June 2021 *Register of Regulations*. The regulations will become effective on June 11, 2021. The exact text of the regulations is attached to this order as Exhibit A.

IT IS SO ORDERED this 4th day of May, 2021 by the Delaware Board of Medical Licensure and Discipline.

/s/ Stephen Lawless, M.D., President

Karyl Rattay, M.D. (absent)

/s/ Madelyn Nellius, Public Member

/s/ Janice Truitt, Public Member

/s/ Bryan D. Villar, M.D.

/s/ Garret H. Colmorgen, M.D.

/s/ Sharon Williams-Mayo, Public Member  
Malvine Richard, Public Member (absent)  
/s/ Melissa Warren, Public Member  
/s/ Mary Lomax, Public Member

Georges A. Dahr, M.D. (absent)  
/s/ Barry L. Baskt, D.O.  
/s/ N. C. Vasuki, Public Member  
/s/ Randeep Kahlon, M.D.  
/s/ Joseph Rubacky, M.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 March 2021 issue of the *Register* at page 857 (24 DE Reg. 857). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**1700 Board of Medical Licensure and Discipline**

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**DIVISION OF PROFESSIONAL REGULATION  
3500 BOARD OF EXAMINERS OF PSYCHOLOGISTS**

Statutory Authority: 24 Delaware Code, Section 3506(a)(1) (24 **Del.C.** §3506(a)(1))  
24 **DE Admin. Code** 3500

**ORDER**

**3500 Board of Examiners of Psychologists**

**NATURE AND STAGE OF THE PROCEEDINGS**

On March 1, 2021, the Delaware Board of Examiners of Psychologists published proposed changes to its regulations in the Delaware Register of Regulations, Volume 24, Issue 9. This notice further indicated that written comments would be accepted by the Board for thirty days, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the Register of Regulations and two Delaware newspapers, a public hearing was held on April 5, 2021 at a regularly scheduled meeting of the Delaware Board of Examiners of Psychologists to receive verbal comments regarding the Board's proposed amendments to its regulations.

**SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

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

There was no verbal testimony given at the public hearing on April 5, 2021. No written comments were received by the Board during the initial thirty-day public comment period; nor were any written comments received after the public hearing during the fifteen day 29 *Del. C.* § 10118(a) second public comment period.

**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 two written public comment periods, or the public hearing.
3. Pursuant to 24 *Del. C.* § 3506(a)(1), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The proposed changes to the Rules and Regulations seek to require licensees to update their contact information with 10 days of any such change; clarify that psychological assistant registrants must complete a Board

approved internship, not just a 450 hour practicum; enhance continuing education requirements by clarifying the maximum number of credits which may be earned for preparing and presenting scientific papers and posters; clarify the requirements for supervision of psychological assistants and direct applicants; clarify that "face-to-face" can include videoconferencing; and eliminates outdated or inconsistent telehealth and "appendix" regulations.

5. Having received no public comments, the Board finds no reason to amend the regulations as proposed.

#### **DECISION AND EFFECTIVE DATE**

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

**SO ORDERED** this 3<sup>rd</sup> day of May, 2021.

#### **BY THE DELAWARE BOARD OF EXAMINERS OF PSYCHOLOGISTS**

/s/ Dr. Laura Cooney-Koss, President

/s/ Dr. Katherine Elder, Vice President

/s/ Dr. Debbie Harrington, Public Member, Secretary

/s/ Dr. Meghan Lines

/s/ Dr. Kristen Robust

/s/ Dr. Rebecca Richmond

/s/ Dr. Michael Harpe, Public Member

/s/ Rachel Sandy, Public Member

/s/ Heather Contant, Public Member

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

**\*Please note that no changes were made to the regulation as originally proposed and published in the March 2021 issue of the *Register* at page 858 (24 DE Reg. 858). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**3500 Board of Examiners of Psychologists**

**DELAWARE PUBLIC EMPLOYEES' RETIREMENT SYSTEM**  
**DELAWARE BOARD OF PENSION TRUSTEES****PUBLIC NOTICE****2002 State Employees' Pension Plan**  
**2003 State Judiciary Pension Plan**  
**2004 State Police Pension Plan**  
**2005 County and Municipal Employees' Pension Plan**  
**2006 County and Municipal Police/Firefighter Pension Plan**

The Delaware Public Employees' Pension System ("DPERS") hereby give notice of its intention to adopt amended regulations pursuant to the General Assembly's delegation of authority to adopt such measures found at 29 Delaware Code, §8308(c)(1) and in compliance with Delaware's Administrative Procedures Act, 29 *Del.C.* §§10115 and 10117. The proposed regulations are reorganized to provide for clarity, to delete obsolete language, to bring the regulations into compliance with changes in federal law, and to incorporate current practices. Identical update and formatting changes are made in each set of regulations. The State Police and Country and Municipal Police/Firefighter Plans include updated standards for PTSD work related disability claims which are consistent with federal law and current practice.

DPERS solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty days (30) after these proposed amended regulations are published in the Delaware Register of Regulations.

Any such submissions should be mailed or delivered to Joanna Adams, State of Delaware Office of Pensions, State of Delaware, Office of Pensions, McArdle Building, 860 Silver Lake Blvd., Suite #1, Dover, DE 19904-2402.

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**DELAWARE RIVER BASIN COMMISSION****PUBLIC NOTICE**

The Delaware River Basin Commission held its quarterly public hearing on **Wednesday, May 12, 2021**. In light of COVID-19 mitigation measures in effect for DRBC member states, the hearing was held remotely. Please check the Commission's website, [www.drbc.gov](http://www.drbc.gov), for details regarding the draft docket decisions that were the subjects of the public hearing.

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

For additional information, please visit the DRBC website at [www.drbc.gov](http://www.drbc.gov) or contact Denise McHugh at [denise.mchugh@drbc.gov](mailto:denise.mchugh@drbc.gov) or Patricia Hausler at [patricia.hausler@drbc.gov](mailto:patricia.hausler@drbc.gov).

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**DEPARTMENT OF AGRICULTURE**  
**DELAWARE STANDARDBRED BREEDERS' FUND****PUBLIC NOTICE****502 Delaware Standardbred Breeders' Fund Regulations**

The State of Delaware, Department of Agriculture's Standardbred Breeders' Fund ("the Fund") hereby gives notice of its intention to adopt an amended regulation pursuant to the General Assembly's delegation of authority to do so found at 29 *Del.C.* §4815(b)(4)b.2 and in compliance with Delaware's Administrative Procedures Act at 29 *Del.C.* §10115. The proposed amended regulation eliminates the restriction on private treaty breeding and allows for later payment of registration fees for the Fund's program pertaining to the registration of stallions. This proposal is an attempt to allow greater flexibility and simplicity for participation in the Fund's program.

The Fund solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty days (30) after these proposed amended regulations are promulgated in the *Delaware Register of Regulations*. Any such submissions should be mailed or hand-delivered to Ms. Judy Davis-Wilson, Administrator, Delaware

Standardbred Breeders' Fund Program whose address is State of Delaware, Department of Agriculture, 2320 South duPont Highway, Dover, Delaware 19901 by July 1, 2021.

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**DEPARTMENT OF EDUCATION****PUBLIC NOTICE**

On March 12, 2020, Governor Carney issued a declaration of a state of emergency for the state of Delaware due to a public health threat. The State of Emergency allows all public meetings of executive branch public bodies, including the SBE, to be conducted electronically, either by means of telephone conference call or video-conference call.

In accordance with the State of Emergency, the State Board of Education is currently holding meetings electronically. The meeting information can be accessed via the public meeting calendar (<https://publicmeetings.delaware.gov/Search?q=&AnyAll=Any&AgencyID=22&StartDateInclusive=2020-08-01>). Members of the public can join the meeting via the web or telephone.

Meeting materials are available on the State Board of Education's eBoard site (<https://simbli.eboardsolutions.com/index.aspx?s=190001>). (If you are having technical difficulties accessing the site, please try a different browser.)

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES****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) regarding Purchase of Care, specifically, to update the formatting and text to provide clear child care application requirements and procedures for DSS staff, stakeholders, and the public.

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 [Nicole.M.Cunningham@delaware.gov](mailto:Nicole.M.Cunningham@delaware.gov), or by fax to 302-255-4413 by 4:30 p.m. on July 1, 2021. 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.

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**DEPARTMENT OF STATE****DIVISION OF PROFESSIONAL REGULATION****3500 BOARD OF EXAMINERS OF PSYCHOLOGISTS****PUBLIC NOTICE**

The Delaware Board of Examiners of Psychologists, pursuant to 24 *Del. C.* § 3506(a)(1), proposes to add a requirement that all licensees complete three continuing education credits in cultural inclusion, equity, and diversity. Psychologists will still be required to complete 40 CE's per renewal period, and psychological assistants will still be required to complete 20 CE's per renewal period, but of those totals, three must be in cultural inclusion, equity, and diversity.

The Board will hold a virtual public hearing on July 26, 2021 at 9:00 a.m. Written comments should be sent to Danielle Cross, Administrator of the Delaware Board of Examiners of Psychologists, Cannon Building, 861 Silver Lake Blvd, Suite 203, Dover, DE 19904. Written comments will be accepted until August 10, 2021.

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