

# DEPARTMENT OF SAFETY AND HOMELAND SECURITY

## OFFICE OF THE SECRETARY

Statutory Authority: 11 Delaware Code, Section 1469(d)(2) (11 **Del.C.** §1469(d)(2))

### FINAL

### ORDER

#### **103 Regulations Governing the Delaware Large Capacity Magazine Compensation Program**

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

At **26 DE Reg. 165** (September 1, 2022), the Delaware Department of Safety and Homeland Security, Office of the Secretary, pursuant to the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 11 of the Delaware Code, Chapter 5, Section 6901(c), published notice of its intent to adopt regulations to implement the Delaware Large Capacity Magazine Prohibition Act of 2022 compensation program. At the same time, DSHS submitted a Regulatory Flexibility Analysis and Impact Statement for this proposed regulation, as required by 29 **Del. C.** Ch. 104. DSHS solicited written comments from the public for thirty (30) days as mandated by 29 **Del. C.** §10118(a).

#### **SUMMARY OF EVIDENCE**

In accordance with law, public notice regarding the proposed regulation was published in the *Delaware Register of Regulations*. The public comment period was open from September 1, 2022 through October 3, 2022. During this period, DSHS received thirteen written responses, which are on file with DSHS. One commenter offered comments that suggested substantive changes including alternative pricing schemes and definitions. The other twelve commenters provided nonsubstantive comments or criticisms of the Delaware Large Capacity Magazine Prohibition Act of 2022.

#### **FINDINGS OF FACT**

The public was given the required notice of DSHS's intention to adopt the proposed regulation and was given opportunity to submit comments. The required Regulatory Flexibility Analysis and Impact Statement for this proposed regulation was submitted. Thirteen written responses were received during the comment period. After reviewing the written comments received from the public, DSHS declines to adopt the suggestions of one commenter with substantive changes. DSHS determines that the regulation already includes the information required by 11 **Del.C.** §1469(d)(2) and therefore no additional changes are required to the regulation. Thus, DSHS finds that the proposed regulations should be adopted as submitted by DSHS.

#### **EFFECTIVE DATE OF ORDER**

The actions hereinabove referred to were taken by DSHS pursuant to 11 **Del. C.** §1469(d)(2). The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

#### **ORDER**

NOW THEREFORE, under the statutory authority and for the reasons set forth above, DSHS does hereby ORDER this 14th day of October 2022 that the regulations be, and that they hereby are, adopted to be enacted as set forth below.

**IT IS SO ORDERED**, this 14th day of October 2022.

Delaware Department of Safety and Homeland Security

Nathaniel McQueen Jr., Secretary

#### **103 Regulations Governing the Delaware Large Capacity Magazine Compensation Program**

#### **1.0 Definitions**

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

"DSHS" means Delaware Department of Safety and Homeland Security.

"Gift Card" means type of payment used by a law enforcement agency to pay for a surrendered large capacity magazine such as VISA or MasterCard gift card.

"Large capacity magazine" or "LCM" means as defined by 11 Del.C. § 1468(2) any ammunition feeding device capable of accepting, or that can readily be converted to hold, more than 17 rounds of ammunition. "Large-capacity magazine" does not include an attached tubular device designed to accept, and only capable of operating with, .22 caliber rimfire ammunition.

"Law Enforcement Agency" means the Delaware State Police.

"LCMCP" means the Delaware Large-Capacity Magazine Prohibition Act of 2022 Compensation Program described in 11 Del.C. § 1469(d).

"Secretary" means the Secretary of Delaware Department of Safety and Homeland Security.

## **2.0 Authorization**

- 2.1 Funds allocated pursuant to 11 Del.C. §1469(d)(1) shall be maintained in the DSHS, Office of the Secretary. Funds will be distributed to the law enforcement agency in the form of gift cards or cash.
- 2.2 The Secretary will designate which law enforcement agency locations will participate in the LCMCP.
  - 2.2.1 An agency location designated to participate in the LCMCP and receive funds shall make public notice upon designation by the Secretary, at least 14 business days in advance of starting their program indicating the following:
    - 2.2.1.1 The dates, times, location and duration of the collection.
    - 2.2.1.2 The contact person for the LCMCP responsible for maintaining the funds or inventory allocated by DSHS.
- 2.3 Within 14 business days after the conclusion of the LCMCP period, the law enforcement agency shall submit to the Secretary an accounting of all funds allocated by DSHS under these regulations.
- 2.4 All unused funds shall be returned to DSHS in the form it was received, within 14 business days of the conclusion of the LCMCP period.

## **3.0 Collection and Disposition of Recovered Large Capacity Magazines**

- 3.1 Upon surrender, all LCM shall be tagged or marked by the collecting agency as to:
  - 3.1.1 Where collected;
  - 3.1.2 Whom collected by;
  - 3.1.3 Who collected from;
  - 3.1.4 The date of collection;
  - 3.1.5 The make, model and serial number if applicable.
- 3.2 Funds shall be issued for LCM which, upon preliminary inspection, appear to be operational, in amounts not to exceed the following:
  - 3.2.1 LCM 18 to 30 rounds: \$15.00
  - 3.2.2 LCM 31 or greater rounds:\$25.00
  - 3.2.3 LCM Drums: \$80.00
- 3.3 The law enforcement agency shall not have the discretion to pay an amount exceeding the amounts as described in subsection 3.2 during the LCMCP period.
- 3.4 Within 14 days after the conclusion of the LCMCP period, a complete list of all LCM collected shall be supplied to the Secretary containing information listed in subsection 3.1 of these regulations.
- 3.5 It shall be the responsibility of the law enforcement agency participating in the LCMCP to dispose of the LCMs collected. Disposal may include any, or a combination of the following:
  - 3.5.1 Destruction in a manner causing destruction of the LCM through such methods as crushing, melting or shredding.
- 3.6 Agencies, upon destruction of weapons, shall furnish a list of all disposed LCMs to the Secretary within 14 business days.

## **4.0 General Rules**

- 4.1 The LCMCP shall be completed by June 30, 2023. The LCMCP is subject to the availability of funds appropriated for this specific purpose by the General Assembly. The LCMCP does not create a right or entitlement in a resident to receive a monetary payment under the LCMCP.

- 4.2 An agency conducting an LCMCP shall be responsible for the security of the site, the surrounding area, the surrendered LCM, transportation, unused funds and inventory.
- 4.3 To ensure safety, any agency conducting an LCMCP shall have at least one person on site knowledgeable in the operation and safety of firearms.
- 4.4 Any individual who elects to surrender an LCM anonymously at an LCMCP designated location may do so; however, the individual will not be eligible for compensation.
- 4.5 Personal identification showing proof of Delaware residency shall be required to be presented at the time of the redemption.
- 4.6 The LCMCP is only intended for individuals and does not apply to wholesale, retail, manufacturers and distributor business entities.
- 4.7 An LCM relinquished to a law-enforcement agency of the state as part of the LCMCP may be destroyed by the agency 30 days after relinquishment.
- 4.8 Notwithstanding any law to the contrary, any person, provided the person is, in good faith, on an immediate, direct route to a designated law enforcement agency in the LCMCP shall be immune from criminal prosecution for the criminal offenses defined in 11 Del.C. §1469.

**26 DE Reg. 400 (11/01/22) (Final)**