
Delaware Register of Regulations

Issue Date: March 1, 2024

Volume 27 - Issue 9, Pages 635-702



IN THIS ISSUE:

Regulations:
Proposed
Final

General Notices

Calendar of Events &
Hearing Notices



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

Cover Photo by
Dick Carter
New Castle

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

637

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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
April 1	March 15	4:30 p.m.
May 1	April 15	4:30 p.m.
June 1	May 15	4:30 p.m.
July 1	June 15	4:30 p.m.
August 1	July 15	4:30 p.m.
September 1	August 15	4:30 p.m.

DIVISION OF RESEARCH STAFF

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

TABLE OF CONTENTS

Cumulative Tables.....	640
------------------------	-----

PROPOSED

DEPARTMENT OF AGRICULTURE

Thoroughbred Racing Commission

1001 Thoroughbred Racing Rules and Regulations - Sections 1.0, 11.0, 12.0, 13.0 and 15.0.....	644
---	-----

DEPARTMENT OF EDUCATION

Office of the Secretary

805 The School Health Tuberculosis (TB) Control Program.....	645
--	-----

Professional Standards Board

1539 Health Education Teacher.....	649
------------------------------------	-----

1564 Physical Education Teacher.....	652
--------------------------------------	-----

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Medicaid and Medical Assistance

Fair Hearings: DSSM 5000 and 5304.....	655
--	-----

Division of Public Health

4202 Control of Communicable and Other Disease Conditions.....	661
--	-----

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

State Bureau of Identification

Firearms Transaction Approval Program Regulations.....	661
--	-----

DEPARTMENT OF STATE

Division of Professional Regulation

100 Board of Accountancy.....	666
-------------------------------	-----

OFFICE OF THE STATE TREASURER

Delaware EARNs Program Board

Regulations Governing the Expanding Access for Retirement and Necessary Saving Program.....	667
---	-----

FINAL

DEPARTMENT OF EDUCATION

Office of the Secretary

608 Unsafe School Choice Option Policy.....	669
---	-----

902 Gifted or Talented Education Plan.....	672
--	-----

Professional Standards Board

1504 Certificate of Eligibility.....	675
--------------------------------------	-----

1553 Driver and Traffic Safety Education Teacher.....	677
---	-----

DEPARTMENT OF FINANCE

Office of the State Lottery

203 Video Lottery and Table Game Regulations.....	678
---	-----

205 Delaware Charitable Video Lottery Regulations.....	679
--	-----

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

Division of Medicaid and Medical Assistance

Continuous Coverage for Children Enrolled in Medicaid: DSSM 14000 & 25000.....	680
--	-----

TABLE OF CONTENTS

639

DEPARTMENT OF INSURANCE

Office of the Commissioner

1004 Term and Universal Life Insurance Reserve Financing..... 682

DEPARTMENT OF LABOR

Division of Paid Leave

1401 Rules Defining and Regulating the Healthy Delaware Families Act, Family and
Medical Leave Insurance Program and the Division of Paid Leave..... 683

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Fish and Wildlife

3755 Lobsters (*Homarus americanus*)..... 686

DEPARTMENT OF STATE

Division of Professional Regulation

2700 Board of Registration for Professional Land Surveyors..... 690

GENERAL NOTICES

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

Division of Air Quality

Approving Final Revision to Delaware's State Implementation Plan ("SIP"):
Basic Inspection & Maintenance Performance Standard Certification for
New Castle County 692

Approving Final Revision to Delaware's State Implementation Plan ("SIP"):
Moderate Non-Attainment Plan for New Castle County for the 2015 8-hour
Ozone National Ambient Air Quality Standard 695

CALENDAR OF EVENTS/HEARING NOTICES

Delaware River Basin Commission; Notice of Quarterly Business Meeting..... 699
Department of Agriculture, Thoroughbred Racing Commission; Notice of Public Comment Period. 699
Department of Education; Notice of Monthly Public Meeting..... 699
Dept. of Health and Social Services, Div. of Medicaid and Medical Assistance, Division of Public Health;
Notices of Public Comment Periods..... 700
Department of Safety and Homeland Security; Notice of Public Comment Period..... 700
Department of State, Div. of Professional Regulation; Notice of Public Hearing and Comment Period..... 701
Office of the State Treasurer; Delaware EARNs Program Board; Notice of Public Comment Period 701

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

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

DELAWARE STATE FIRE PREVENTION COMMISSION

709 Fire Service Standards.....	27 DE Reg.470(Prop.)
710 Ambulance Service Regulations.....	27 DE Reg.566(Prop.)

DEPARTMENT OF AGRICULTURE**Office of the Secretary**

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

Thoroughbred Racing Commission

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

DEPARTMENT OF EDUCATION**Office of the Secretary**

105 Residential Child Care Facilities and Day Treatment Programs.....	27 DE Reg. 82 (Prop.)
106A Teacher Appraisal Process	
Delaware Performance Appraisal System (DPAS II) Revised.....	27 DE Reg. 99 (Final)
107A Specialist Appraisal Process	
Delaware Performance Appraisal System (DPAS II) Revised.....	27 DE Reg.101 (Final)
108A Administrator Appraisal Process	
Delaware Performance Appraisal System (DPAS II).....	27 DE Reg.102 (Final)
235 Teacher of the Year Award.....	27 DE Reg. 84 (Prop.)
275 Charter Schools.....	27 DE Reg.103 (Final)
415 Voluntary School Assessments.....	27 DE Reg. 515(Final)
501 State Content Standards.....	27 DE Reg. 516(Final)
502 Alignment of Local School District Curricula to the State Content Standards	27 DE Reg. 518(Final)
503 Instructional Program Requirements.....	27 DE Reg. 519(Final)
608 Unsafe School Choice Option Policy.....	27 DE Reg.471(Prop.)
901 Dispute Resolution Process for Educational Placement for Children and Youth Experiencing Homelessness	27 DE Reg.137(Prop.)
910 Delaware Requirements for Issuance of the Secondary Credential.....	27 DE Reg. 520(Final)
922 Children with Disabilities Subpart A, Purposes and Definitions.....	27 DE Reg.474(Prop.)
923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies	27 DE Reg.476(Prop.)
925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs.....	27 DE Reg.477(Prop.)
1001 Participation in Extra Curricular Activities.....	27 DE Reg. 522(Final)
1021 DIAA Committees.....	27 DE Reg.154 (Final)
	27 DE Reg. 523(Final)
1040 Out-of-Season and Summer Athletic Activities and Contact.....	27 DE Reg.479(Prop.)
1043 Officials.....	27 DE Reg.158 (Final)
1213 Speech-Language Pathologist Student Loan Repayment Program.....	27 DE Reg. 11 (Prop.)
	27 DE Reg.159 (Final)
1215 High Needs Educator Student Loan Payment Program.....	27 DE Reg. 14 (Prop.)
	27 DE Reg.162 (Final)
1216 Educator Support Scholarship Program.....	27 DE Reg. 18 (Prop.)
	27 DE Reg.165 (Final)

1218 Mental Health Services Student Loan Repayment Program.....	27 DE Reg. 21 (Prop.)
	27 DE Reg.168 (Final)
Professional Standards Board	
1501 Salary Supplements for Educators.....	27 DE Reg. 525(Final)
1503 Comprehensive Educator Induction Programs.....	27 DE Reg.142(Prop.)
	27 DE Reg.481(Prop.)
1510 Initial License.....	27 DE Reg.171 (Final)
	27 DE Reg.483(Prop.)
1516 Professional Standards Board Standing Committees.....	27 DE Reg.173 (Final)
1517 Paraeducator Permit.....	27 DE Reg. 526(Final)
1519 Multiple Measures for Demonstrating Content Knowledge.....	27 DE Reg. 37 (Final)
1571 Special Education Teacher of Students with Disabilities.....	27 DE Reg. 24 (Prop.)
	27 DE Reg.175 (Final)
1552 Junior Reserve Officers' Training Corps (JROTC) Teacher.....	27 DE Reg.528 (Final)
1585 School Behavior Analyst.....	27 DE Reg.176 (Final)
1586 School Behavior Analyst Assistant.....	27 DE Reg.181 (Final)
1596 Charter School Leader.....	27 DE Reg. 39 (Final)
 DEPARTMENT OF FINANCE	
Division of Revenue	
Regulations Governing Tax Refund Intercept Claims of Other States.....	27 DE Reg.143(Prop.)
Regulation Governing Tax Refund Offset and Lottery Winnings Intercept Programs.....	27 DE Reg.105 (Final)
Office of the State Lottery	
203 Video Lottery and Table Game Regulations.....	27 DE Reg.106 (Final)
	27 DE Reg.484(Prop.)
205 Delaware Charitable Video Lottery Regulations.....	27 DE Reg.485(Prop.)
 DEPARTMENT OF HEALTH AND SOCIAL SERVICES	
Division of Health Care Quality	
3345 Personal Assistance Services Agencies.....	27 DE Reg. 43 (Final)
3350 Skilled Home Health Agencies (Licensure).....	27 DE Reg. 44 (Final)
3351 Home Health Agencies--Aide Only (Licensure).....	27 DE Reg. 45 (Final)
Division of Medicaid and Medical Assistance	
Continuous Coverage for Children Enrolled in Medicaid.....	27 DE Reg.486(Prop.)
Title XIX Medicaid State Plan - Ground Emergency Medical Transportation (GEMT).....	27 DE Reg.149(Prop.)
Title XIX Medicaid State Plan - Pharmacy Over the Counter (OTC) & Physician Administered Drugs (PAD).....	27 DE Reg.147(Prop.)
Title XIX Medicaid State Plan: Temporary Extension to COVID-19 Disaster Relief Co-pay & Premium Provisions.....	27 DE Reg.107 (Final)
US Savings Bonds: DSSM 20330.7.....	27 DE Reg. 46 (Final)
Division of Public Health	
4110 Pharmacists Dispensing and Administering Contraceptives.....	27 DE Reg.609(Final)
4305 Trauma System Regulation.....	27 DE Reg.529 (Final)
4306 Stroke System Regulation.....	27 DE Reg.567(Prop.)
4458A Cottage Food Regulations.....	27 DE Reg. 30 (Prop.)
4459 Lead-Based Paint Hazards.....	27 DE Reg.567(Prop.)
4459A Regulations Governing the Childhood Lead Poisoning Prevention Act for Children Between the Ages of 22 and 26 Months.....	27 DE Reg.109 (Final)
	27 DE Reg.570(Prop.)
4501 Regulations for Animals Held in Shelter.....	27 DE Reg.530 (Final)
Division of Social Services	
Delaware's SNAP EBT System: DSSM 9093, 9093.1, 9093.11.....	27 DE Reg.111 (Final)
Determining Relative Child Care: DSSM 11006.7.....	27 DE Reg. 49 (Final)

Food Benefit Certification: DSSM 9068, 9068.1, 9068.2, 9068.3, 9068.4, 9068.5	27 DE Reg.577(Prop.)
Processing Applications for Child Care: DSSM 11004.1.....	27 DE Reg.580(Prop.)
Division of Substance Abuse and Mental Health	
6002 Credentialing Mental Health Screeners and Payment for Voluntary Admissions.....	27 DE Reg.185 (Final)
DEPARTMENT OF HUMAN RESOURCES	
State Employee Benefits Committee	
2001 Group Health Insurance Plan Eligibility and Enrollment Rules.....	27 DE Reg.532 (Final)
DEPARTMENT OF INSURANCE	
Office of the Commissioner	
611 Automobile Insurance Premium Refunds.....	27 DE Reg.488(Prop.)
1004 Term and Universal Life Insurance Reserve Financing.....	27 DE Reg.489(Prop.)
1316 Arbitration of Health Insurance Disputes Between Carriers And Non-Network Providers of Emergency Care Services.....	27 DE Reg.113 (Final)
1406 Third Party Administrators.....	27 DE Reg.150(Prop.)
2102 Termination of Coverage for Policies of Commercial Governmental and Professional Liability Insurance [Formerly Regulation 54].....	27 DE Reg.114 (Rep.)
DEPARTMENT OF LABOR	
Division of Industrial Affairs	
1341 Workers' Compensation Regulations.....	27 DE Reg.614(Final)
Division of Paid Leave	
1401 Rules Defining and Regulating the Healthy Delaware Families Act, Family and Medical Leave Insurance Program and the Division of Paid Leave	27 DE Reg. 51 (Final) 27 DE Reg.496(Prop.)
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL	
Division of Fish and Wildlife	
3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit.....	27 DE Reg.115 (Final)
3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements.....	27 DE Reg.466(Emer.) 27 DE Reg.497(Prop.) 27 DE Reg.151(Prop.)
3801 Shellfish Aquaculture.....	
Division of Waste and Hazardous Substances	
1351 Underground Storage Tank Systems.....	27 DE Reg. 87 (Prop.) 27 DE Reg.533 (Final) 27 DE Reg. 88 (Prop.) 27 DE Reg.536 (Final)
1352 Aboveground Storage Tanks.....	
DEPARTMENT OF SAFETY AND HOMELAND SECURITY	
Office of the Alcoholic Beverage Control Commissioner	
Rule 202 (Formerly Rule 19) A Rule Defining the Words Hotel, Motel, Restaurant and Dinner Theater.....	27 DE Reg.186 (Final)
Rule 1201 (Formerly Rule 7) A Rule Requiring Persons Between the Ages of 16 and 18 to Secure a Work Permit to be Employed by an On-Premises Licensee.....	27 DE Reg.189 (Final)
Rule 1202 (Formerly Rule 7.1) Employment of Persons Who Have Reached the Age of 18 Years in Package Stores.....	27 DE Reg.189 (Final)
Police Officer Standards and Training Commission	
801 Regulations of the Delaware Council on Police Training.....	27 DE Reg.615(Final)

803 COPT Firearms Instructors Standards and Requirements.....	27 DE Reg. 617(Final)
---	------------------------------

DEPARTMENT OF STATE

Division of Professional Regulation

1100 Board of Dentistry and Dental Hygiene.....	27 DE Reg. 584(Prop.)
1700 Board of Medical Licensure and Discipline.....	27 DE Reg. 89 (Prop.)
1900 Board of Nursing.....	27 DE Reg. 61 (Final)
	27 DE Reg. 619(Final)
2000 Board of Occupational Therapy Practice.....	27 DE Reg. 91 (Prop.)
2100 Board of Examiners in Optometry.....	27 DE Reg. 620(Final)
2500 Board of Pharmacy.....	27 DE Reg. 500(Prop.)
2930 Council on Real Estate Appraisers.....	27 DE Reg. 94 (Prop.)
3100 Board of Funeral Services.....	27 DE Reg. 501(Prop.)
3300 Board of Veterinary Medicine.....	27 DE Reg. 190 (Final)
3600 Board of Geologists.....	27 DE Reg. 31 (Prop.)
3900 Board of Social Work Examiners.....	27 DE Reg. 502(Prop.)
5300 Board of Massage and Bodywork.....	27 DE Reg. 63 (Final)
6100 Board of Elevator Mechanics.....	27 DE Reg. 539 (Final)
Uniform Controlled Substances Act Regulations.....	27 DE Reg. 7 (Emer.)

Office of the Alcoholic Beverage Control Commissioner

Rule 203 (Formerly Rule 36) Delivery, Sale and Consumption of Alcoholic Liquors for On-Premises Consumption.....	27 DE Reg. 563(Emer.)
Rule 601 (Formerly Rule 35.1) Gathering Licenses.....	27 DE Reg. 503(Prop.)
Rule 701 (Formerly Rule 51) A Rule Requiring the Biennial Renewal of Wholesale, Retail, and Annual Gathering Licenses.....	27 DE Reg. 506(Prop.)
Rule 702 (formerly Rule 51.1) A Rule Requiring the Biennial Renewal of Supplier’s Licenses.....	27 DE Reg. 506(Prop.)
Rule 1008 (Formerly Rule 19.1) Bottle Clubs - Licensing and Operation.....	27 DE Reg. 511(Prop.)

Public Service Commission

1002 Minimum Filing Requirements for All Regulated Companies Subject to the Jurisdiction of the Public Service Commission.....	27 DE Reg. 117 (Final)
3001 Rules for Certification and Regulation of Electric Suppliers, Net Metering, and Community Energy Facilities.....	27 DE Reg. 585(Prop.)
3012 Rules for Regulation of Net Metering.....	27 DE Reg. 588(Prop.)
3013 Rules for and Regulation of Community Energy Facilities.....	27 DE Reg. 590(Prop.)

DEPARTMENT OF TRANSPORTATION

Division of Motor Vehicles

2226 Third Party Commercial Driver License Skills Testing.....	27 DE Reg. 35 (Prop.)
	27 DE Reg. 191(Final)
2266 Vehicle Document Fees.....	27 DE Reg. 94 (Prop.)

Division of Transportation Solutions

1207 Electronic Speed Monitoring System.....	27 DE Reg. 592(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.

DEPARTMENT OF AGRICULTURE
THOROUGHBRED RACING COMMISSION

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

PUBLIC NOTICE**1001 Thoroughbred Racing Rules and Regulations**Summary

The Thoroughbred Racing Commission proposes to amend its Regulations adopted in accordance with Title 3, Chapter 101. The purpose of the proposed regulations is to amend the rules regarding Entries, Subscriptions, Delegations (11.0) Claiming Races (13.0) and Definitions and Interpretations (1.0). The recommended changes to 11.14.1.4 are necessary to comply with (HISA) rules regarding horse's place on Veterinarian's Lists. Changes to 11.14.1.5 are necessary to allow flexibility for trainers entering horses in multiple jurisdictions. Recommended changes to 13.6 allow the stewards to allow claimed horses to race in handicap or nomination required races previously not included. Under 1.0 "Call" is defined for clear interpretation with regards to rule 7.3.7. This amendment also includes changes to correct spelling errors, other regulations issued by the Thoroughbred Racing Commission are not affected by this proposal. The Thoroughbred Racing Commission is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

Comments

A copy of the proposed regulations is being published in the March 1, 2024 edition of the Delaware Register of Regulations. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 and is available for inspection during regular office hours. Copies are also published online at the *Register of Regulations* website: https://regulations.delaware.gov/register/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Thoroughbred Racing Commission at the above address as to whether these

proposed regulations should be adopted, rejected or modified. Pursuant to 29 *Del.C.* § 10118(a), public comments must be received on or before April 1, 2024. Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Regulation

On or after April 1, 2024, following review of the public comment, the Thoroughbred Racing Commission will determine whether to amend its regulations by adopting the proposed rules or make additional changes because of the public comments received.

Effective Date of Amendments to Regulations

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

Delaware Thoroughbred Racing Commission

Sarah A. Crane, Executive Director

***Please Note:**

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

<https://regulations.delaware.gov/register/march2024/proposed/27 DE Reg 644RFA 03-01-24.pdf>

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

<https://regulations.delaware.gov/register/march2024/proposed/27 DE Reg 644 03-01-24.htm>

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(2) (14 *Del.C.* §122(b)(2))
14 *DE Admin. Code* 805

PUBLIC NOTICE

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

805 The School Health Tuberculosis (TB) Control Program

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 *Del.C.* §122(b)(2), the Delaware Department of Education ("Department") developed amendments to 14 *DE Admin. Code* 805 The School Health Tuberculosis (TB) Control Program. The regulation is amended to clarify the tuberculosis screening and testing requirements for school staff and extended services personnel, volunteers, and new enrollees in Delaware public schools.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/governance/regulations-code/post-a-comment/> by the close of business (4:30 p.m. EST) on or before April 1, 2024. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses tuberculosis screening and testing requirements for school staff and extended services personnel, volunteers, and new enrollees in Delaware public schools and is not designed to help improve student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses tuberculosis screening and testing requirements for school staff and extended services personnel, volunteers, and new enrollees in Delaware public schools and is not designed to help ensure that all students receive an equitable education.

3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation will help to ensure all students' health and safety are adequately protected by strengthening measures for tuberculosis prevention, detection, and management within schools.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses tuberculosis screening and testing requirements for school staff and extended services personnel, volunteers, and new enrollees in Delaware public schools and is not designed to help ensure students' legal rights are respected.

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

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Department implements regulations governing the protection of the health and physical welfare of public school students in Delaware.

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

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

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

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

<https://regulations.delaware.gov/register/march2024/proposed/27 DE Reg 645RFA 03-01-24.pdf>

805 The School Health Tuberculosis (TB) Control Program

1.0 Definitions

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

"~~New School Enterer~~ school enrollee" means any child ~~entering or being admitted to enrolling in a Delaware public school for the first time, including but not limited to, foreign exchange students, immigrants, students from other states and territories, and children entering from nonpublic schools.~~ For purposes of this regulation, "new school ~~enterer~~ enrollee" shall also include any child who is re-enrolled in a Delaware public school following travel or residency of one month in a location or facility identified by the Delaware Division of Public Health as an area at risk for tuberculosis exposure.

"~~School Staff and Extended Services Personnel~~ staff and extended services personnel" means all persons hired as full or part time employees in a public school. This includes, ~~but is not limited to~~

teachers, administrators, substitutes, contract employees, bus ~~drivers~~ drivers, and student teachers whether compensated or not.

"~~Tuberculosis Risk Assessment~~ risk assessment" means a formal assessment by a healthcare professional, including the primary healthcare physician, Division of Public Health's TB Elimination Program, and school nurse, to determine possible tuberculosis exposure through the use of a health history or questionnaire.

"~~Tuberculosis Test test~~" means a Mantoux skin test, Quantiferon QuantiFERON-TB Gold blood test, or other test approved by the Delaware Division of Public Health.

"**Verification**" means a documented evaluation of the individual's disease status.

"**Volunteers**" means those persons who give their time to help others for no monetary reward and who share the same air space with public school students and staff on a regularly scheduled basis.

2.0 School Staff and Extended Services Personnel

2.1 ~~School Staff and Extended Services~~ staff and extended services personnel shall provide the ~~Tuberculosis Test~~ tuberculosis test results from a test administered within the past ~~twelve (12)~~ 12 months during the first ~~fifteen (15)~~ 15 working days of employment.

2.1.1 ~~Tuberculosis Test test~~ requirements may be waived for public school staff and extended services personnel who present a notarized statement that tuberculosis testing is against their religious beliefs.

2.1.1.1 In such cases, the individual shall complete the ~~Delaware Department of Education TB Health Questionnaire for School Employees~~ Delaware Department of Education TB Health Questionnaire for School Employees or provide, within ~~two (2)~~ 2 weeks, verification from a licensed ~~health care~~ healthcare provider or the Division of Public Health that the individual does not pose a threat of transmitting tuberculosis to students or other staff.

~~2.1.1.1~~ 2.1.1.2 If a school staff member or extended services person, who has submitted a waiver because of religious beliefs, answers affirmatively to any of the questions in the ~~Delaware Department of Education TB Health Questionnaire for School Employees~~ he/she Delaware Department of Education TB Health Questionnaire for School Employees the individual shall complete a symptom screener and provide, within ~~two (2)~~ 2 weeks, verification from a licensed ~~health care~~ healthcare provider or the Division of Public Health that the individual does not pose a threat of transmitting tuberculosis to students or other staff.

2.1.2 ~~School Staff and Extended Services Personnel~~ staff and extended services personnel need not be retested if they move, ~~within Delaware, from district to district, district to charter school, charter school to district, or charter school to charter school~~ change employment within Delaware within a ~~five (5)~~ 5 year period; however, a copy of the result of the latest ~~Tuberculosis Test~~ tuberculosis test shall be provided to the new ~~district or charter school~~ employer within ~~sixty (60)~~ 60 days.

2.2 Every fifth year, by October 15th, all ~~public~~ school staff and extended services personnel shall complete the ~~Delaware Department of Education TB Health Questionnaire for School Employees~~ Delaware Department of Education TB Health Questionnaire for School Employees or, within ~~two (2)~~ 2 weeks, provide ~~Tuberculosis Test~~ tuberculosis test results administered within the last ~~twelve (12)~~ 12 months.

~~2.2.1~~ 2.2.4 If a school staff member or extended services staff member answers affirmatively to any of the questions in the Delaware Department of Education TB Health Questionnaire for School Employees ~~he/she~~ the individual shall complete a symptom screener and provide, within ~~two (2)~~ 2 weeks, verification from a licensed ~~health care~~ healthcare provider or the Division of Public Health that the individual does not pose a threat of transmitting tuberculosis to students or other staff.

2.3 All documentation related to the School Health Tuberculosis (TB) Control Program shall be retained in the same manner as other confidential personnel medical information.

3.0 Volunteers

- 3.1 Volunteers shall complete the *Delaware Department of Education's TB Health Questionnaire for Volunteers in Public Schools* prior to their assignment and every fifth year thereafter.
- 3.1.1 If the volunteer answers affirmatively to any of the questions, ~~he/she~~ the individual shall complete a symptom screener and provide, within ~~two (2)~~ 2 weeks, verification from a licensed ~~health care~~ healthcare provider or the Division of Public Health that the individual does not pose a threat of transmitting tuberculosis to the students or staff.
- 3.2 All documentation related to the School Health Tuberculosis (TB) Control Program shall be retained in the same manner as other confidential personnel medical information.

4.0 New School Enterers Enrollees

- 4.1 New ~~school enterers~~ school enrollees shall provide tuberculosis screening results from either a ~~Tuberculosis Test~~ tuberculosis test or the results of a ~~Tuberculosis Risk Assessment~~ tuberculosis risk assessment administered within the past ~~twelve (12)~~ 12 months prior to school ~~entry~~ enrollment.
- 4.1.1 If the new school ~~enterer~~ enrollee is in compliance with the other school ~~entry~~ enrollment health requirements, a school nurse who is trained in the use of the *Delaware Department of Education TB Risk Assessment Questionnaire for Students* may administer the questionnaire to the student's ~~parent(s), guardian(s) or Relative Caregiver~~ parent, guardian, or relative caregiver, or to a new school ~~enterer~~ enrollee who has reached the statutory age of majority (18).
- 4.1.1.1 If a student's ~~parent(s), guardian(s) or Relative Caregiver~~ parent, guardian, or relative caregiver, or a student 18 years or older answers affirmatively to any of the questions, ~~he/she~~ the individual shall complete a symptom screener and provide, within ~~two (2)~~ 2 weeks, ~~provide~~ provide proof of tuberculosis testing results or provide verification from a licensed ~~health care~~ healthcare provider or the Division of Public Health that the student does not pose a threat of transmitting tuberculosis to staff or other students.
- 4.2 All documentation related to the School Health Tuberculosis (TB) Control Program shall be retained in the same manner as other confidential student medical information.

5.0 Tuberculosis Status Verification and ~~Follow-up~~ Follow-up

- 5.1 Tuberculosis ~~Status~~ status shall be determined through the use of a ~~Tuberculosis Risk Assessment, Tuberculosis Test~~ tuberculosis risk assessment, tuberculosis test, or other testing, which may include x-ray or sputum culture. Individuals who either refuse the ~~Tuberculosis Test~~ tuberculosis test or have positive reactions to the same, or give positive responses to a tuberculosis risk assessment shall provide verification from a licensed ~~health care~~ healthcare provider or the Division of Public Health that the individual does not pose a threat of transmitting tuberculosis to staff or other students.
- 5.1.1 Verification shall include Mantoux results recorded in millimeters (if the test was administered), or other ~~Tuberculosis Test~~ tuberculosis test results, current disease status (i.e. contagious or noncontagious), current treatment (or completion of preventative treatment for tuberculosis) and date when the individual may return to ~~his/her~~ the individual's school assignment without posing a risk to the school setting.
- 5.1.2 Verification from a ~~health care~~ healthcare provider or Division of Public Health shall be required only once if treatment was completed successfully.
- 5.1.3 Updated information regarding disease status and treatment shall be provided to the public school by October 15 every fifth year if treatment was previously contraindicated, incomplete or unknown.
- 5.1.4 ~~Persons~~ Individuals with a positive ~~Tuberculosis Test~~ tuberculosis test, without active disease, who do not receive prophylactic treatment shall be excluded from school in the event of showing any signs or symptoms of active, infectious disease as described by the Division of Public Health.
- 5.2 In the event an individual shows any signs or symptoms of active tuberculosis infection, ~~he/she~~ the individual shall be excluded from school until all required medical verification is received by the school. During the specified verification and follow-up an asymptomatic individual, as described by the Division of Public Health, may remain in school until testing and evaluations are completed, but no

longer than ~~ten (10)~~ 10 weeks. If an individual's testing and evaluations have not been completed within the 10-week period, the individual is not permitted to remain in school unless the Division of Public Health provides verification that the individual has an evaluation pending and the individual does not pose a threat of transmitting tuberculosis to staff or other students.

Non regulatory note: See 14 **DE Admin. Code** 930 Supportive Instruction (Homebound) for students who are not permitted to remain in school.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1203, 1205(b), and 1220 (14 **Del.C.** §§1203, 1205(b), & 1220)
14 **DE Admin. Code** 1539

PUBLIC NOTICE

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

1539 Health Education Teacher

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1539 Health Education Teacher. The regulation concerns the requirements for a Health Education Teacher Standard Certificate in accordance with 14 **Del.C.** §1220. The proposed amendments include revising subsection 4.1.1.5, which concerns the requirements for an applicant who has completed a minimum of 91 days of successful long-term substitute teaching in a Delaware public school. The revisions to subsection 4.1.1.5 were prompted by HB 315 w/ HA 2 of the 151st General Assembly, which was signed into law on August 4, 2022. In addition, the proposed amendments include adding subsections 4.1.4 and 4.2.2, which require an applicant to complete at least 30 hours of health education professional development provided by the Department unless the applicant completed at least 6 credits in teaching health and are intended to help address that there are not any health education programs in the State.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/governance/regulations-code/post-a-comment/> by the close of business (4:30 p.m. EST) on or before April 1, 2024. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The education, knowledge, and skill requirements in Section 4.0 are designed to improve the quality of the educator workforce, which will help to improve student achievement.

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

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

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

regulation addresses a standard certificate for educators and is not designed to help ensure students' legal rights are respected.

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

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

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

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

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

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

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

<https://regulations.delaware.gov/register/march2024/proposed/27 DE Reg 649RFA 03-01-24.pdf>

1539 Health Education Teacher (*Break in Continuity of Sections*)

4.0 Prescribed Education, Knowledge, and Skill Requirements

4.1 For an applicant who does not hold a content area Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.1.1 and 4.1.2 through 4.1.4.

4.1.1 The applicant shall have satisfied 1 of the following education requirements:

4.1.1.1 Obtained and currently maintain a Health Education certificate from the National Board for Professional Teaching Standards; or

4.1.1.2 Earned a bachelor's degree from a Regionally Accredited college or university with a minimum of 30 semester hours of coursework in health education from an educator preparation program approved or recognized by the Council for the Accreditation of Educator Preparation (CAEP) or a state where the state approval body employed the appropriate standards; or

4.1.1.3 Satisfactorily completed an alternative routes for licensure or certification program to teach health education as provided in 14 **Del.C.** §§1260 – 1266; or

4.1.1.4 Satisfactorily completed a Department-approved educator preparation program in health education; or

4.1.1.5 ~~If the applicant is applying for an Initial License after the applicant completed a minimum of 91 days of successful long-term substitute teaching in a Delaware public school as~~

~~provided in subsection 4.1.3.1 of 14 DE Admin. Code 1510, earned a bachelor's degree from a Regionally Accredited college or university in any content area and also satisfactorily completed 15 college credits or an equivalent number of hours in professional development with 1 credit equating to 15 hours taken either as part of a degree program or in addition to a degree program from a Regionally Accredited college or university or a professional development provider approved by the Department related to health education of which at least 6 credits focus on pedagogy. If the applicant has been issued an Initial License and a Health Education Teacher Emergency Certificate after the applicant has completed a minimum of 91 days of successful long-term substitute teaching in a Delaware public school, as provided in subsection 4.1.3.1 of 14 DE Admin. Code 1510, in order to be issued the Health Education Teacher Standard Certificate, the applicant shall have satisfactorily completed 15 college credits from a Regionally Accredited college or university in generic or content-specific education courses that are applicable to the Health Education Teacher Standard Certificate of which at least 6 credits focus on pedagogy and as approved by the Department. A course is applicable to the Health Education Teacher Standard Certificate if the course is equivalent to a course that is included in the curriculum of an equivalent education degree from a program approved by the Department.~~

- ~~4.1.1.5.1 The applicant, in consultation with the applicant's Employing Authority, shall select the 15 credits or the equivalent number of hours in professional development subject to the Department's approval.~~
- ~~4.1.1.5.2 If the applicant does not have an Employing Authority or is applying for a Standard Certificate outside of the applicant's current spectrum of employment, the applicant shall select the 15 credits or the equivalent number of hours in professional development in consultation with the Department and subject to the Department's approval.~~
- ~~4.1.1.5.3 For the purpose of subsection 4.1.1.5, professional development means a combination of focused, in depth learning, practice, feedback, reflection, and expert support experiences designed to change the participants' attitudes, insights, and perspectives and ultimately results in improved professional practice.~~
- ~~4.1.1.5.4 Professional development hours may be approved if the applicant shows that the activity meets all of the following criteria:

 - ~~4.1.1.5.4.1 Relevant courses from a Regionally Accredited college or university in health education are not available to the applicant online or in the applicant's county of residence; and~~
 - ~~4.1.1.5.4.2 The activity is grounded in research and current best practices as judged by the Department's content specialist in health education; and~~
 - ~~4.1.1.5.4.3 The activity is documented by the provider to provide knowledge and skills that are required for the health education certification; and~~
 - ~~4.1.1.5.4.4 The activity is part of a professional development program that includes knowledge acquisition, skill mastery, descriptive feedback, and refinement of practice in the work setting.~~~~
- 4.1.2 The applicant shall have achieved the minimum score on 1 of the following examinations:
 - 4.1.2.1 A minimum score of 162 on the Praxis Subject Assessment – Health Education (ETS Test Code # 5551); or
 - 4.1.2.2 A minimum score of 160 on the Praxis Subject Assessment – Health and Physical Education – Content Knowledge (ETS Test Code # 5857).
- 4.1.3 Notwithstanding the requirement in subsection 4.1.2, if the applicant did not achieve the minimum score on 1 of the examinations in subsection 4.1.2, the applicant shall meet the requirements set forth in 14 DE Admin. Code 1519 Multiple Measures for Demonstrating Content Knowledge.

PROPOSED REGULATIONS

- 4.1.4 The applicant shall have completed at least 30 hours of health education professional development provided by the Department unless the applicant completed at least 6 credits in teaching health.
- 4.2 For an applicant who holds at least 1 content area Standard Certificate, the applicant shall have ~~achieved the minimum score on an examination as provided in subsection 4.1.2. Notwithstanding the foregoing, if the applicant did not achieve the minimum score, the applicant shall meet the requirements set forth in 14 DE Admin. Code 1519 Multiple Measures for Demonstrating Content Knowledge~~ completed the requirements in subsections 4.2.1 and 4.2.2.
- 4.2.1 The applicant shall have achieved the minimum score on an examination as provided in subsection 4.1.2. Notwithstanding the foregoing, if the applicant did not achieve the minimum score, the applicant shall meet the requirements set forth in 14 DE Admin. Code 1519 Multiple Measures for Demonstrating Content Knowledge.
- 4.2.2 The applicant shall have completed the professional development required in subsection 4.1.4.

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

<https://regulations.delaware.gov/register/march2024/proposed/27 DE Reg 649 03-01-24.htm>

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1203, 1205(b), and 1220 (14 Del.C. §§1203, 1205(b), & 1220)
14 DE Admin. Code 1564

PUBLIC NOTICE

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

1564 Physical Education Teacher

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§1203, 1205(b), and 1220, the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1564 Physical Education Teacher. The regulation concerns the requirements for a Physical Education Teacher Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments include revising subsection 4.1.1.5, which concerns the requirements for an applicant who has completed a minimum of 91 days of successful long-term substitute teaching in a Delaware public school. The revisions to subsection 4.1.1.5 were prompted by HB 315 w/ HA 2 of the 151st General Assembly, which was signed into law on August 4, 2022. In addition, the proposed amendments include adding subsections 4.1.4 and 4.2.2, which require an applicant to complete at least 30 hours of physical education professional development provided by the Department unless the applicant completed at least 6 credits in teaching physical education.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department's online submission form at <https://education.delaware.gov/community/governance/regulations-code/post-a-comment/> by the close of business (4:30 p.m. EST) on or before April 1, 2024. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The education, knowledge, and skill requirements in Section 4.0 are designed to improve the quality of the educator workforce, which will help to improve student achievement.

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

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

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

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

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

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

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

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

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

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

<https://regulations.delaware.gov/register/march2024/proposed/27 DE Reg 652RFA 03-01-24.pdf>

**1564 Physical Education Teacher
(Break in Continuity of Sections)**

4.0 Prescribed Education, Knowledge, and Skill Requirements

4.1 For an applicant who does not hold a content area Standard Certificate, the applicant shall have satisfied the requirements in subsections 4.1.1 and 4.1.2 through 4.1.4.

4.1.1 The applicant shall have satisfied 1 of the following education requirements:

4.1.1.1 Obtained and currently maintain a Physical Education certificate from the National Board for Professional Teaching Standards; or

PROPOSED REGULATIONS

- 4.1.1.2 Earned a bachelor's degree from a Regionally Accredited college or university with a minimum of 30 semester hours of coursework in physical education from an educator preparation program approved or recognized by the Council for the Accreditation of Educator Preparation (CAEP) or a state where the state approval body employed the appropriate standards; or
- 4.1.1.3 Satisfactorily completed an alternative routes for licensure or certification program to teach physical education as provided in 14 **Del.C.** §§1260 - 1266; or
- 4.1.1.4 Satisfactorily completed a Department-approved educator preparation program in physical education; or
- 4.1.1.5 ~~If the applicant is applying for an Initial License after the applicant completed a minimum of 91 days of successful long-term substitute teaching in a Delaware public school as provided in subsection 4.1.3.1 of 14 **DE Admin. Code** 1510, earned a bachelor's degree from a Regionally Accredited college or university in any content area and also satisfactorily completed 15 college credits or an equivalent number of hours in professional development with 1 credit equating to 15 hours taken either as part of a degree program or in addition to a degree program from a Regionally Accredited college or university or a professional development provider approved by the Department related to physical education of which at least 6 credits focus on pedagogy. If the applicant has been issued an Initial License and a Physical Education Teacher Emergency Certificate after the applicant has completed a minimum of 91 days of successful long-term substitute teaching in a Delaware public school, as provided in subsection 4.1.3.1 of 14 **DE Admin. Code** 1510, in order to be issued the Physical Education Teacher Standard Certificate, the applicant shall have satisfactorily completed 15 college credits from a Regionally Accredited college or university in generic or content-specific education courses that are applicable to the Physical Education Teacher Standard Certificate of which at least 6 credits focus on pedagogy and as approved by the Department. A course is applicable to the Physical Education Teacher Standard Certificate if the course is equivalent to a course that is included in the curriculum of an equivalent education degree from a program approved by the Department.~~
- 4.1.1.5.1 ~~The applicant, in consultation with the applicant's Employing Authority, shall select the 15 credits or the equivalent number of hours in professional development subject to the Department's approval.~~
- 4.1.1.5.2 ~~If the applicant does not have an Employing Authority or is applying for a Standard Certificate outside of the applicant's current spectrum of employment, the applicant shall select the 15 credits or the equivalent number of hours in professional development in consultation with the Department and subject to the Department's approval.~~
- 4.1.1.5.3 ~~For the purpose of subsection 4.1.1.5, professional development means a combination of focused, in-depth learning, practice, feedback, reflection, and expert support experiences designed to change the participants' attitudes, insights, and perspectives and ultimately results in improved professional practice.~~
- 4.1.1.5.4 ~~Professional development hours may be approved if the applicant shows that the activity meets all of the following criteria:~~
- 4.1.1.5.4.1 ~~Relevant courses from a Regionally Accredited college or university in physical education are not available to the applicant online or in the applicant's county of residence; and~~
- 4.1.1.5.4.2 ~~The activity is grounded in research and current best practices as judged by the Department's content specialist in physical education; and~~
- 4.1.1.5.4.3 ~~The activity is documented by the provider to provide knowledge and skills that are required for the physical education certification; and~~

- ~~4.1.1.5.4.4 The activity is part of a professional development program that includes knowledge acquisition, skill mastery, descriptive feedback, and refinement of practice in the work setting.~~
- 4.1.2 The applicant shall have achieved the minimum score on 1 of the following examinations:
- 4.1.2.1 A minimum score of 152 on the Praxis Subject Assessment - Physical Education: Content Knowledge (ETS Test Code # 5091); or
- 4.1.2.2 A minimum score of 160 on the Praxis Subject Assessment - Health and Physical Education - Content Knowledge (ETS Test Code # 5857).
- 4.1.3 Notwithstanding the requirement in subsection 4.1.2, if the applicant did not achieve the minimum score on one of the examinations in subsection 4.1.2, the applicant shall meet the requirements set forth in 14 **DE Admin. Code** 1519 Multiple Measures for Demonstrating Content Knowledge.
- 4.1.4 The applicant shall have completed at least 30 hours of teaching physical education professional development provided by the Department unless the applicant completed at least 6 credits in teaching physical education.
- 4.2 For an applicant who holds at least 1 content area Standard Certificate, the applicant shall have ~~achieved the minimum score on 1 of the examinations as provided in subsection 4.1.2. Notwithstanding the foregoing, if the applicant did not achieve the minimum score, the applicant shall meet the requirements set forth in 14 **DE Admin. Code** 1519 Multiple Measures for Demonstrating Content Knowledge~~ completed the requirements in subsections 4.2.1 and 4.2.2.
- 4.2.1 The applicant shall have achieved the minimum score on an examination as provided in subsection 4.1.2. Notwithstanding the foregoing, if the applicant did not achieve the minimum score, the applicant shall meet the requirements set forth in 14 **DE Admin. Code** 1519 Multiple Measures for Demonstrating Content Knowledge.
- 4.2.2 The applicant shall have completed the professional development required in subsection 4.1.4.

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

[https://regulations.delaware.gov/register/march2024/proposed/27 DE Reg 652 03-01-24.htm](https://regulations.delaware.gov/register/march2024/proposed/27%20DE%20Reg%20652%2003-01-24.htm)

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** 5000

PUBLIC NOTICE

Fair Hearings

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of 31 **Del.C.** §512, Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DHSS/DMMA) is proposing to amend the Division of Social Services Manual (DSSM) 5000 and 5304, specifically, to clarify policy and procedures.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs, or other written materials concerning the proposed new regulations must submit same to, Planning and Policy Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to DHSS_DMMA_Publiccomment@Delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on April 1, 2024. Please identify in the subject line: Fair Hearings

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

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Division of Social Services Manual (DSSM) regarding Fair Hearings.

Statutory Authority

- 1413(b)(1)(A) of the Patient Protection and Affordable Care Act
- 42 CFR § 431.221 Request for hearing

Background

The Patient Protection and Affordable Care Act modernized the means by which an application can be filed. We are proposing a policy change that facilitates individual's ability to exercise their fair hearing rights through the same modalities that can be used to submit an application.

In accordance with section 1413(b)(1)(A) of the Patient Protection and Affordable Care Act and CFR § 431.221 Request for Hearing, the agency must accept an application from the applicant, an adult who is in the applicant's household or family, an authorized representative, or if the applicant is a minor or incapacitated, someone acting responsibly for the applicant, and any documentation required to establish eligibility--

- (1) Via the internet website;
- (2) By telephone;
- (3) Via mail;
- (4) In person; and
- (5) Through other commonly available electronic means.

Currently the Division of Social Services Manual defines a Medical Assistance fair hearing request as any clear, written expression by the appellant or his authorized agent that the individual wants to appeal a decision to a higher authority. We are proposing a change to enable applicants and beneficiaries to request a Medical Assistance fair hearing via all the same modalities as are available for individuals to submit an application. For that reason, we are proposing to redefine Medical Assistance fair hearing requests as any clear expression (oral or written).

We believe that facilitating individuals' ability to exercise their fair hearing rights through modernizing how a Medical Assistance fair hearing request can be made is as important as, and no more inherently burdensome than, modernizing how an application can be filed. The proposed change will add two new types of Medical Assistance fair hearing requests: telephonic and online fair hearing requests.

Summary of Proposal*Purpose*

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Division of Social Services Manual (DSSM) 5000 and 5304 regarding Fair Hearings.

Summary of Proposed Changes

Effective for services provided on and after May 11, 2024, Delaware Health and Social Services/Division of Medicaid and Medical Assistance (DHSS/DMMA) proposes to amend the Delaware Social Services Manual (DSSM) to clarify internal policy and procedures regarding Fair Hearings.

Public Notice

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

on April 1, 2024.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact

There is no anticipated fiscal impact.

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

<https://regulations.delaware.gov/register/march2024/proposed/27 DE Reg 655RFA 03-01-24.pdf>

5000 Fair Hearing Practice and Procedures

5000 Definitions

42 CFR 438.400

Abandonment

When the claimant fails without good cause, to appear (by himself or by authorized representative) at his or her scheduled hearing.

Adequate Notice

A written notice that includes:

1. A statement of what action the agency intends to take
2. The reasons for the intended agency action
3. The specific regulations supporting such action
4. An explanation of the individual's right to request a State agency hearing
5. The circumstances under which assistance is continued if a hearing is requested
6. If the agency action is upheld, that such assistance must be repaid under title IV-A, and must also be repaid under titles I, X, XIV or XVI (AABD) if the State plan provides for recovery of such payments.

Advance Notice Period

The 10 day period between the date a notice is mailed to the date a proposed action is to take effect. (Also called Timely Notice Period.)

Adverse Benefit Determination

For recipients enrolled in a MCO, the denial or limited authorization of a requested service, including determinations based on the type or level of service, requirements for medical necessity, appropriateness, setting, or effectiveness of a covered benefit; the reduction, suspension, or termination of a previously authorized service; the denial, in whole or in part, of payment for a service; the failure to provide services in a timely manner, as defined by the State; the failure of the MCO to act within timeframes regarding the standard resolution of grievances and appeals; and the denial of a recipient's request to dispute a financial liability, including cost sharing, copayments, and other recipient financial liabilities.

PROPOSED REGULATIONS

Appellant	Anyone who requests a hearing. (Also called Claimant.)
Benefits	Any kind of assistance, payments or benefits made by TANF, GA, Medicaid, Delaware Healthy Children Program (DHCP), Chronic Renal Disease Program (CRDP), Child Care, Refugee, Emergency Assistance or Food Supplement programs.
Claimant	Anyone who requests a hearing. (Also called Appellant.)
DHSS	The Department of Health and Social Services, including: <ol style="list-style-type: none"> 1. The Division of Social Services (DSS), in connection with economic, medical, vocational or child care subsidy assistance 2. The Division of Medicaid and Medical Assistance (DMMA) or a managed care organization (MCO) under contract with DHSS to manage an operation of the Medicaid Program, in connection with medical assistance 3. The Division of State Service Centers (DSSC) in connection with the Emergency Assistance Program 4. The Division of Developmental Disabilities Services (DDDS) in connection with Medicaid Program services 5. The Division of Public Health in connection with Medicaid Program services 6. The Division of Services for the Aging and Adults with Physical Disabilities (DSAAPD) in connection with Medicaid Program services
DSS	The Division of Social Services (or "the Division.")
Expedited Fair Hearing	An administrative hearing for Medicaid and DHCP which provides for a decision to be issued within 3 working days from the receipt of the request for an appeal of a decision to terminate, reduce, or suspend previously authorized services or a decision to deny or limit a new service request where the standard decision time frame of 45 days could seriously jeopardize the claimant's life or health or ability to attain, maintain, or regain maximum function.
Fair Hearing	An administrative hearing held in accordance with the principles of due process which include: <ol style="list-style-type: none"> 1. Timely and adequate notice 2. The right to confront and cross-examine adverse witnesses 3. The opportunity to be heard orally 4. The right to an impartial decision maker 5. The opportunity to obtain counsel, represent him or herself, or use any other person of his or her choice.
Fair Hearing Summary	A document prepared by the agency stating the factual and legal reason(s) for the action under appeal. The purpose of the hearing summary is to state the position of the agency/entity that initiated the action in order to provide the appellant with the necessary information to prepare his or her case.
Good Cause	May include, but is not limited to the following: <ol style="list-style-type: none"> 1. Death in the family 2. Personal injury or illness 3. Sudden and unexpected emergencies 4. Failure to receive the hearing notice
Group Hearing	A series of individual requests for a hearing consolidated into a single group hearing. A group hearing is appropriate when the sole issue involved is one of State or federal law, regulation, or policy. The policies governing hearings will be followed in all group hearings. The individual appellant in a group hearing is permitted to present his or her case or be represented by an authorized representative.

Hearing Decision	<p>The decision in a case appealed to the State hearing officer. The decision includes:</p> <ol style="list-style-type: none">1. The substance of what transpired at the hearing2. A summary of the case facts3. Supporting evidence4. Pertinent State or federal regulations5. The reason for the decision <p>In Food Supplement Program disqualification cases, the hearing decision must also respond to reasoned arguments by the appellant.</p> <p>EXAMPLE: At a Food Supplement Program Intentional Program Violation Hearing involving a failure to report a change promptly, an appellant may argue that a failure to report does not constitute "clear and convincing evidence" of intent to defraud. The hearing officer's decision must respond to this argument.</p>
Hearing Officer	<p>The individual responsible for conducting the hearing and issuing a final decision on issues of fact and questions of law.</p>
Hearing Record	<p>A verbatim transcript of all evidence and other material introduced at the hearing, the hearing decision, and all other correspondence and documents which are admitted as evidence or otherwise included for the hearing record by the hearing officer.</p>
Hearing Summary	<p>A document prepared by the agency stating the factual and legal reason(s) for the action under appeal. The purpose of the hearing summary is to state the position of the agency/entity that initiated the action in order to provide the appellant with the necessary information to prepare his or her case.</p>
Hearsay Evidence	<p>Testimony about a statement made by a third party that is offered as fact without personal knowledge</p>
Individual Hearing	<p>A hearing in which an individual client disagrees with the action taken by the Department on the facts of his or her case.</p>
MCO	<p>A Managed Care Organization under contract with DHSS to administer the delivery of medical services to recipients of Medicaid and CHIP through a network of participating providers.</p>
Party	<p>A party to a hearing is a person or an administrative agency or other entity who has taken part in or is concerned with an action under appeal. A party may be composed of one or more individuals.</p>
Privilege	<p>Appellants may decline to present testimony or evidence at a fair hearing under claim of privilege. Privilege may include the privilege against self-incrimination or communication to an attorney, a religious advisor, a physician, etc.</p>
Request for a Fair Hearing	<p>Any clear expression (oral or written) by the appellant or his authorized agent that the individual wants to appeal a decision to a higher authority. Such request may be oral in the case of actions taken under the <u>Medical Assistance or Food Supplement Program</u>. <u>The agency must establish procedures that permit an individual, or an authorized representative, to submit a hearing request for Medical Assistance</u></p> <ol style="list-style-type: none">1. <u>Via the internet website;</u>2. <u>By telephone;</u>3. <u>Via mail;</u>4. <u>In person; and</u>5. <u>Through other commonly available electronic means.</u>

Relevance	Refers to evidence. Evidence is relevant if an average person believes that the evidence makes a significant fact more probable.
Remand	To send back for further action.
Rule of Residuum	Findings of fact must be supported by at least some evidence which is admissible in a court of law.
Timely Notice Period	The 10 day period between the date a notice is mailed to the date a proposed action is to take effect. (Also called Advance Notice Period.)

5304 Presiding Over Fair Hearings

7 CFR 273.15, 42 CFR 431.241, 45 CFR 205.10

This policy applies to applicants and recipients for any public assistance program administered by the Division of Social Services or the Division of Medicaid and Medical Assistance. It also applies to programs administered by other agencies over which DSS has authority. Staff may not limit or interfere in any way with an appellant's freedom to make a request for a hearing.

1. DSS Hearing Officers Preside Over Fair Hearings

The Division of Social Services is authorized to preside over and render decisions in the following types of hearings:

- A. PASRR Hearings
- B. Medicaid Managed Care Cases
- C. Emergency Assistance Services Hearings
- D. Jurisdiction for Hearings over Medicaid Program Services

2. Hearing Office Determines if Hearing Request is Valid

A request for a hearing must be a clear, written expression to the effect that the appellant wants the opportunity to present his or her case to a higher authority. The request must be signed by the appellant or his or her representative.

Exception: The agency must establish procedures that permit an individual, or an authorized representative, to submit a hearing request for Medical Assistance

1. Via the internet website;
2. By telephone;
3. Via mail;
4. In person; and
5. Through other commonly available electronic means.

Appellants of actions taken in the Food Supplement Program may request a fair hearing orally. If an oral request is made, inform the appellant that it is advisable to finalize the request by putting it in writing. The staff member receiving an oral request will take steps to begin the hearing process. This includes an offer, at the time of the request, to assist the appellant by putting the request in writing.

3. Hearing Officer Limits Issues Presented at the Hearing

The Hearing Officer has the authority to restrict the issues raised at the hearing. The following issues may be raised at the hearing.

- A. Issues described in the notice of action sent to the appellant
- B. Issues fairly presented in the appellant's request for a hearing
- C. Issues fairly presented in the Division's response in its hearing summary.

DIVISION OF PUBLIC HEALTH

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

PUBLIC NOTICE

4202 Control of Communicable and Other Disease Conditions

Pursuant to 16 Del.C. §§122(3)(a) and 504, the Department of Health and Social Services, Division of Public Health has the legal authority to promulgate regulations. The Division of Public Health is proposing amendments to Regulation 4202 Control of Communicable and Other Disease Conditions, to be published in the March 1, 2024, issue of the *Delaware Register of Regulations*.

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

Public comments will be received until the close of business Monday, April 1, 2024. Comments will be accepted in written form via email to DHSS_DPH_regulations@delaware.gov, or by U.S. mail to the following address:

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

***Please Note:**

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

<https://regulations.delaware.gov/register/march2024/proposed/27 DE Reg 661RFA 03-01-24.pdf>

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

<https://regulations.delaware.gov/register/march2024/proposed/27 DE Reg 661 03-01-24.htm>

DEPARTMENT OF SAFETY AND HOMELAND SECURITY STATE BUREAU OF IDENTIFICATION

Statutory Authority: 11 Delaware Code, Section 8572(f) (11 Del.C. §8572(f))

PUBLIC NOTICE

Firearms Transaction Approval Program Regulations

The Delaware State Bureau of Identification, pursuant to 11 Del.C. §8572(f), proposes regulations to enforce and administer the Firearms Transaction Approval Program.

The Agency will accept written comments, which should be sent to the Director of SBI, 600 S. Bay Road, Dover, DE 19901. Written comments may also be sent by email to the following email address: DSP_FTAP_Appeals@delaware.gov. The Public Comment period will end on Monday, April 1, 2024.

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

<https://regulations.delaware.gov/register/march2024/proposed/27 DE Reg 661aRFA 03-01-24.pdf>

Firearms Transaction Approval Program Regulations

1.0 Authority and Purpose

- 1.1 Pursuant to 11 Del.C. §8572(f), the State Bureau of Identification promulgates these regulations which shall have the force and effect of law in the counties, cities, and political sub-divisions of this State.
- 1.2 These regulations are compliant with the Federal Brady Act.
- 1.3 These regulations, in conjunction with statutory authority found in Chapter 85 of Title 11 of the Delaware Code, establish Delaware as a Point of Contact State for the National Instant Criminal Background Check System.
- 1.4 The purpose of these regulations is to enforce the required background checks for the lawful sale, transfer, or delivery of firearms under federal and Delaware law. The Firearms Transaction Approval Program will also make eligibility determinations, communicate with FFLs and NICS, and process denial challenges as well as appeals.

2.0 Definitions

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

"ATF" means the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

"ATF 4473 Form" means the form used by FFLs to determine whether the FFL may lawfully sell or deliver a firearm to the prospective buyer.

"Federal Firearms Licensee" or "FFL" means a person licensed by the federal ATF as a manufacturer, importer, or dealer of firearms.

"Firearm" means any weapon from which a shot, projectile or other object may be discharged by force of combustion, explosive, gas, or mechanical means, whether operable or inoperable, loaded or unloaded, the frame or receiver of any such weapon, any firearm muffler or firearm silencer, or any destructive device.

"Firearms Transaction Approval Program" or "FTAP" means the Delaware State Police Firearms Transaction Approval Program established by 11 Del.C. Ch. 85, Subchapter VI.

"NICS" means the National Instant Criminal Background Check System.

"NICS POC" means a point of contact for the National Instant Criminal Background Check System.

"NICS POC Guidelines" means the guidelines established and published by the federal government for the operation and implementation of the NICS program by a POC agency.

"Prospective buyer" means a person who intends to purchase a firearm and includes a prospective transferee.

"Prospective seller" means a person who intends to sell a firearm and includes a prospective transferor.

"State Transaction Number" means a number assigned to a specific transaction.

"Transfer" means assigning, pledging, leasing, loaning, giving away, or otherwise disposing of, but does not include any of the following:

- The loan of a firearm for any lawful purpose, for a period of 14 days or less, by the owner of the firearm to a person known personally to the owner.
- A temporary transfer for any lawful purpose that occurs while in the continuous presence of the owner of the firearm, if the temporary transfer does not exceed 24 hours in duration.
- The transfer of a firearm for repair, service, or modification to a licensed gunsmith or other person lawfully engaged in these activities as a regular course of trade or business.

- A transfer that occurs by operation of law or because of the death of a person for whom the prospective transferor is an executor or administrator of an estate or a trustee of a trust created in a will.

“Transferee” means a person who receives a firearm by way of transfer.

3.0 General Procedures

- 3.1 FFLs must contact FTAP to receive authorization to sell, or facilitate the transfer of, a firearm by telephone or electronic request.
 - 3.1.1 A toll-free telephone number is operational between the hours of 9:00am and 9:00pm Monday through Saturday, 9:00am and 5:00pm on Sundays, except on the following holidays: Thanksgiving Day, Christmas Day, Good Friday, and Easter Sunday.
 - 3.1.2 An internet based portal is available to make electronic requests.
 - 3.1.2.1 The FFL may enroll at <https://ftap.delaware.gov/enroll> and provide necessary identification information.
 - 3.1.2.2 The FFL primary account must be reviewed by the FTAP before being approved. FTAP may contact the FFL using the provided information to verify the identity and authority of the FFL enrolling for access.
 - 3.1.2.3 Once the FFL primary account is approved, the FFL may create multiple secondary accounts for employees, administrative staff, and kiosk terminals.
 - 3.1.2.4 FTAP must review and approve employee and secondary administrator accounts in compliance with applicable State laws before each account becomes active.
 - 3.1.2.5 Every FFL employee must use unique log on credentials.
- 3.2 FTAP may share information with other state or federal law enforcement agencies or the Judicial Information System when necessary to affect the FTAP goals.
- 3.3 FTAP may not maintain, longer than 6 months, any records containing the names of FFLs who have received unique approval numbers or any records of firearms transactions related to citizens who are not prohibited under 11 Del.C. §1448 or federal law.
 - 3.3.1 FTAP may retain the records described in subsection 3.3 if it has reason to believe the prospective purchaser or transferee is committing a crime.
 - 3.3.2 FTAP will monitor record retention at regular intervals. All records that will not be maintained will be destroyed in accordance with the applicable State Archives Policies.
- 3.4 FTAP will maintain strict confidentiality and security of NICS information received from FFLs.

4.0 Background Check Procedures

- 4.1 Upon receipt of a request for an FTAP background check FTAP will:
 - 4.1.1 Ensure all necessary information was provided by the FFL using the ATF 4473 Form. The necessary information includes name, driver's license number and state of issue, date of birth, social security number, race, address, phone number, country of citizenship, place of birth, height, weight, sex (male, female, or non-binary), ICE Number (if applicable).
 - 4.1.1.1 If necessary information is missing, FTAP will reject the request.
 - 4.1.1.2 The FFL may compile the missing information and refile the request.
 - 4.1.2 Assign the request a unique State Transaction Number.
 - 4.1.3 Collect a fee for the background check in an amount to be determined by the Superintendent of the State Police.
 - 4.1.4 Search all available federal and local databases to determine if the prospective buyer or transferee is prohibited from possession of a firearm.
 - 4.1.5 Compile the information from the searched databases to determine eligibility.
 - 4.1.6 Notify the FFL that the prospective buyer or transferee is approved, denied, or delayed.
 - 4.1.6.1 Approved. The prospective buyer or transferee is eligible.

PROPOSED REGULATIONS

- 4.1.6.1.1 FTAP will notify the FFL that the sale or transfer may proceed.
- 4.1.6.1.2 The FFL is not required to transfer a firearm after receiving a response that the transfer may proceed. The FFL may determine the transfer is not appropriate based on observations of the prospective buyer or transferee. If the FFL knows or has reasonable cause to believe the prospective buyer or transferee is prohibited from receiving or possessing a firearm, even after FTAP issues a proceed, the FFL may not lawfully transfer the firearm.
- 4.1.6.2 Denied. The prospective buyer or transferee is not eligible. FTAP will notify the FFL that the sale or transfer was denied. FTAP will not provide the FFL with the reason or reasons for the denial.
 - 4.1.6.2.1 The FFL should give a denied prospective buyer or transferee a denial form, which will be available for printing from the web based portal, and the State Transaction Number directly linked to the denial. This denial form will inform the prospective buyer or transferee of explanation and appeal options, as outlined in Section 5.0 and Section 6.0.
 - 4.1.6.2.2 In the alternative, the FFL may give the prospective buyer or transferee the contact information to FTAP with the State Transaction Number.
- 4.1.6.3 Delayed
 - 4.1.6.3.1 In the event of an electronic failure or other emergency beyond the control of FTAP, then FTAP will immediately notify the FFL of the delay, including the reason and estimated length. FTAP will notify the FFL to provide a further response within 3 business days.
 - 4.1.6.3.2 In the event of an investigatory delay, FTAP will notify the FFL of the delay. FTAP will provide a further response within 25 calendar days.
- 4.2 The FFL may not complete the transfer unless it receives an approval or more than 25 calendar days have elapsed since the background check request was submitted and the FFL has not received a denial.

5.0 Denial Procedures

- 5.1 In response to a denial, the prospective buyer or transferee may request a written explanation from FTAP within 30 calendar days of the date of the denial.
 - 5.1.1 FTAP will accept requests for explanation by U.S. Mail to Delaware State Police FTAP, 600 S. Bay Rd, Dover, DE 19901 or by electronic mail to DSP_FTAP_Appeals@Delaware.gov.
 - 5.1.2 Any requests pursuant to subsection 5.1.1 must include the prospective buyer or transferee's name, date of birth, address, telephone number, NICS Transaction Number or State Transaction Number, date of denial, and name of FFL.
- 5.2 FTAP will respond to all requests for explanations within 30 days of the receipt of the request. The response will be mailed to the prospective buyer or transferee's address listed on the ATF 4473 Form.

6.0 Appeal Procedures

- 6.1 A prospective buyer or transferee who received a denial may file an appeal with FTAP within 30 calendar days of receipt of the denial. FTAP will not consider appeals where jurisdiction lies elsewhere.
 - 6.1.1 FTAP will accept appeals, in writing, by U.S. Mail to Delaware State Police FTAP, 600 S. Bay Rd., Dover, DE 19901 or by electronic mail to DSP_FTAP_Appeals@Delaware.gov.
 - 6.1.1.1 Upon receipt of an appeal, FTAP will thoroughly review the records which caused the denial.
 - 6.1.1.2 FTAP will advise the prospective buyer or transferee if fingerprints or additional information is necessary.

- 6.1.1.3 The prospective buyer or transferee may request a hearing before the Director of SBI, or designee.
 - 6.1.1.3.1 The hearing will occur at the FTAP office, located at 600 S. Bay Rd., Dover, DE 19901.
 - 6.1.1.3.2 The prospective buyer or transferee may be represented by legal counsel at their own expense, if desired.
 - 6.1.1.3.3 If the prospective buyer or transferee wishes for the Director of SBI, or designee, to consider documentary evidence, then the documents must bear signs of authenticity, such as a raised seal or other insignia suggesting validity.
- 6.1.2 Within 30 days of the receipt of the appeal, including any additional information, or the date of the hearing (whichever is later), the Director of SBI or designee will issue a final decision regarding the denial.
 - 6.1.2.1 Under exceptional circumstances, FTAP may extend the filing deadline for an additional 30 days. FTAP will provide the prospective buyer or transferee with notification of the extension and the exceptional circumstances causing the extension.
 - 6.1.2.2 The Director of SBI or designee's final decision will be sent in writing to the prospective buyer or transferee at the address provided on the ATF 4473 Form.
- 6.2 A prospective buyer or transferee whose appeal was denied may do the following:
 - 6.2.1 Follow the applicable process for potential corrections to the criminal history information at the originating agency, the initial agency of record, or other appropriate location.
 - 6.2.2 Appeal to the Superior Court of Delaware.
- 6.3 A prospective buyer or transferee whose appeal is successful may return to the FFL to follow the procedures set forth in Section 4.0.
- 6.4 In the event of a successful appeal related to inaccurate information, FTAP will communicate with the entity from which it received the disqualifying information.
 - 6.4.1 FTAP will ask the entity to amend its records to reflect accurate information.
 - 6.4.2 FTAP will ask the entity to destroy any records containing erroneous information.
 - 6.4.3 FTAP will destroy any of its own records containing erroneous information.
 - 6.4.4 FTAP will submit a NICS Deny Overturn (NDO) message to NICS.
 - 6.4.5 FTAP will notify the prospective buyer or transferee in writing.

7.0 Transfers without Photographic Identification

- 7.1 FTAP recognizes that a prospective buyer or transferee may be a bona fide member or adherent of an organized church or religious group which prohibits photographic identification.
- 7.2 FTAP shall facilitate transfers of firearms without photographic identification in the following way:
 - 7.2.1 The prospective buyer or transferee and prospective seller or transferor must schedule a meeting for the background check with the FTAP Director, or designee, at the FTAP offices, located at 600 S. Bay Rd., Dover, DE 19901.
 - 7.2.1.1 The prospective buyer or transferee and prospective seller or transferor shall bring the firearm to be transferred to the meeting with the FTAP Director, or designee, for inspection.
 - 7.2.1.2 The prospective buyer or transferee must submit a signed affidavit stating that photographic identification conflicts with the tenets of an organized church or religious group of which the prospective buyer or transferee is a bona fide member.
 - 7.2.1.3 The prospective buyer or transferee must submit to fingerprinting.
 - 7.2.1.4 The prospective buyer or transferee must submit any additional information necessary to complete the background check as determined by FTAP.

PROPOSED REGULATIONS

7.2.2 The fee for the background check, in an amount to be determined by the Superintendent of the State Police, may be paid by the prospective buyer or transferee or the prospective seller or transferor.

7.2.3 FTAP will inform the prospective buyer or transferee of the results of the background check within 25 calendar days.

7.3 FTAP will maintain records of all background checks performed under this section to the same extent as those background checks performed under Section 4.0.

8.0 Investigation Procedures

8.1 FTAP will investigate any persons who purchase or attempt to purchase, a firearm, while being a person prohibited from receipt of possession of a firearm under 11 **Del.C.** §1448 or federal law.

8.2 FTAP will investigate any persons who willfully and intentionally make any materially false statements or who exhibit any false identification intended to deceive.

8.3 FTAP will investigate any FFL or employee thereof who willfully and intentionally sells or transfers a firearm in violation of 11 **Del.C.** §1448A.

8.4 FTAP will investigate any person who engages in a firearms transfer on behalf of another.

8.5 FTAP will investigate the status of stolen firearms purchased or received by FFLs.

9.0 Administrative Responsibilities

9.1 SBI will provide an annual report to the Senate and House Judiciary committees as required by 11 **Del.C.** §1448A(i).

9.2 The FTAP Director will incorporate FTAP information into the annual report from SBI.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
Board of Accountancy

Statutory Authority: 24 Delaware Code, Section 105(a)(1) (24 **Del.C.** §105(a)(1))
24 **DE Admin. Code** 100

PUBLIC NOTICE

100 Board of Accountancy

Pursuant to 24 **Del.C.** §105(a)(1), the Delaware Board of Accountancy ("Board") has proposed revisions to its Rules and Regulations. The Board proposes these amendments to advance its primary objective, which is to protect the general public, specifically those persons who are the direct recipients of accounting services, regulated by 24 **Del.C.**, Ch. 1.

Proposed amendments to subsections 5.3 and 10.12 delete provisions that are no longer applicable due to the passage of time. Proposed amendments to subsection 6.2.2.8 enlarge the period of time during which an applicant is allowed to pass examinations required for licensure by 24 **Del.C.** §107(d). Proposed amendments to Sections 7.0 and 9.0 set forth new standards applicable to continuing professional education for licensed certified public accountants and public accountants licensed. The Board promulgates rules pertaining to continuing professional education pursuant to 24 **Del.C.** §105(a)(8) and §110(d-e). The amendments relate to the types of activities that qualify as continuing professional education and the licensees' responsibilities to record and report their participation in qualifying continuing professional education. Additional revisions are technical and style changes consistent with the *Delaware Administrative Code Drafting and Style Manual*.

This proposed amendment is offered in place of a previous proposal that was published in the *Delaware Register of Regulations* in Vol. 26, Issue 12 because the new proposal is substantively different than the original submission. The previously proposed amendments were published on page 1046 of the June 1, 2023 issue of the

Register (26 **DE Reg.** 1046 (6/01/23)). The Board planned to hold a hearing at its July 19, 2023 meeting but at that meeting the Board determined to cancel the hearing in order to consider a more substantial revision to its continuing professional education rules. Revisions to the Board's Rules and Regulations were discussed during subsequent public meetings of the Board, and, at its January 17, 2024 meeting, the Board determined to propose a substantively different amendment to its Rules and Regulations. As a result, the Board will now hold a public hearing on April 17, 2024, at 9:00 a.m. in the second-floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Accountancy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address or to Danielle.Ridgway@delaware.gov.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be May 2, 2024. The Board will deliberate on all public comments at its next regularly scheduled meeting thereafter.

***Please Note:**

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

<https://regulations.delaware.gov/register/march2024/proposed/27 DE Reg 666RFA 03-01-24.pdf>

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

<https://regulations.delaware.gov/register/march2024/proposed/27 DE Reg 666 03-01-24.htm>

**OFFICE OF THE STATE TREASURER
DELAWARE EARNS PROGRAM BOARD**

Statutory Authority: 19 Delaware Code, Section 3803 (19 **Del.C.** 3803)

PUBLIC NOTICE

Regulations Governing the Expanding Access for Retirement and Necessary Saving Program

NATURE OF PROCEEDINGS; SYNOPSIS OF THE SUBJECT AND SUBSTANCE OF THE PROPOSED REGULATIONS

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code), and under the authority of 19 **Del.C.** §3803, the Delaware EARNS Program Board (the "Board") proposes to introduce regulations concerning the establishment of the Delaware Expanding Access for Retirement and Necessary Saving Program (the "Program"). The Board, with administrative assistance from the Office of the State Treasurer ("OST"), will administer the Program and these regulations.

The General Assembly established the Program to serve as a vehicle through which eligible employees may, on a voluntary basis, provide for additional retirement security through a State-facilitated retirement savings program in a convenient, cost effective, and portable manner. The Program aims to alleviate barriers small employers face in offering retirement options, close the wealth gap among low to modest wage earners, and keep Delaware competitive with neighboring states by attracting talented workers to the State.

The Board is tasked with overseeing the initial design and implementation of the Program. The Board will be disbanded no later than December 31, 2025, at which point all duties and functions of the Board will be transferred to and assumed by the Plans Management Board.

The proposed regulations will guide and govern the implementation and operation of the Program. These proposed regulations provide definitions and standards for identifying covered employers and eligible employees, establish enrollment processes and requirements for employers and prospective participants, and set procedures for complaints and enforcement.

STATUTORY BASIS AND LEGAL AUTHORITY TO ACT

29 Del.C. § 3803(e)(3).

OTHER REGULATIONS AFFECTED

None.

HOW TO COMMENT ON THE PROPOSED REGULATIONS

In accordance with 29 Del.C. §10116, persons wishing to submit written comments, suggestions, briefs, and compilations of data or other written materials concerning the proposed regulations should direct them to the following address:

Ted Griffith
Program Director, Delaware EARNs
Office of the State Treasurer
820 Silver Lake Blvd., Suite 100
Dover, DE 19904
Email: ted.griffith@delaware.gov
Office: (302) 577-4212

Comments may also be directed via electronic mail to EARNS@Delaware.gov. Any written submission in response to this notice and relevant to the proposed regulations must be received by the above contact no later than 4:00 p.m., prevailing Eastern time, on April 1, 2024. The determination of whether to adopt the regulations, as proposed, will be based upon consideration of the written comments and any other written materials filed by the public.

Members of the public may request a copy of the proposed regulations at no charge by contacting Program Director Ted Griffith by US mail, email, or phone using the contact information above.

***Please Note:**

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

<https://regulations.delaware.gov/register/march2024/proposed/27 DE Reg 667RFA 03-01-24.pdf>

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

<https://regulations.delaware.gov/register/march2024/proposed/27 DE Reg 667 03-01-24.htm>

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

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

ORDER

608 Unsafe School Choice Option Policy

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §122(b)(2), the Department of Education ("Department") developed amendments to 14 **DE Admin. Code** 608 Unsafe School Choice Option Policy. The regulation sets forth the State's unsafe school choice policy in accordance with 20 U.S.C. § 7912(a). The regulation was reviewed in accordance with 29 **Del.C.** §10407. The proposed amendments include grammatical and style changes to comply with the Delaware Administrative Code Drafting and Style Manual.

The Department initially published the proposed amendments in the *Register of Regulations* on October 1, 2023. The Department received a written submittal from Ann C. Fisher, Chairperson of the Governor's Advisory Council for Exceptional Citizens ("GACEC"). GACEC commented that language in proposed subsections 3.2 is ambiguous because Title 11 only applies to knowingly possessing a firearm. GACEC further commented that it supports the proposed changes to subsection 3.3 because "it will ensure that parents and students are consistently aware of when schools are designated as 'persistently dangerous'" and recommended that the Department "identify which schools are so designated because of the number of unsafe incidents or for failing to comply with reporting requirements." GACEC also commented that the proposed addition of "and attending" to enrollment in subsection 5.1 is inconsistent with 20 U.S.C. § 7912(a). Additionally, GACEC recommended the Department "include additional reporting on unsafe incidents for student victims with disabilities."

The Department considered GACEC's written submittal. As a result of GACEC's written submittal, the Department revised proposed subsections 3.2 and 5.1. The Department did not make any further changes as a result of GACEC's written submittal. Pursuant to 29 **Del.C.** §10118(c), the Department republished the proposed

regulation with the revisions. Notice of the proposed regulation was published in the *Register of Regulations* on January 1, 2024. The Department received one written submittal from Ms. Fisher on behalf of GACEC. GACEC thanked the Department "for considering the comments from the GACEC and making changes to sections 3.2 and 5.1."

II. FINDINGS OF FACTS

The Department finds that the proposed amendments to the regulation are necessary to implement the State's unsafe school choice policy in accordance with 20 U.S.C. § 7912(a). Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 608 Unsafe School Choice Option Policy.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 608 Unsafe School Choice Option Policy. Therefore, pursuant to 14 **Del.C.** §122(b)(2), 14 **DE Admin. Code** 608 Unsafe School Choice Option Policy, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 608 Unsafe School Choice Option Policy amended hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 608 Unsafe School Choice Option Policy 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 6th day of February, 2024.

Department of Education

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

608 Unsafe School Choice Option Policy

1.0 Purpose

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

2.0 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

"Unsafe Incidents" means any of the following:

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

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

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

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

3.0 Identification of Persistently Dangerous Schools

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

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

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

3.2.1 The school suspends or expels a student for bringing a firearm to the school in violation of 20 U.S.C. §7961.

3.2.2 The school suspends or expels a student for possessing a firearm at the school in violation of 20 U.S.C. §7961 or while in or on a safe school zone, as defined in 11 Del.C. §1457A(a)(4), pursuant to 11 Del.C. §1457A(f).

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

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

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

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

~~3.3~~ 3.5 A ~~School~~ school that is identified as a Persistently Dangerous School will ~~persistently dangerous school shall~~ retain that designation the identification as a persistently dangerous school for the entire fiscal year.

4.0 Students Attending Schools Labeled as Persistently Dangerous

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

5.0 Students Who are Victims of a Violent Felony

- 5.1 A student who is the victim of a ~~Violent Felony~~ violent felony while in or on the grounds of a ~~School in~~ school which the student is ~~enrolled~~ attending shall be allowed to choice to a ~~Safe School~~ safe school in the same school district, including a charter ~~school~~ school, provided that a charter school option exists in that school district's boundaries.
- 5.2 All school districts and charter schools shall establish a plan that describes their policies and procedures for providing school choice options to a student who is the victim of a ~~Violent Felony~~ violent felony, including the process for notifying parents.
- 5.3 Each school district and charter school shall post the policy and procedures on the school district's or charter school's website, with hard copies provided to any requesting parties.

OFFICE OF THE SECRETARY

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

REGULATORY IMPLEMENTING ORDER

902 Gifted or Talented Education Plan

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §3126, the Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 902 Gifted or Talented Education Plan. This regulation was proposed in October 2023 to clarify language to continue to allow gifted or talented services to be provided based on a school district's or charter school's capacity, and to outline school district and charter school responsibilities. In November 2023, it was determined that additional clarification was needed to explain that both school districts and charter schools must have a gifted or talented education plan, but school districts and charter schools could determine the extent of the plan and the areas of giftedness covered.

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

Issue: The definition of "capacity" offers no data-based criteria for assessing what services a school or district provides.

Response: When school districts or charter schools submit their plans for approval to the Department of Education, the method and norm-referenced tool for identification is part of the process by which their plans are reviewed, and therefore that is the criteria used to determine capacity. No change will be made to the regulation.

Issue: The lack of reference for district or charter schools' plan is problematic, as differences in the school districts' or charter schools' interpretation of capacity to provide could result in inequities between different districts and between different charter schools.

Response: The Department works closely with all districts and charter schools to provide feedback, support and guidance on ways to provide gifted or talented education services, especially when resources may be limited, in an effort to ensure students' needs are met. No change will be made to the regulation.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 902 Gifted or Talented Education Plan to clarify language in order to continue to allow gifted or talented services to be provided based on a school district's or charter school's capacity, and to outline school district and charter school responsibilities. Additionally, this regulation provides additional clarification requiring both school districts and charter schools to have a gifted or talented education plan, but school districts and charter schools could determine the extent of the plan and the areas of giftedness covered.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 902 Gifted or Talented Education Plan. Therefore, pursuant to 14 **Del.C.** §3126, 14 **DE Admin. Code** 902 Gifted or Talented Education Plan attached hereto as *Exhibit "A"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 902 Gifted or Talented Education Plan hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 902 Gifted or Talented Education Plan amended hereby shall be in the form attached hereto as *Exhibit "A"*, and said regulation shall be cited as 14 **DE Admin. Code** 902 Gifted or Talented Education Plan 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.** §3126 on January 18, 2024. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 18th day of January 2024.

Department of Education

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

Approved this 18th day of January 2024

State Board of Education

/s/ Shawn Brittingham, President

/s/ Wali W. Rushdan, II

/s/ Deborah Stevens, Vice President

/s/ Candice Fifer

/s/ Provey Powell, Jr.

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

902 Gifted or Talented Education Plan

1.0 Purpose

The purpose of this regulation is to establish that a gifted or talented student, as identified by a professionally qualified person or persons, may require differentiated educational programs or services beyond those normally provided by the regular school program in order to address the ~~individual's~~ individual student's capabilities. The school districts' or charter schools' capacity to provide differentiated educational programs or services should also be considered as this varies between school districts and charter schools. Capacity means the way in which a school district or charter school chooses to identify its areas of giftedness and the types of services they choose to provide. A school district or charter school is not required to provide programming for all giftedness areas.

2.0 Definitions

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

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

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

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

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

"Relative Caregiver caregiver" means, pursuant to 14 Del.C. §202(f)(2), an adult who, by blood, marriage or adoption, is the child's great grandparent, grandparent, step grandparent, great aunt, aunt, step aunt, great uncle, uncle, step uncle, step parent, brother, sister, step brother, step sister, half brother, half sister, niece, nephew, first cousin, or first cousin once removed but who does not have legal custody or legal guardianship of the student.

3.0 ~~Development and Components of the Plan~~ Development, Components and Plan Review

3.1 Each school district or charter school shall have a Plan plan which, at a minimum, shall:

3.1.1 Outline the anticipated services to be provided and giftedness areas to be covered based upon each individual district or charter school's capacity.

~~3.1.1~~ 3.1.2 Outline goals and specific outcomes;

~~3.1.2~~ 3.1.3 Be developed with input from various stakeholder groups including parents;

~~3.1.3~~ 3.1.4 Provide the process for identification of gifted or talented students by professionally qualified persons;

~~3.1.4~~ 3.1.5 Outline an identification process that includes how each district or charter identifies gifted learners and in which defined giftedness areas that ensures all students have an equal opportunity to be identified and participate in the program;

~~3.1.5~~ 3.1.6 Provide for a communication process, which shall include procedures to inform ~~parent(s), guardian(s), or Relative Caregiver(s)~~ parents, guardians, or relative caregivers of a student's participation in the gifted or talented education program;

~~3.1.6~~ 3.1.7 Establish procedures for requiring that, at a minimum, each teacher assigned to teach a student identified as gifted or talented be certified in accordance with the applicable Professional Standards Board regulations.

~~3.1.7~~ 3.1.8 Establish procedures for ~~the identification and placement of a student who was identified as gifted or talented in the school district from which the student transferred~~ students who transfer into the school district or charter school who have been identified as gifted or talented in their prior school; and

~~3.1.8~~ 3.1.9 Provide for an evaluation of the ~~Plan provided for its gifted or talented students plan~~.

3.2 Implementation of the gifted or talented programs and services shall be aligned to the ~~Plan~~ plan.

3.3 The Department of Education shall review each plan periodically, but not less than every 5 years for compliance with this regulation and equitable practices. If a school district or charter school makes any substantive changes to the gifted or talented education plan, the plan shall be provided to the Department of Education within 1 year of the change for review for compliance with this regulation.

4.0 ~~Department of Education Responsibilities~~ Resources

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

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

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), and 1221(2) (14 **Del.C.** §§1203, 1205(b), and 1221(2))
14 **DE Admin. Code** 1504

ORDER

1504 Certificate of Eligibility

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§1203, 1205(b), and 1221(2), the Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1504 Certificate of Eligibility. The regulation concerns the issuance, extension, and retention of a Certificate of Eligibility. The proposed amendments include clarifying Section 1.0; striking terms in Section 2.0; revising Section 3.0, which concerns issuing a Certificate of Eligibility; adding the issuance, extension, application, and retention requirements for individuals who seek an Initial License and content area Standard Certificate in Section 4.0; adding the issuance, extension, application, and retention requirements for individuals who hold an Initial, Continuing, or Advanced License and content area Standard Certificate in Section 5.0; revising Section 6.0, which concerns validity of a Certificate of Eligibility; revising Section 8.0, which concerns disciplinary action; and adding Section 9.0, which concerns applicants' and educators' contact information.

Notice of the proposed regulation was published in the *Register of Regulations* on December 1, 2023. The Professional Standards Board received two written submittals concerning the proposed regulation. Benjamin Shrader, Chairperson of the State Council for Persons with Disabilities ("SCPD") commented that SCPD supports the proposed changes. Ann C. Fisher, Chairperson of the Governor's Advisory Council for Exceptional Citizens ("GACEC") commented that GACEC supports the proposed revisions. GACEC commented that the proposed

regulation "attempt[s] to expand the eligible teacher pool while maintaining standards and oversight of instructor quality."

II. FINDINGS OF FACTS

On January 11, 2024, the Professional Standards Board considered the two written submittals and determined that further changes as a result of the written submittals were not necessary. The Professional Standards Board voted to propose 14 **DE Admin. Code** 1504 Certificate of Eligibility, 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** 1504 Certificate of Eligibility.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1504 Certificate of Eligibility subject to the State Board of Education's approval. On January 18, 2024, the State Board of Education approved amending 14 **DE Admin. Code** 1504 Certificate of Eligibility. Therefore, pursuant to 14 **Del.C.** §§1203, 1205(b), and 1221(2), 14 **DE Admin. Code** 1504 Certificate of Eligibility, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1504 Certificate of Eligibility amended hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1504 Certificate of Eligibility 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 18th day of January, 2024.

Department of Education

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

Approved this 18th day of January, 2024.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Wali W. Rushdan, II

/s/ Deborah Stevens, Vice President

/s/ Candice Fifer

/s/ Rev. Provey Powell, Jr.

***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 December 2023 issue of the *Register* at page 386 (27 DE Reg. 386). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/march2024/final/27 DE Reg 675 03-01-24.htm>

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), and 1220 (14 Del.C. §§1203, 1205(b), & 1220)
14 DE Admin. Code 1553

ORDER

1553 Driver and Traffic Safety Education Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §§1203, 1205(b), and 1220, the Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1553 Driver and Traffic Safety Education Teacher. The regulation concerns the requirements for a Driver and Traffic Safety Education Teacher Standard Certificate. The proposed amendments include clarifying the requirement regarding an applicant's driving record in subsections 4.1.3 and 5.1.5 and specifying that a 5-year driving record is required to be submitted with an application in subsections 6.3.4 and 6.5.5.

Notice of the proposed regulation was published in the *Register of Regulations* on December 1, 2023. The Professional Standards Board did not receive any written submittals concerning the proposed regulation.

II. FINDINGS OF FACTS

On January 11, 2024, the Professional Standards Board voted to propose 14 DE Admin. Code 1553 Driver and Traffic Safety Education Teacher, 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 1553 Driver and Traffic Safety Education Teacher.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 DE Admin. Code 1553 Driver and Traffic Safety Education Teacher subject to the State Board of Education's approval. On January 18, 2024, the State Board of Education approved amending 14 DE Admin. Code 1553 Driver and Traffic Safety Education Teacher. Therefore, pursuant to 14 Del.C. §§1203, 1205(b), and 1220, 14 DE Admin. Code 1553 Driver and Traffic Safety Education Teacher, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 DE Admin. Code 1553 Driver and Traffic Safety Education Teacher amended hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 DE Admin. Code 1553 Driver and Traffic Safety Education Teacher 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 18th day of January, 2024.

Department of Education

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

Approved this 18th day of January, 2024.

FINAL REGULATIONS

State Board of Education

/s/ Shawn Brittingham, President

/s/ Wali W. Rushdan, II

/s/ Deborah Stevens, Vice President

/s/ Candice Fifer

/s/ Rev. Provey Powell, Jr.

*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 December 2023 issue of the *Register* at page 393 (27 DE Reg. 393). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

<https://regulations.delaware.gov/register/march2024/final/27 DE Reg 677 03-01-24.htm>

DEPARTMENT OF FINANCE

OFFICE OF THE STATE LOTTERY

Statutory Authority: 29 Delaware Code, Section 4805 (29 Del.C. §4805)
10 DE Admin. Code 203

ORDER

203 Video Lottery and Table Game Regulations

The Director of the Office of the State Lottery ("Director") issues this Order to take effect ten (10) days after it has been published in the Delaware *Register of Regulations*:

1. Pursuant to his statutory authority, the Director proposed for adoption revisions to the Office of the State Lottery's existing charitable video lottery regulations (10 DE Admin. Code 205) setting forth clearer requirements for the licensing of Gaming and Non-Gaming Vendors, as well as for rehires and transfers of licensed employees.

Other regulations issued by the Director are not affected by this Order.

2. The statutory authority for these revisions is **29 Del.C. §§ 4805**.

3. A copy of the proposed regulations was published in the January 1, 2024 edition of the Delaware *Register of Regulations* and has been available for inspection in the Office of the State Lottery, 1575 McKee Road, Suite 102, Dover, Delaware 19904 during regular office hours.

4. The Director did not receive any written comments on the proposed regulations during the thirty-day period following publication of the proposed regulations on January 1, 2024.

5. The Director finds that the proposed changes as set forth in the January 2024 *Register of Regulations* should be adopted as submitted.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director of the Office of the State Lottery does hereby ORDER that the regulations be, and that they hereby are, enacted as set forth below. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 Del.C. §10118(g).

Helene Keeley, Director
Office of the State Lottery

Feb. 02, 2024
Date

*Please note that no changes were made to the regulation as originally proposed and published in the January 2024 issue of the *Register* at page 484 (27 DE Reg. 484). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

<https://regulations.delaware.gov/register/march2024/final/27 DE Reg 678 03-01-24.htm>

OFFICE OF THE STATE LOTTERY

Statutory Authority: 29 Delaware Code, Section 4819A (29 Del.C. §4819A)
10 DE Admin. Code 205

ORDER

205 Delaware Charitable Video Lottery Regulations

The Director of the Office of the State Lottery ("Director") issues this Order to take effect ten (10) days after it has been published in the Delaware *Register of Regulations*:

1. Pursuant to his statutory authority, the Director proposed for adoption revisions to the Office of the State Lottery's existing charitable video lottery regulations (10 DE Admin. Code 205) to remove the annual requirement for Charitable Gaming Organizations (CGOs) to submit an affidavit of membership if that CGO does not wish to exceed the minimum number of allowable video lottery machines. Other regulations issued by the Director are not affected by this Order.

2. The statutory authority for these revisions is **29 Del.C. §§ 4819A**.

3. A copy of the proposed regulations was published in the January 1, 2024 edition of the Delaware *Register of Regulations* and has been available for inspection in the Office of the State Lottery, 1575 McKee Road, Suite 102, Dover, Delaware 19904 during regular office hours.

4. The Director did not receive any written comments on the proposed regulations during the thirty-day period following publication of the proposed regulations on January 1, 2024.

5. The Director finds that the proposed changes as set forth in the January 2024 *Register of Regulations* should be adopted as submitted.

DECISION AND ORDER CONCERNING THE REGULATIONS

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director of the Office of the State Lottery does hereby ORDER that the regulations be, and that they hereby are, enacted as set forth below. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 Del.C. §10118(g).

Feb. 02, 2024

Helene Keeley, Director
Office of the State Lottery

Date

***Please note that no changes were made to the regulation as originally proposed and published in the January 2024 issue of the *Register* at page 485 (27 DE Reg. 485). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/march2024/final/27 DE Reg 679 03-01-24.htm>

FINAL REGULATIONS

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

16 **DE Admin. Code** 14000, 25000

ORDER

Continuous Coverage for Children Enrolled in Medicaid

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend Title XIX Medicaid State Plan regarding Continuous Coverage for Children Enrolled in Medicaid, specifically, to provide continuous eligibility to children Enrolled in Medicaid for a full 12-month period regardless of changes in circumstances with limited exceptions. 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 January 2024 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by January 31, 2024, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that Delaware Health and Social Services (DHSS)/Division of Medicaid and Medical Assistance (DMMA) is proposing to amend Title XIX Medicaid State Plan and Division of Social Services Manual (DSSM) regarding Continuous Coverage for Children Enrolled in Medicaid.

Background

Section 5112 of the CAA amended titles XIX of the Social Security Act (SSA) to require that states provide 12 months of Continuous Eligibility (CE) for children under the age of 19 in Medicaid effective January 1, 2024. The Continuous Eligibility provides coverage to children regardless of changes in circumstances with certain exceptions. Extending this coverage will protect families from experiencing gaps in coverage that support better short-term and long-term health outcomes and promote health equity.

Statutory Authority

- The Consolidated Appropriations Act of 2023 (CAA)
- 42 CFR 435.926
- 42 CFR 916(d)(1)(i)

Purpose

The purpose of this proposed regulation is to provide continuous eligibility to children enrolled in Medicaid for a full 12-month period regardless of changes in circumstances with limited exceptions.

Summary of Proposed Changes

Effective January 1, 2024, the DHSS/DMMA proposes to amend the Division of Social Services Manual (DSSM) and Title XIX Medicaid State Plan regarding continuous eligibility for children enrolled in Medicaid, specifically, to provide 12 months of continuous eligibility for children under the age of 19 enrolled in Medicaid.

Public Notice

In accordance with the *federal* public notice requirements established at Section 1902(a)(13)(A) of the Social Security Act and 42 CFR 440.386 and the *state* public notice requirements of Title 29, Chapter 101 of the **Delaware Code**, DHSS/DMMA gave public notice and provided an open comment period for 30 days to allow all stakeholders an opportunity to provide input on the proposed regulation. Comments were to have been received by 4:30 p.m. on January 31, 2024.

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact Statement

	Federal Fiscal Year 2024	Federal Fiscal Year 2025
General (State) funds	\$4,469,369.70	\$5,854,145.87
Federal funds	\$6,623,630.30	\$8,936,520.80

Summary of Comments Received with Agency Response and Explanation of Changes

The following comments were received:

Comment: Council supports the amendment as it enables Delaware to comply with federal law and provides additional stability in children's health coverage. Additionally, Council would encourage DHSS to insert a comma following "eligibility" in proposed DSSM §14810.2, exception #4 to provide clarity to the policy interpretation.

Agency Response: DMMA appreciates the support and agrees with interpretation requiring the insertion of the comma.

Comment: There were comments supporting the proposed changes as they enable Delaware Medicaid to comply with federal law and aligns Medicaid policy with its Delaware Healthy Children Program to provide 12 months of Continuous Eligibility (CE) for children under the age of 19.

Agency Response: DMMA appreciates the support.

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

- Nemours Children's Health
- State Council for Persons with Disabilities (SCPD)
- Governor's Advisory Council for Exceptional Citizens (GACEC)
- Community Legal Aid Society, Inc. (CLASI)

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the January 2024 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) and Title XIX Medicaid State Plan regarding Continuous Coverage for Children Enrolled in Medicaid, specifically, to provide continuous eligibility to children enrolled in Medicaid for a full 12-month period regardless of changes in circumstances with limited exceptions and shall be final effective March 11, 2024.

2/13/2024 | 1:01 PM EST

Date of Signature

Josette D. Manning, Esq.
Cabinet Secretary, DHSS

*Please note that no changes were made to the regulation as originally proposed and published in the January 2024 issue of the *Register* at page 486 (27 DE Reg. 486). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

<https://regulations.delaware.gov/register/march2024/final/27 DE Reg 680 03-01-24.htm>

DEPARTMENT OF INSURANCE

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and 915 (18 Del.C. §§311 & 915)

REGULATORY IMPLEMENTING ORDER

1004 Term and Universal Life Insurance Reserve Financing

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

In the January 1, 2024 edition of the *Register of Regulations*, at 27 DE Reg. 489 (01/01/2024), the Commissioner of the Delaware Department of Insurance (Commissioner) published a proposal to implement the National Association of Insurance Commissioners Model Regulation #787, which establishes uniform, national standards governing reserve financing arrangements pertaining to life insurance policies with secondary guarantees and ensures that funds consisting of primary security and other security are held in the forms and amounts required.

The Department did not receive any comments regarding proposed Regulation 1004.

II. FINDINGS OF FACTS

The Commissioner finds that 18 DE Admin. Code 1004 as proposed in the January 1, 2024 *Register of Regulations*, having been properly noticed and open for public comment, should be adopted for the reasons set forth in the proposal.

III. DECISION TO ADOPT THE PROPOSED AMENDMENTS

For the foregoing reasons, the Commissioner concludes that it is appropriate to adopt 18 DE Admin. Code 1004.

IV. EFFECTIVE DATE OF ORDER

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

IT IS SO ORDERED.

The 15th day of February, 2024.

Trinidad Navarro
Commissioner
Delaware Department of Insurance

*Please note that no changes were made to the regulation as originally proposed and published in the January 2024 issue of the *Register* at page 489 (27 DE Reg. 489). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

<https://regulations.delaware.gov/register/march2024/final/27 DE Reg 682 03-01-24.htm>

DEPARTMENT OF LABOR

DIVISION OF PAID LEAVE

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

ORDER

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

SUMMARY OF THE EVIDENCE

1. Title 19, Sections 105 and 3720 of the Delaware Code authorize the Department of Labor ("Department") to establish, amend and repeal regulations necessary for the internal administration of the Department, and for the proper conduct of any necessary hearings before the Department or its authorized agents and in relation to the administration and enforcement of the Healthy Delaware Families Act ("Act") and the Division of Paid Leave ("Division").
2. The Department's purpose in proposing these regulations was to set forth additional definitions, guidance, procedures, and standards for the implementation of the Act and its Family Medical Leave Insurance Program ("PFML" or "Program"). The Division will administer the Act and this Program in accordance with these regulations.
3. Notice of the proposed regulation was published in the January 1, 2024 edition of the *Delaware Register of Regulations*.
4. The Department invited a period of 30 days, until February 1, 2024, for written comment from the public.
5. The Department received 5 written submittals from organizations representing businesses and community members regarding the proposed regulations. One comment sought changes to proposed language to have consistent terminology, which the Division agrees is appropriate. One comment dealt with clarification regarding an employee's obligation to provide advanced notice when taking leave, which the Division also agrees is appropriate. Some comments dealt with Sections of the regulations where no change was proposed. The Division will consider these comments in future rounds of regulations. None of the comments received require any substantive changes to the proposed regulations.
6. On further review of the published proposed regulations and in light of the public comments received, the Department determined that some non-substantive edits to the proposed rules were needed simply to clarify based upon questions raised by some of the commentators. Non-substantive changes made are summarized as follows:
 - Section 1 ("Employee") was modified to clarify whether an individual is an employee is determined by whether they receive a W-2;
 - Section 1 ("Family and medical leave benefits") was modified to clarify the circumstances when an individual is not entitled to family and medical leave benefits;
 - Subsections 10.2.1.2 and 10.3, were modified to reflect language specified and consistent with the Act, being "average weekly wage" rather than "normal weekly salary" and "wages;"
 - Subsection 11.2 was revised to reference the correct statutory citation;

- Subsection 11.3 was clarified to reference the definition of "Employee" found in Section 1.0;
- Subsection 11.4 was modified to reflect language specified and consistent with the Act, being "acquired knowledge" rather than "believes;" and
- Subsections 11.6.1 and 11.6.2 were added to clarify that an employee's notice requirement to an employer applies to intermittent as well as continuous leave.

The changes from the proposed rules are in bold bracketed text:

1.0 Definitions

"Employee" means an individual employed by an employer. For purposes of the Act, individuals primarily reporting for work at a worksite in this State are employees unless otherwise excluded. "Primarily" is defined as working at least 60% of an employee's work hours physically in Delaware each calendar quarter. Individuals primarily reporting for work at a worksite or telecommuting outside of this State are not considered employees under the Act unless the employer and employee elect in writing to reclassify them as such. Employee does not include ~~those in business for themselves in a non-corporate form who offer services to the public as a~~ **[an individual who is self-employed, including a member of a LLC,] [sole proprietor,]** or partner **[member] [in a partnership] [or joint venture, independent contractor, or] any [other]** self-employed individual unless they separately qualify as a bona fide employee by paying themselves wages reported on Form W-2. Notwithstanding, these individuals may "reclassify" to be considered employees to participate in the Paid Family and Medical Leave Insurance Program **19 Del.C. Ch. 37** ("PFML"). An "employee" under PFML does not include the following types of individuals:

- Federal government workers, railroad workers, and employees of Tribal Governments;
- State of Delaware employees in a casual/seasonal position covered under §5903(17)a. of Title 29;
- and
- Department of Education employees who are in a casual/seasonal position that would be covered under §5903(17)a. of Title 29, or in an equivalent casual/seasonal position with an entity covered by State employee benefits.

"Family and medical leave benefits" means benefits received pursuant to the Act for family caregiving, medical, or parental leave. For purposes of the Act, an individual is not entitled to family and medical leave benefits for an absence if an individual is receiving **[for is entitled to receive]:**

- temporary disability benefits under the Workers' Compensation Act, 19 Del.C. §2301 et seq. due to a workplace accident or injury;
- personal injury protection benefits under 21 Del.C. §2118 due to an injury from an automobile accident; or
- unemployment insurance benefits under 19 Del.C. §3311 et seq.

10.0 Coordination of benefits **[Reserved.]**

10.2.1.2 If PFML is primary, the employer provided disability/paid leave policy will supplement the PFML benefit up to no more than 100% of a covered individual's **[average weekly]** wages.

10.3 Covered individuals cannot receive more than 100% of their **[normal weekly salary] [average weekly wage]** during their PFML benefit period. It is both the employer and the covered individual's shared responsibility to review benefit information to make sure any supplemental benefits or wages are integrated correctly with the PFML benefit to avoid an overpayment.

11.0 Notice

11.2 **[Reserved].** The Division shall make available, on its website, a Paid Family and Medical Leave notice for employers to utilize that meets the notice requirement set forth in **[\$3710(e)] [19 Del.C. §3710(a)].**

11.3 **[Reserved].** Written notice required by 19 Del.C. §3710(a)-(b), shall be provided to all of an employer's existing Delaware-based employees **[as defined in Section 1.0 of this regulation]** at least 30 days prior to the start of contributions on January 1, 2025.

11.4 Written notice required by 19 Del.C. §3710(a)-(b) shall also be provided upon the hiring of an employee, when an employee requests leave, or when an employer ~~believes~~ [acquires knowledge] an employee's leave may be a qualifying event under the Act.

[11.6.1] [If an employee is on intermittent leave for planned medical treatment for themselves or a family member with a serious health condition, the employee should provide the employer with as much advance notice as is reasonably possible prior to taking leave.]

[11.6.2] [If an employee is on intermittent leave due to their own serious health condition or that of a family member, and the need for leave is unplanned, the employee should notify the employer as soon as practicable, in the usual and customary manner employees notify the employer if they will be absent from work.]

7. A copy of the published regulation formatted to show the above non-substantive changes is attached hereto as Exhibit A.

8. Having solicited and requested public comment on the proposed regulations in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Ch. 101, et. seq., and determining that no substantive changes are required to the proposed regulations, this is the Department's Decision and Order adopting the proposed regulations with the proposed non-substantive edits set forth herein and with the rest of the proposed rules as published remaining unchanged.

FINDINGS OF FACT AND CONCLUSIONS

The Department reviewed and considered the written submittals and in response to the comments received, the Department clarified some language by editing subsections 1.0, 10.2.1, 10.3, 11.2, 11.3, and 11.4. Also in response to comments received, the Department added subsections 11.6.1 and 11.6.2. In accordance with 29 Del. C. §10118(c), the Department determines that the edits described herein are not substantive, and as a result, is not required to repropose the changes. Accordingly, the Department finds that it is appropriate to adopt the proposed regulations, 19 DE Admin. Code 1401, pursuant to 19 Del.C. § 3720. The text of 19 DE Admin. Code 1401 shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 19 DE Admin. Code 1401 Healthy Delaware Families Act in the Administrative Code of Regulations for the Division.

ORDER

AND NOW this 14th day of February, 2024, it is hereby ordered that:

1. The proposed regulations, with the non-substantiative changes, are hereby adopted;
2. The effective date of this order is 10 days from the date of its publication in the *Delaware Register of Regulations* in accordance with 29 Del. C. §10118(e); and
3. The Department reserves to itself the authority to issue such order and further orders concerning its Regulations as it deems appropriate.

IT IS SO ORDERED.
Department of Labor
Karryl Hubbard, Secretary of Labor

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

<https://regulations.delaware.gov/register/march2024/final/27 DE Reg 683 03-01-24.htm>

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Section 1902 (7 Del.C. §1902)
7 DE Admin. Code 3755

Secretary's Order No.: 2024-F-0001

**RE: Approving Final Amendments to 7 DE Admin. Code 3755:
*Lobsters (Homarus americanus)***

Date of Issuance: February 02, 2024

Effective Date of the Amendment: March 11, 2024

3755 Lobsters (*Homarus americanus*)

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), and pursuant to 7 Del C. §1902, 7 Del.C. Chapter 60, and all other relevant statutory authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced promulgation.

Background, Procedural History and Findings of Fact

This Order relates to the Department's proposed regulatory amendments to 7 DE Admin. Code 3755: *Lobsters (Homarus americanus)* ("Amendments"). The Department's Division of Fish and Wildlife ("DFW") is proposing to amend Delaware's existing lobster regulation to comply with the Atlantic States Marine Fisheries Commission ("ASMFC") Addendum XXIX to Amendment 3 to the American Lobster Fishery Management Plan ("FMP").

The ASMFC's American Lobster FMP requires all vessels with federal lobster permits to install and maintain an electronic tracking device that will transmit location data while the vessel is in the water. The FMP is requiring the electronic trackers because the same are now required by a National Oceanic and Atmospheric Administration ("NOAA") Fisheries federal regulation intended to reduce interactions between fishing boats and gear and the endangered North Atlantic Right Whale.

The North Atlantic Right Whale population is currently at an historically low level and has been listed as an endangered species under the federal Endangered Species Act. The federal agency overseeing the recovery efforts for the North Atlantic Right Whale, NOAA Fisheries, is attempting to reduce potential hazards to these whales.

Whale entanglement in the floating lines of lobster pot gear was identified as a major hazard and an important source of whale mortality. As a result, NOAA Fisheries has recently approved several rules intended to reduce whale entanglements in lobster pot gear. All federal lobster permit holders are required to install an approved device to collect and transmit spatial data in order to participate in the pot gear fishery in federal waters. Federally permitted vessels are required to install and activate an approved device prior to beginning a trip with lobster pot gear. The device must remain onboard the vessel and be powered at all times when the vessel is in the water unless the device is authorized to power down by the principal port state.

Addendum XXIX to the ASMFC American Lobster FMP requires all states with federal lobster permit holders to take complementary action to the above federal actions. Of note is the fact that the ASMFC is providing all lobster permit holders with funding for the tracking device that is being required, and the funding will also cover several years of service for the tracking device.

The Department's proposed amendments to 7 DE Admin. Code 3755 are contained within the new proposed Section 4.0, *Electronic Tracking Devices*. Section 4.1 provides that the aforementioned "Electronic Tracking Device" shall be defined as an electronic device approved by the ASMFC, used to track vessel location, and to

collect and transmit such spatial data to the DFW in compliance with Addendum XXIX, as noted above. Section 4.2 provides that the tracking device shall be installed and activated prior to beginning a lobster fishing trip with pot gear onboard by a Delaware commercial lobster pot licensee operating any vessel named on a NOAA Fisheries limited access lobster permit, pursuant to 50 CFR §697.4, to fish trap gear for lobsters and Jonah crabs in the Exclusive Economic Zone. Additionally, Section 4.2 provides that all permit holders shall sign a written affidavit confirming the electronic tracking device has been installed. Lastly, Section 4.3 provides that the tracking device shall remain onboard the vessel and be powered on at all times when the vessel is in the water.

The Department has the statutory basis and legal authority to promulgate the proposed Amendments pursuant to 7 *Del.C.* §1902. The Department published the initial proposed Amendments in the December 1, 2023, *Delaware Register of Regulations ("Register")*. The virtual public hearing was held in this matter on December 21, 2023. No members of the public attended the hearing.

Pursuant to 29 *Del.C.* §10118(a), the hearing record ("Record") remained open for fifteen (15) additional days following the public hearing for receipt of public comment. The Record formally closed with regard to public comment on January 5, 2024. Only one written comment was received by the Department concerning this proposed regulatory promulgation, and the DFW's response to the same is discussed below. It should be noted that all notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

At the request of presiding Hearing Officer Lisa A. Vest, the Department's DFW prepared a Technical Response Memorandum ("TRM"). This TRM, dated January 11, 2024, provided a response to the sole comment received in this matter. Thereafter, Hearing Officer Vest prepared her Hearing Officer's Report ("Report") dated January 23, 2024. The Report expressly incorporated both the Department's proposed Amendments and the TRM into the Record generated in this matter, and attached both documents to the Report as Appendices "A" and "B," respectively. The Report documents the proper completion of the required regulatory amendment process, establishes the Record, and recommends the adoption of the proposed Amendments.

Reasons and Conclusions

Currently pending before the Department is the adoption of the proposed amendments to 7 DE Admin. Code 3755, *Lobsters (Homarus americanus)*. As noted previously, the proposed Amendments will enable the Department to comply with the ASMFC Addendum XXIX to Amendment 3 to the American Lobster FMP, which requires all vessels with federal lobster permits to install and maintain an electronic tracking device that will transmit location data while the vessel is in the water.

The Record reflects that only one comment was received by the Department in this matter. That commenter questioned the need for this particular regulation, not the content of the regulation itself. In the Department's TRM dated January 11, 2024, the DFW acknowledged receipt of this comment, and responded to the same by noting that the proposed promulgation is necessary in order for the Department to comply with the ASMFC Addendum XXIX noted above, and for Delaware's lobster fishery to continue to operate.

Based on the Record developed in this matter, I find and conclude that the Department has provided appropriate reasoning regarding the need for the proposed Amendments. Accordingly, I recommend promulgation of the Amendments to 7 DE Admin. Code 3755, *Lobsters (Homarus americanus)*, in the customary manner provided by law.

Further, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code 3755, *Lobsters (Homarus americanus)*, pursuant to 7 *Del.C.* §1902;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del. C.* Ch. 60, to issue an Order adopting the proposed Amendments as final;
3. The Department provided adequate public notice of the proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the proposed Amendments, including at the time of the virtual public hearing held on December 21, 2023, and during the 15 days subsequent to the hearing (through January 5, 2024), in order to consider all public comment on the same before making any final decision;
4. Promulgation of the proposed Amendments will enable Delaware to remain in compliance with the ASMFC Addendum XXIX to Amendment 3 to the American Lobster FMP, thereby allowing Delaware's lobster fishery to continue to operate;

5. The Department has reviewed the proposed Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and believes the same to be lawful, feasible, and desirable, that it will not establish substantive additional costs for individuals or small businesses, and that the recommendations as proposed should be applicable to all Delaware individuals or small businesses equally;

6. The Department's proposed Amendments, as published in the December 1, 2023, *Delaware Register of Regulations*, fully vetted to the public at the public hearing held on December 21, 2023, and attached to the Report as noted above as Appendix "A," are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, the same are approved as final Amendments, which shall go into effect ten days after publication in the next available issue of the *Delaware Register of Regulations*;

7. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary;

8. The Department shall submit this Order approving the proposed Amendments as final Amendments to the *Delaware Register of Regulations* for publication in its next available issue, and shall provide such other notice as the law and regulation require, as the Department determines is appropriate; and

9. The Department shall serve and publish its Order on its internet site.

Lisa Borin Ogden
For Shawn M. Garvin
Secretary

3755 Lobsters (*Homarus americanus*)

1.0 Lobsters Pot Design

(Penalty Section 7 *Del.C.* §1912)

- 1.1 It is unlawful for any person to set, tend or conduct shellfishing for lobsters with any pot or trap in the waters under the jurisdiction of the State unless said pot or trap has an escape vent, slot or port of not less than two (2) inches by 5 ³/₄ inches located in the parlor section of each pot or trap, or if a circular escape vent is used in the parlor section of any lobster pot or trap, it is unlawful to use less than two (2) circular vents that are less than 2 ⁵/₈ inches inside diameter.
- 1.2 It is unlawful for any person to set, tend or conduct shellfishing for lobsters with any pot or trap, not constructed entirely of wood, excluding heading or parlor twine and the escape vent, that does not contain a ghost panel covering an opening that measures at least 3 ³/₄ inches by 3 ³/₄ inches. A ghost panel means a panel, or other mechanism, designed to allow the escapement of lobsters after a period of time if the pot or trap has been abandoned or lost. The panel must be constructed of, or fastened to the pot or trap with, one of the following untreated materials: wood lath, cotton, hemp, sisal or jute twine not greater than 3/16 inch in diameter, or non-stainless, uncoated ferrous metal not greater than 3/32 inch in diameter. The door of the pot or trap may serve as the ghost panel, if fastened with a material specified in this subsection. The ghost panel must be located in the outer parlor(s) of the pot or trap and not the bottom of the pot or trap.
- 1.3 It is unlawful for any recreational or commercial lobster pot fisherman to set, tend or conduct shellfishing for lobsters with a lobster pot or trap with a volume larger than 22,950 cubic inches.

2.0 Lobsters Pot Season And Limits

Penalty Section 7 *Del.C.* §1912)

- 2.1 Except as provided in subsections 2.1.1 and 2.1.2, it is unlawful to set or tend lobster pots or to take and reduce to possession or attempt to take and reduce to possession lobsters during the period February 1 through March 31.
 - 2.1.1 A person with a valid Commercial Lobster Pot License may remove lobster gear from the water during the period February 1 through February 14; however, no lobsters may be reduced to possession.
 - 2.1.2 A person with a valid Commercial Lobster Pot License may set lobster gear during the period March 25 through March 31; however, the gear cannot be tended and no lobsters may be reduced to possession.

- 2.2 It is unlawful for any person who has a valid Commercial Lobster Pot License to harvest lobsters in the waters under the jurisdiction of the State on any Sunday.
- 2.3 It is unlawful for any person who has a valid Commercial Lobster Pot License to set, tend or use in any manner in excess of fifty (50) lobster pots for the taking of lobsters in the waters under the jurisdiction of the State.
- 2.4 It shall be unlawful for any person, licensed to catch or land lobsters for commercial purposes in this State, who uses gear or methods other than pots or traps outside the jurisdiction of this State, to land more than 100 lobsters per day for each day at sea during the same trip, up to a maximum of 500 lobsters per trip for trips 5 days or longer.

3.0 V-notched Lobsters

(Penalty Section 7 Del.C. §1912)

- 3.1 It is unlawful for any person to possess a V-notched female lobster. V-notched female lobster means any female lobster bearing a V-notch, a straight-sided triangular cut with or without setal hairs at least 1/8 inch in depth and tapering to a sharp point, in the flipper (uropod) next to the right of center flipper (telson) as viewed from the rear of the female lobster with the underside (ventral side) facing down.
- 3.2 Any person that catches an egg-bearing female lobster shall notch it as outlined in subsections 3.2.1 through 3.2.5.
 - 3.2.1 The notch shall be made on the flipper (uropod) immediately to the right of the central flipper (telson) as viewed from the rear of the lobster with the underside (ventral side) facing down.
 - 3.2.2 The notch shall be made by means of a sharp bladed instrument.
 - 3.2.3 The notch shall be made at least ¼ inch in width along the outer margin of the flipper.
 - 3.2.4 The notch shall taper to a sharp point at least ½ inch deep.
 - 3.2.5 The lobster shall be immediately returned to the water upon completion of the notch.
- 3.3 It is unlawful to possess a female lobster that is mutilated in a manner that could hide, obscure or obliterate a V-notch.

4.0 Electronic Tracking Devices

4.1 Definitions

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

"Electronic Tracking Device" means an electronic device approved by the Atlantic States Marine Fisheries Commission and used to track vessel location and collect and transmit this spatial data to the Division in compliance with Addendum XXIX to the Interstate Fishery Management Plan for American Lobster and Addendum IV to the Interstate Fishery Management Plan for Jonah Crabs.

- 4.2 An electronic tracking device shall be installed and activated prior to beginning a lobster fishing trip with pot gear onboard by a Delaware commercial lobster pot licensee operating any vessel named on a NOAA Fisheries limited access lobster permit, pursuant to 50 CFR § 697.4, to fish trap gear for lobsters and Jonah crabs in the Exclusive Economic Zone. All permit holders shall sign a written affidavit confirming the electronic tracking device has been installed.
 - 4.3 The electronic tracking device shall remain onboard the vessel and powered on at all times when the vessel is in the water.
-

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

BOARD OF REGISTRATION FOR PROFESSIONAL LAND SURVEYORS

Statutory Authority: 24 Delaware Code, Section 2706(a)(1) (24 Del.C. §2706(a)(1))
24 DE Admin. Code 2700

ORDER

2700 Board of Registration for Professional Land Surveyors

After due notice in the Delaware Register of Regulations and two Delaware newspapers, a public hearing was held on January 18, 2024 at a scheduled meeting of the Delaware Board of Professional Land Surveyors ("Board") to receive comments regarding proposed amendments to the Board's rules and regulations. The revised subsection 10.1.2 would relax the PDH requirement for disabled, retired licensees under the age of 62. Additional technical and style changes consistent with the *Delaware Administrative Code Drafting and Style Manual* have also been made.

The proposed changes to the rules and regulations were published in the *Delaware Register of Regulations*, Volume 27, Issue 5 on November 1, 2023, giving notice of a January 18, 2024 public hearing at 8:30 a.m. Notice of the January 18, 2024 hearing was also published in the *News Journal* (Board Exhibit 1) and the *Delaware State News* (Board Exhibit 2). Pursuant to 29 Del.C. § 10118(a), the date to receive final written comments was February 7, 2024, 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on February 15, 2024.

Summary of the Evidence and Information Submitted

The following exhibits were made a part of the record:

Board Exhibit 1: *News Journal* Affidavit of Publication.
Board Exhibit 2: *Delaware State News* Affidavit of Publication.

At the public hearing on January 18, 2024, no public comment was received.

No written comments were submitted.

Findings of Fact and Conclusions

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

Pursuant to 24 Del.C. § 2706(a)(1), the Board has the statutory authority to promulgate rules and regulations in accordance with the procedures specified in the Administrative Procedures Act. The Board finds reason to amend the regulations as proposed and hereby takes action to do so.

Decision and Effective Date

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

IT IS SO ORDERED this 15th day of February, 2024.

Board of Professional Land Surveyors

Kelly Katz, Chairman, Professional Member /s/ Charles Adams, Jr., Professional Member
(ABSENT)

/s/ James Bielecki, Vice Chairman, Professional Member /s/ Vance Daniels, Public Member
Member

/s/ Deborah Cottrell, Secretary, Public Member VACANT, Public Member

/s/ Robert Wijkowski, Professional 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 November 2023 issue of the *Register* at page 325 (27 DE Reg. 325). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/march2024/final/27 DE Reg 690 03-01-24.htm>

GENERAL NOTICES

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Sections 6006 and 6010 (7 Del.C. §§ 6006 & 6010)

Secretary's Order No.: 2024-A-0003

Approving Final Revision to Delaware's State Implementation Plan ("SIP"): *Basic Inspection & Maintenance Performance Standard Certification for New Castle County*

Date of Issuance: February 14, 2024

Effective Date of the Amendment: March 11, 2024

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

Background, Procedural History and Findings of Fact

This Order relates to the Department's proposed revision to Delaware's State Implementation Plan ("SIP") addressing the *Basic Inspection & Maintenance Performance Standard Certification for New Castle County*. Delaware is required by Section 110 of the federal Clean Air Act ("CAA") to submit to the U.S. Environmental Protection Agency ("EPA") a SIP that provides for the implementation, maintenance, and enforcement of the National Ambient Air Quality Standard ("NAAQS") established by the EPA. More specifically, Delaware is required to certify that it has met the basic Inspection and Maintenance ("I/M") performance standard for the New Castle County nonattainment area for the ozone NAAQS, through the submission of the SIP.

A SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and inventories. Delaware periodically submits revisions to the SIP as required by the CAA to address air quality nonattainment and maintenance issues. The CAA requires that any proposed SIP revision be made available for public comment and presented at a public hearing prior to submitting to EPA for adoption.

In 2015, EPA promulgated a revised NAAQS for ground-level ozone at a level of 70 parts per billion (ppb). The revised NAAQS for ground-level ozone is expected to provide better protections of public health and environment. Ground-level ozone, formed in the atmosphere by photochemical reactions among volatile organic compounds (VOC), oxides of nitrogen (NO_x), and carbon monoxide (CO) in the presence of sunlight, is a serious air pollutant that harms human health and the environment. On-road vehicle emissions contribute to ground-level ozone pollution by emitting carbon monoxide, ozone-forming hydrocarbons, nitrogen oxides, and air toxics. Promulgation of a revised NAAQS triggers a requirement for the EPA to designate areas as nonattainment, attainment, or unclassifiable, and to classify the nonattainment areas based upon the severity of nonattainment at the time of designation.

On June 4, 2018, under the 2015 8-hour Ozone NAAQS, the EPA designated 51 areas of the country as nonattainment which included the Philadelphia-Wilmington-Atlantic City (PA-NJ-MD-DE) Area ("Philadelphia NAA"). The Philadelphia NAA is comprised of 16 counties, with New Castle County being one of its regions. Collectively, the 2018-2020 design value for the area measured 0.074 parts per million (ppm) which is equal to 74 ppb and does not meet the revised NAAQS for ground-level ozone. The EPA classified the Philadelphia NAA as "marginal" nonattainment and required the Philadelphia NAA to meet the NAAQS attainment level by August 3, 2021.

On October 7, 2022, it was determined by the EPA that the Philadelphia NAA failed to meet attainment standards established in the NAAQS by August 3, 2021. Subsequently, EPA issued Final Rule 87 FR 60897,

reclassifying the Philadelphia NAA as "moderate" non-attainment. Under this rule, states with established I/M programs are required to perform and submit a Performance Standard Modeling ("PSM") analysis. They must also implement any essential program adjustments as part of their moderate area SIP submissions. This ensures that I/M programs meet or exceed the basic I/M performance standard level for the 2015 ozone NAAQS.

The Department conducted analysis to demonstrate the New Castle County's I/M program meets the regulations defined in 40 CFR Part 51, subpart S. Delaware's New Castle County I/M program is regulated under 7 DE Admin. Code 1131 - *Low Enhanced Inspection and Maintenance Program*. The New Castle County I/M program adheres to "low-enhanced" I/M performance standard which includes more stringent requirements than the "basic" I/M performance standard.

The Department utilized EPA's Motor Vehicle Emission Simulator (MOVES3.1.0) for the performance standard certification modeling analysis. The Department conducted two analyses, comparing Delaware's I/M program against EPA's basic I/M standards. The first scenario was representative of New Castle County's Low-Enhanced I/M program for the attainment year 2023 and the second scenario was representative of EPA's basic inspection and maintenance program defined in 40 CFR 50.352(e).

Utilizing the RunSpec, a system used to define elements prior to inputting the data into MOVES3.1.0, the Department created separate databases for each scenario. The input database incorporates county-specific parameters related to on-road fleet such as vehicle miles traveled, age distribution of 13 EPA vehicle types, fuel types, and the I/M program data. Additionally, the Department followed Section 3.1 of EPA's *Performance Standard Modeling for New and Existing Vehicle I/M Programs Using the MOVES Mobile Source Emissions Model*, for selecting the appropriate parameters to create the data.

To meet the EPA basic I/M performance standard, the grams per mile emission rate for volatile organic compounds (VOC) and nitrogen oxides (NO_x) must be equal to or less than the emissions rate calculated for the relevant standard. According to the analysis conducted for the New Castle County Low-Enhanced I/M program in the attainment year 2023, the VOC and NO_x emission rate measured 0.2085 grams per mile. In comparison, the EPA's basic I/M program recorded a slightly higher emission rate of 0.2148 grams per mile. The Department determined that the emission rate of VOCs and NO_x under the New Castle County's Low-Enhanced I/M program is less than the emission rate of EPA's basic I/M program and therefore Delaware's I/M program achieves the performance standard set forth by the EPA.

In accordance with EPA Final Rule 87 FR 60897, the Philadelphia NAA is required to implement any essential program adjustments. As mentioned above and supported by the analysis provided, Delaware's New Castle County's Low-Enhanced I/M program exceeds the basic I/M performance standard level for the 2015 ozone NAAQS. As a result, no further revisions are required as part of their moderate area SIP submission. The analysis conducted ensures, through the proposed PSM certification, that Delaware's New Castle County will continue to meet all applicable I/M requirements and operate at or above the applicable performance standard level for the corresponding ozone NAAQS.

The Department has the statutory basis and legal authority to act with regard to the proposed SIP revision pursuant to 7 *Del.C.* Chapter 60. The Department published the General Notice of this proposed SIP revision, and of the November 28, 2023 public hearing to be held in this matter, in the November 1, 2023 *Delaware Register of Regulations*. Subsequent to the publication of the General Notice, the Department proposed additional revisions to the SIP, in response to EPA's pre-hearing review. The Department is proposing non-substantive amendments to the SIP modifications, that include grammatical revisions, removal of most references and background regarding Sussex and Kent Counties, as they are not part of the Philadelphia NAA, and other clarifications throughout the SIP document.

The proposed *revised* SIP modifications were thoroughly vetted during at the hearing held on November 28, 2023, and the revisions were deemed non-substantive, and no further action was required by the Department. The Record remained open for comment subsequent to the aforementioned public hearing through December 13, 2023. No public comment was received by the Department during any phase of this hearing matter. All proper

notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Theresa Smith, prepared a Hearing Officer's Report dated January 14, 2023 ("Report"). The Report documents the proper completion of the required SIP revision process, establishes the Record, and recommends the approval of the proposed SIP revision into Delaware's SIP document, thus enabling the Department to certify through a PSM that Delaware's New Castle County's I/M program meets EPA basic I/M performance standards, defined in 40 CFR Part 51, subpart S, for the ozone NAAQS. Additionally, the approval of the SIP will enable the Department to provide EPA with revisions to Delaware's SIP - *Basic Inspection & Maintenance Performance Standard Certification for New Castle County*, as attached to the Report as Appendix "A."

Reasons and Conclusions

Based on the Record developed by the Department's experts and established by the Hearing Officer's Report, I find that the Department's proposed revision to Delaware's SIP - *Basic Inspection & Maintenance Performance Standard Certification for New Castle County*, meet the attainment plan requirements associated with the 2015 8-hour ozone NAAQS, as set forth in 40 CFR Part 51 Subpart S. I further find that the Department's experts in the Division of Air Quality fully developed the Record to support adoption of the proposed *revised* SIP modifications as final. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the same be promulgated as final.

The following reasons and conclusions are hereby entered:

1. The Department has the statutory basis and legal authority to act with regard to this proposed SIP revision, pursuant to 7 *Del.C.* Ch. 60;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Ch. 60, to issue an Order adopting this proposed SIP revision as final;
3. The Department provided adequate public notice of the proposed *revised* SIP modifications, and all proceedings associated with the same, in a manner required by the law and regulations. The Department provided the public with an adequate opportunity to comment on the proposed *revised* SIP modification, and held the Record open for receipt of public comment subsequent to the date of the hearing (through December 13, 2023), consistent with Delaware law, in order to consider the same before making any final decision;
4. The Department's Hearing Officer's Report, including its established Record and the recommended proposed *revised* SIP modifications as set forth in Appendix "A," is hereby adopted to provide additional reasons and findings for this Order;
5. Promulgation of the proposed *revised* SIP modification will enable the Department to certify through a PSM that Delaware's New Castle County's I/M program meets EPA basic I/M performance standards, defined in 40 CFR Part 51, subpart S, for the ozone NAAQS and provide EPA with revisions to Delaware's SIP - *Basic Inspection & Maintenance Performance Standard Certification for New Castle County*;
6. The Department's proposed SIP revision, as published in the November 1, 2023 *Delaware Register of Regulations*, and subsequently revised, is set forth in Appendix "A" as noted above, and is adequately supported, is not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it is approved as a final revision to Delaware's SIP document, which shall become effective immediately upon the signing of this Order;
7. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and

8. The Department shall submit this Order approving as final revisions to Delaware's SIP document to the *Delaware Register of Regulations* for publication in its next available issue and provide such other notice as the law and regulation require and the Department determines is appropriate.

Shawn M. Garvin
Secretary

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

<http://regulations.delaware.gov/register/march2024/general/Appendix A - Performance Standard Certification 2-15-24.pdf>

[http://regulations.delaware.gov/register/march2024/general/Bold-Bracketed Performance Standard Certification\[63\].pdf](http://regulations.delaware.gov/register/march2024/general/Bold-Bracketed Performance Standard Certification[63].pdf)

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Sections 6006 and 6010 (7 Del.C. §§ 6006 & 6010)

Secretary's Order No.: 2024-A-0002

Approving Final Revision to Delaware's State Implementation Plan ("SIP"): Moderate Non-Attainment Plan for New Castle County for the 2015 8-hour Ozone National Ambient Air Quality Standard

Date of Issuance: February 13, 2024

Effective Date of the Amendment: March 11, 2024

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

Background, Procedural History and Findings of Fact

This Order relates to the Department's proposed revision to Delaware's State Implementation Plan ("SIP") addressing the *Moderate Non-Attainment Plan for New Castle County for the 2015 8-hour Ozone National Ambient Air Quality Standard* ("NAAQS"). Delaware is required by Section 110 of the federal *Clean Air Act* ("CAA") to submit to U.S. Environmental Protection Agency ("EPA") a SIP that provides for the implementation, maintenance, and enforcement of the NAAQSs established by the EPA.

A SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and inventories. Delaware periodically submits revisions to the SIP as required by the CAA to address air quality nonattainment and maintenance issues. The CAA requires that any proposed SIP revision be made available for public comment and presented at a public hearing prior to submitting to EPA for adoption.

In 2015, EPA promulgated a revised NAAQS for ground-level ozone at a level of 70 parts per billion (ppb). Ground-level ozone, formed in the atmosphere by photochemical reactions among volatile organic compounds (VOC), oxides of nitrogen (NOx), and carbon monoxide (CO) in the presence of sunlight, is a serious air pollutant that harms human health and the environment. The revised NAAQS for ground-level ozone is expected to provide better protections of public health and environment. Promulgation of a revised NAAQS triggers a requirement for the EPA to designate areas as nonattainment, attainment, or unclassifiable, and to classify the nonattainment areas based upon the severity of nonattainment at the time of designation. Non-Attainment areas classified as

"moderate" or above (i.e. Serious, Severe, Extreme) the NAAQS, are required to identify control measures that will reduce emissions from pollutant sources.

On June 4, 2018, under the 2015 8-hour Ozone NAAQS, the EPA designated 51 areas of the country as non-attainment which included the Philadelphia-Wilmington-Atlantic City (PA-NJ-MD-DE) Area ("Philadelphia NAA"). The Philadelphia NAA is comprised of 16 counties, with New Castle County being as one of its regions. Collectively, the 2018-2020 design value for the area measured 0.074 parts per million (ppm) which is equal to 74 ppb and does not meet the revised NAAQS for ground-level ozone. The EPA classified the Philadelphia NAA as "marginal" nonattainment and required the Philadelphia NAA to meet the NAAQS attainment level by August 3, 2021.

On October 7, 2022, it was determined by the EPA that the Philadelphia NAA failed to meet attainment standards established in the NAAQS by August 3, 2021. Subsequently, the EPA published Final Rule 87 FR 60897 and reclassified the Philadelphia NAA as "moderate" non-attainment. State agencies of areas designated as moderate non-attainment are required to submit a revised State SIP and implement controls to satisfy the statutory and regulatory requirements for the 2015 ground-level ozone NAAQS. Areas reclassified to moderate encounter more stringent CAA requirements designed to achieve attainment of the NAAQS.

In accordance with 40 CFR Part 52 Subpart I, the Department is required to identify, through a SIP, how Delaware will achieve attainment of the NAAQS by August 3, 2024. The Department is proposing revisions to Delaware's SIP by incorporating the following components to meet the requirements associated with the 2015 8-hour ozone NAAQS:

- Attainment Modeling - demonstrates that the New Castle County portion of the Philadelphia-Wilmington, Atlantic City, PA-NJ-MD-DE moderate NAA will attain the 2015 8-hour Ozone NAAQS in 2023.
- Reasonable Further Progress (RFP) - to ensure that the air quality in New Castle County makes steady and incremental progress toward attaining the 2015 8-hour Ozone NAAQS.
- Control Measures and Emission Reductions - to detail existing controls needed to attain the 2015 8-hour Ozone NAAQS.
- Mobile Vehicle Emission Budgets - Delaware's 2023 mobile source budgets (portions of total allowable emissions that are allocated to On-road mobile sources) for transportation conformity determination.
- Contingency Measures - specific control measures to be implemented if the area fails to make RFP, fails to meet any applicable milestone, or fails to attain the NAAQS by the applicable attainment date.
- Base Year Inventory - establishes a baseline emissions inventory (2017).
- Reasonably Available Control Technology - the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available.
- Reasonably Available Control Measures - measures necessary to achieve attainment as soon as possible.
- Gasoline Vapor Recovery - systems for gasoline vapor recovery of emissions from the fueling of motor vehicles.
- Non-Attainment New Source Review (NNSR) Certification - certifies the adequacy of Delaware's NNSR program.
- Motor Vehicle Inspection and Maintenance Program - identifies problems with vehicle emission control systems and assures their repairs.

- General Emission Offset Requirement - offsets the annual emissions increase from new sources or source modifications to provide a new air quality benefit. The ratio shall be at least 1.15 to 1 for Moderate NAAs.

The Department has the statutory basis and legal authority to act with regard to the proposed SIP revision pursuant to 7 *Del.C.* Chapter 60. The Department published the General Notice of this proposed SIP revision, and of the November 28, 2023, public hearing to be held in this matter, in the November 1, 2023, *Delaware Register of Regulations*. Subsequent to the publication of the General Notice, the Department proposed additional revisions to the SIP in response to EPA's pre-hearing review. The Department is proposing non-substantive amendments to the SIP modifications, that include grammatical revisions, removal of most references and background regarding Sussex and Kent Counties, as they are not part of the Philadelphia NAA, and other clarifications throughout the SIP document.

The proposed *revised* SIP modifications were thoroughly vetted during at the hearing held on November 28, 2023. The revisions were deemed non-substantive and no further action was required by the Department. The Record remained open for comment following the public hearing through December 13, 2023. No public comment was received by the Department during any phase of this hearing matter. All proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Theresa Smith, prepared a Hearing Officer's Report dated January 14, 2023 ("Report"). The Report documents the proper completion of the required SIP revision process, establishes the Record, and recommends the approval of the proposed SIP revision into Delaware's SIP document. The Department will meet the attainment plan requirements associated with the 2015 8-hour ozone NAAQS, as set forth in 40 CFR Part 52 Subpart I and provide EPA with revisions to Delaware's SIP - *Moderate Non-Attainment Plan for New Castle County for The 2015 8-Hour Ozone National Ambient Air Quality Standard*, as attached to the Report as Appendix "A."

Reasons and Conclusions

Based on the Record developed by the Department's experts and established by the Hearing Officer's Report, I find that the Department's proposed revision to Delaware's SIP - *Moderate Non-Attainment Plan for New Castle County for the 2015 8-Hour Ozone National Ambient Air Quality Standard*, meets the attainment plan requirements associated with the 2015 8-hour ozone NAAQS, as set forth in 40 CFR Part 52 Subpart I. I further find that the Department's experts in the Division of Air Quality fully developed the Record to support adoption of the proposed *revised* SIP modifications as final. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the same be promulgated as final.

The following reasons and conclusions are hereby entered:

1. The Department has the statutory basis and legal authority to act with regard to this proposed SIP revision, pursuant to 7 *Del.C.* Ch. 60;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Ch. 60, to issue an Order adopting this proposed SIP revision as final;
3. The Department provided adequate public notice of this proposed *revised* SIP modifications, and all proceedings associated with the same, in a manner required by the law and regulations. The Department provided the public with an adequate opportunity to comment on the proposed *revised* SIP modification, and held the Record open for receipt of public comment subsequent to the date of the hearing (through December 13, 2023), consistent with Delaware law, in order to consider the same before making any final decision;
4. The Department's Hearing Officer's Report, including its established Record and the recommended proposed *revised* SIP modifications as set forth in Appendix "A," is hereby adopted to provide additional reasons and findings for this Order;

GENERAL NOTICES

5. Promulgation of the proposed *revised* SIP modification will enable the Department to meet the attainment plan requirements associated with the 2015 8-hour ozone NAAQS, as set forth in 40 CFR Part 52 Subpart I and provide EPA with revisions to Delaware's SIP - *Moderate Non-Attainment Plan for New Castle County for the 2015 8-Hour Ozone National Ambient Air Quality Standard*;
6. The Department's proposed SIP revision, as published in the November 1, 2023 *Delaware Register of Regulations*, and subsequently *revised*, is set forth in Appendix "A" as noted above, and is adequately supported, is not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it is approved as a final revision to Delaware's SIP document, which shall become effective immediately upon the signing of this Order;
7. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and
8. The Department shall submit this Order approving as final revisions to Delaware's SIP document to the *Delaware Register of Regulations* for publication in its next available issue and provide such other notice as the law and regulation require and the Department determines is appropriate.

Shawn M. Garvin
Secretary

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

[http://regulations.delaware.gov/register/march2024/general/Appendix A - Final Non-Attainment Plan \(2\).pdf](http://regulations.delaware.gov/register/march2024/general/Appendix A - Final Non-Attainment Plan (2).pdf)
<http://regulations.delaware.gov/register/march2024/general/Bold-Bracketed 2015 Ozone NAAQS Attainment Plan.pdf>

DELAWARE RIVER BASIN COMMISSION
PUBLIC NOTICE

The Commission's quarterly business meeting will be held on Wednesday, March 6, 2024, commencing at 10:30 a.m. The business meeting will be held remotely. An agenda will be posted on the Commission's website, www.drbc.gov, at least ten (10) days prior to the meeting date.

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

Pamela M. Bush, J.D., M.R.P.
Commission Secretary and Assistant General Counsel

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

The Thoroughbred Racing Commission proposes to amend its Regulations adopted in accordance with Title 3, Chapter 101. The purpose of the proposed regulations is to amend the rules regarding Entries, Subscriptions, Delegations (11.0) Claiming Races (13.0) and Definitions and Interpretations (1.0). The recommended changes to 11.14.1.4 are necessary to comply with (HISA) rules regarding horse's place on Veterinarian's Lists. Changes to 11.14.1.5 are necessary to allow flexibility for trainers entering horses in multiple jurisdictions. Recommended changes to 13.6 allow the stewards to allow claimed horses to race in handicap or nomination required races previously not included. Under 1.0 "Call" is defined for clear interpretation with regards to rule 7.3.7. This amendment also includes changes to correct spelling errors, other regulations issued by the Thoroughbred Racing Commission are not affected by this proposal. The Thoroughbred Racing Commission is issuing these proposed regulations in accordance with Title 3 of the Delaware Code. This notice is issued pursuant to the requirements of Chapter 101 of Title 29 of the Delaware Code.

Comments

A copy of the proposed regulations is being published in the March 1, 2024 edition of the Delaware Register of Regulations. A copy is also on file in the office of the Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, Delaware 19804 and is available for inspection during regular office hours. Copies are also published online at the Register of Regulations website: https://regulations.delaware.gov/register/current_issue.shtml.

Interested parties may offer written comments on the proposed regulations or submit written suggestions, data, briefs or other materials to the Thoroughbred Racing Commission at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 *Del.C.* § 10118(a), public comments must be received on or before April 1, 2024. Written materials submitted will be available for inspection at the above address.

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education meets monthly, generally at 5:00pm on the third Thursday of the month. These meetings are open to the public. The Board rotates locations of regular meetings among the three counties.

The State Board of Education provides information about meeting dates and times, materials, minutes, and audio recordings on its website:
<https://education.delaware.gov/community/governance/state-board-of-education/sbe-monthly-meetings/>

CALENDAR OF EVENTS/HEARING NOTICES

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Fair Hearings**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of 31 **Del.C.** §512, Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DHSS/DMMA) is proposing to amend the Division of Social Services Manual (DSSM) 5000 and 5304, specifically, to clarify policy and procedures.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs, or other written materials concerning the proposed new regulations must submit same to, Planning and Policy Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to DHSS_DMMA_Publiccomment@Delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on April 1, 2024. Please identify in the subject line: Fair Hearings

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

DIVISION OF PUBLIC HEALTH**PUBLIC NOTICE****4202 Control of Communicable and Other Disease Conditions**

Pursuant to 16 **Del.C.** §§122(3)(a) and 504, the Department of Health and Social Services, Division of Public Health has the legal authority to promulgate regulations. The Division of Public Health is proposing amendments to Regulation 4202 Control of Communicable and Other Disease Conditions, to be published in the March 1, 2024, issue of the *Delaware Register of Regulations*.

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

Public comments will be received until the close of business Monday, April 1, 2024. Comments will be accepted in written form via email to DHSS_DPH_regulations@delaware.gov, or by U.S. mail to the following address:

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

DEPARTMENT OF SAFETY AND HOMELAND SECURITY**STATE BUREAU OF IDENTIFICATION****PUBLIC NOTICE****Firearms Transaction Approval Program Regulations**

The Delaware State Bureau of Identification, pursuant to 11 **Del.C.** §8572(f), proposes to regulations to enforce and administer the Firearms Transaction Approval Program.

The Agency will accept written comments, which should be sent to the Director of SBI, 600 S. Bay Road, Dover, DE 19901. Written comments may also be sent by email to the following email address: DSP_FTAP_Appeals@delaware.gov. The Public Comment period will end on Monday, April 1, 2024.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
PUBLIC NOTICE
100 Board of Accountancy

Pursuant to 24 **Del.C.** §105(a)(1), the Delaware Board of Accountancy ("Board") has proposed revisions to its Rules and Regulations. The Board proposes these amendments to advance its primary objective, which is to protect the general public, specifically those persons who are the direct recipients of accounting services, regulated by 24 **Del.C.**, Ch. 1.

Proposed amendments to subsections 5.3 and 10.12 delete provisions that are no longer applicable due to the passage of time. Proposed amendments to subsection 6.2.2.8 enlarge the period of time during which an applicant is allowed to pass examinations required for licensure by 24 **Del.C.** §107(d). Proposed amendments to Sections 7.0 and 9.0 set forth new standards applicable to continuing professional education for licensed certified public accountants and public accountants licensed. The Board promulgates rules pertaining to continuing professional education pursuant to 24 **Del.C.** §105(a)(8) and §110(d-e). The amendments relate to the types of activities that qualify as continuing professional education and the licensees' responsibilities to record and report their participation in qualifying continuing professional education. Additional revisions are technical and style changes consistent with the *Delaware Administrative Code Drafting and Style Manual*.

This proposed amendment is offered in place of a previous proposal that was published in the *Delaware Register of Regulations* in Vol. 26, Issue 12 because the new proposal is substantively different than the original submission. The previously proposed amendments were published on page 1046 of the June 1, 2023 issue of the *Register* (26 **DE Reg.** 1046 (6/01/23)). The Board planned to hold a hearing at its July 19, 2023 meeting but at that meeting the Board determined to cancel the hearing in order to consider a more substantial revision to its continuing professional education rules. Revisions to the Board's Rules and Regulations were discussed during subsequent public meetings of the Board, and, at its January 17, 2024 meeting, the Board determined to propose a substantively different amendment to its Rules and Regulations. As a result, the Board will now hold a public hearing on April 17, 2024, at 9:00 a.m. in the second-floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Accountancy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address or to Danielle.Ridgway@delaware.gov.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be May 2, 2024. The Board will deliberate on all public comments at its next regularly scheduled meeting thereafter.

OFFICE OF THE STATE TREASURER
DELAWARE EARNS PROGRAM BOARD
PUBLIC NOTICE

Regulations Governing the Expanding Access for Retirement and Necessary Saving Program

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code), and under the authority of 19 **Del.C.** §3803, the Delaware EARNS Program Board (the "Board") proposes to introduce regulations concerning the establishment of the Delaware Expanding Access for Retirement and Necessary Saving Program (the "Program"). The Board, with administrative assistance from the Office of the State Treasurer ("OST"), will administer the Program and these regulations.

In accordance with 29 **Del.C.** §10116, persons wishing to submit written comments, suggestions, briefs, and compilations of data or other written materials concerning the proposed regulations should direct them to the following address:

Ted Griffith
Program Director, Delaware EARNS
Office of the State Treasurer
820 Silver Lake Blvd., Suite 100

Dover, DE 19904

Email: ted.griffith@delaware.gov

Office: (302) 577-4212

Comments may also be directed via electronic mail to EARNNS@Delaware.gov. Any written submission in response to this notice and relevant to the proposed regulations must be received by the above contact no later than 4:00 p.m., prevailing Eastern time, on April 1, 2024. The determination of whether to adopt the regulations, as proposed, will be based upon consideration of the written comments and any other written materials filed by the public.

Members of the public may request a copy of the proposed regulations at no charge by contacting Program Director Ted Griffith by US mail, email, or phone using the contact information above.
