
Delaware Register of Regulations

Issue Date: April 1, 2025

Volume 28 - Issue 10, Pages 699-768



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Errata

Regulations:
Proposed
Final

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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 March 15, 2025.

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

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

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

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

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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.

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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
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.
October 1	September 15	4:30 p.m.

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DEPARTMENT OF EDUCATION**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 925

ERRATA**925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs**

* **Please Note:** The Department of Education regulation, 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs, was published as proposed in the *Delaware Register of Regulations*, 28 **DE Reg.** 14 (07/01/24). The following provision was inadvertently published incorrectly:

Subsection 6.16.5.1 was published as:

- 6.16.5.1 For purposes of continued eligibility determination, the IEP team Team shall follow procedures in 14 **DE Admin. Code** 925.3.0 through 925.5.0 and 925.6.16.1; and

Subsection 6.6.5 should have read:

- 6.16.5.1 For purposes of continued eligibility determination, the IEP team Team shall follow procedures in 14 **DE Admin. Code** ~~925.3.0 through 925.5.0 and 925.6.16.1~~ 925, Sections 3.0 through 5.0 and subsection 6.16.1; and

This regulation is corrected and being published as a final regulation in the April 2025 *Register*.

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 Delaware Thoroughbred Racing Commission ("Commission") proposes to amend its Regulation adopted in accordance with Title 3, Section 10103(c) of the Delaware Code. The proposed changes include amendments to subsections 2.5, 8.8, 10.7, 21.3, 21.4, 21.5, and 21.8. The proposed changes to subsection 2.5 clarify the Commission's authority to refuse to register or to issue an authorization or permit to an applicant, or to suspend or revoke a registration, permit, or authorization previously issued, or order disciplinary measures on the basis of age, citizenship, or financial irresponsibility. The proposed changes to subsection 8.8 replace the set jockey fees with a requirement that jockey fees be set by the Commission or through special agreement approved by the Commission. The proposed changes to subsection 10.7 add a requirement that the registered trainer shall be responsible for the cost of a postmortem examination, testing, and disposal when the Commission finds that the horse suffered an injury in another jurisdiction and subsequently died or was euthanized on a Delaware licensee's grounds as a result of such injury. The proposed changes to subsections 21.3 and 21.4 include minor technical corrections to improve wording and numbering. The proposed changes to subsection 21.5 include minor technical corrections to improve wording, eliminate the requirement for confirmatory testing at a Commission approved laboratory unless requested in writing by the individual tested, and include procedural requirements for how confirmatory testing is elected and conducted. Finally, the proposed changes to subsection 21.8 include technical corrections to improve wording and numbering and make clarifications regarding the penalties for first, second, and third violations of Rule 21 relating to substance abuse or addiction. Other regulations issued by the Delaware Thoroughbred Racing Commission are not affected by this proposal. The Delaware Thoroughbred Racing Commission is issuing this proposed regulation 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 regulation is being published in the April 1, 2025 edition of the *Delaware Register of Regulations*. A copy is also on file in the office of the Delaware 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 Delaware Thoroughbred Racing Commission at the above address as to whether this proposed regulation should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before May 1, 2025. Written materials submitted will be available for inspection at the above address.

***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/april2025/proposed/28 DE Reg 711RFA 04-01-25.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/april2025/proposed/28 DE Reg 711 04-01-25.htm>

DEPARTMENT OF EDUCATION
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** 1594

PUBLIC NOTICE

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

1594 Special Education Director

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** 1594 Special Education Director. The regulation concerns the requirements for a Special Education Director Standard Certificate in accordance with 14 **Del.C.** §1220. Amendments to this regulation include adding clarity and detail regarding the experience requirements for a Special Education Director Standard Certificate in subsection 4.1.3. The proposed amendments include grammatical and style changes to comply with the *Delaware Administrative Code Drafting and Style Manual*.

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 May 1, 2025. 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 Special Education Director 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 the 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/april2025/proposed/28 DE Reg 712RFA 04-01-25.pdf>

1594 Special Education Director
(Break in Continuity of Sections)

4.0 Prescribed Education, Knowledge, and Skill Requirements

4.1 The Department may issue a Special Education Director Standard Certificate to an applicant who has satisfied the requirements in subsections 4.1.1 through 4.1.3.

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

4.1.1.1 Earned a master's or doctoral degree with a minimum of 30 semester hours of coursework in special education leadership from a regionally accredited college or university with

- advanced preparation accreditation by the Council for the Accreditation of Educator Preparation (CAEP); or
- 4.1.1.2 Earned a master's or doctoral degree in special education from a regionally accredited college or university with advanced preparation accreditation by the Council for the Accreditation of Educator Preparation (CAEP) and satisfactorily completed an alternative routes for licensure or certification program for leaders as provided in 14 **Del.C.** §§1260 – 1266; or
- 4.1.1.3 Earned a master's or doctoral degree in any content area from a regionally accredited college or university and satisfactorily completed a Department-approved educator preparation program for special education directors as provided in 14 **DE Admin. Code** 290 Approval of Educator Preparation Programs; or
- 4.1.1.4 Earned a master's or doctoral degree with a minimum of 30 semester hours of coursework in Pre-K to 12 educational leadership from a regionally accredited college or university with advanced preparation accreditation by the Council for the Accreditation of Educator Preparation (CAEP) and completed an additional 30 graduate-level credit hours in special education from a regionally accredited college or university or the equivalent in professional development approved by the Department. For the purpose of subsection 4.1.1.4, graduate-level coursework that leads to professional licensure as a school psychologist, behavior analyst, occupational therapist, physical therapist, speech pathologist, or audiologist will be counted.
- 4.1.2 The applicant shall have achieved a minimum score on 1 of the following examinations:
- 4.1.2.1 A minimum score of 146 on the Educational Leadership: Administration and Supervision Assessment (ETS Test Code # 5412); or
- 4.1.2.2 A minimum score of 151 on the School Leaders Licensure Assessment (ETS Test Code # 6990); or
- 4.1.2.3 A minimum score of 162 on the School Superintendent Assessment (ETS Test Code # 6991).
- 4.1.3 The applicant shall have completed a minimum of 4 years of 1 of the following experience requirements in any Pre-K to 12 public school setting or an equivalent setting as approved by the Department:
- 4.1.3.1 ~~Teaching or providing pupil personnel services to special education students as a school psychologist or behavior analyst~~ under a state special education credential with satisfactory annual summative evaluations or the equivalent thereof on a state-approved educator evaluation system; or
- 4.1.3.2 Providing pupil personnel services to special education students as a school psychologist or behavior analyst under a state education credential with satisfactory annual summative evaluations or the equivalent thereof on a state-approved educator evaluation system; or
- 4.1.3.2 ~~4.1.3.2~~ Working with special education students in a school as an occupational therapist, physical therapist, speech pathologist, or audiologist under a Delaware professional license; or
- 4.1.3.3 ~~4.1.3.3~~ Working with special education students as an educational diagnostician or special education coordinator diagnostician, special education coordinator, or other district special education leadership position under a state special education credential with satisfactory annual summative evaluations or the equivalent thereof on a state-approved educator evaluation system; or
- 4.1.3.4 ~~4.1.3.4~~ Any combination of the experience requirements in subsections 4.1.3.1 through 4.1.3.3

5.0 Reciprocity

- 5.1 If an applicant is already licensed or certified as a special education director in a state or jurisdiction whose requirements are not substantially similar to the requirements in Section 4.0 of this regulation,

the applicant shall have satisfied the requirements in subsections 5.1.1 through 5.1.3 in order for the Department to issue a Special Education Director Standard Certificate:

- 5.1.1 The applicant shall hold a valid and current license or certificate as a special education director.
- 5.1.2 The applicant shall have earned a master's or doctoral degree in a Pre-K to 12 education-related field from a regionally accredited college or university.
- 5.1.3 If the applicant has less than 4 years' experience working as a special education director or supervisor at the LEA level in any Pre-K to 12 public school setting or an equivalent setting as approved by the Department, the applicant shall have achieved a minimum score on 1 of the following examinations:
 - 5.1.3.1 A minimum score of 146 on the Educational Leadership: Administration and Supervision Assessment (ETS Test Code # 5412); or
 - 5.1.3.2 A minimum score of 151 on the School Leaders Licensure Assessment (ETS Test Code # 6990); or
 - 5.1.3.3 A minimum score of 162 on the School Superintendent Assessment (ETS Test Code # 6991).

6.0 Application Requirements

- 6.1 If an applicant is applying for an Initial License, a Standard Certificate must be applied for simultaneously with an application for an Initial License, and the applicant shall also provide all required documentation for the License license.
- 6.2 If the applicant is also applying for the issuance or renewal of an educator's license or paraeducator's permit, the applicant must disclose the applicant's criminal conviction history upon application. Failure to disclose a criminal conviction history is grounds for denial of the license or permit application as specified in 14 **Del.C.** §1219 and it could delay the processing or result in the denial of the application for a Special Education Director Standard Certificate.
- 6.3 For applicants who are applying for the Special Education Director Standard Certificate under subsection 3.1.1 of this regulation, the following documentation is required:
 - 6.3.1 Official transcript from the applicant's regionally accredited college or university with advanced preparation accreditation by the Council for the Accreditation of Educator Preparation (CAEP) for applicants who are applying under subsections 4.1.1.1 and 4.1.1.4 of this regulation or official transcript from the applicant's regionally accredited college or university for applicants who are applying under subsections 4.1.1.2 or 4.1.1.3 of this regulation.
 - 6.3.1.1 Electronic transcripts may be submitted by the employing authority or by the applicant's regionally accredited college or university; or
 - 6.3.1.2 Sealed paper transcripts may be submitted.
 - 6.3.1.3 The Department will not accept copies of transcripts; and
 - 6.3.2 Documents verifying successful completion of Department-approved professional development, if applicable; and
 - 6.3.3 Official score on an examination as provided in subsection 4.1.2 of this regulation; and
 - 6.3.4 The Department-approved form verifying the applicant's completion of the experience requirement as provided in subsection 4.1.3 of this regulation; and
 - 6.3.5 Additional documentation as required by the Department.
- 6.4 For applicants who are applying for the Special Education Director Standard Certificate under subsection 3.1.2 of this regulation, the following documentation is required:
 - 6.4.1 An official copy of the valid and current license or certificate; and
 - 6.4.2 Additional documentation as required by the Department.
- 6.5 For applicants who are applying for the Special Education Director Standard Certificate under subsection 3.1.3 of this regulation, the following documentation is required:
 - 6.5.1 An official copy of the valid and current license or certificate; and
 - 6.5.2 Official transcript from the applicant's regionally accredited college or university.

PROPOSED REGULATIONS

- 6.5.2.1 Electronic transcripts may be submitted by the employing authority or by the applicant's regionally accredited college or university; or
- 6.5.2.2 Sealed paper transcripts may be submitted.
- 6.5.2.3 The Department will not accept copies of transcripts; and
- 6.5.3 Official score on an examination as provided in subsection 5.1.3 of this regulation; and
- 6.5.4 Additional documentation as required by the Department.

7.0 Secretary of Education Review

- 7.1 The Secretary of Education may, upon the written request of a local school district or charter school, review credentials submitted in an application for a Special Education Director Standard Certificate on an individual basis and grant such a Standard Certificate to an applicant who otherwise does not meet the requirements for a Special Education Director Standard Certificate but whose effectiveness is documented by the local school district or charter school.
- 7.2 The request shall be approved as provided in subsections 7.2.1 and 7.2.2.
 - ~~7.1.1~~ 7.2.1 For school districts, requests shall be approved by the superintendent of the school district.
 - ~~7.1.2~~ 7.2.2 For charter schools, requests concerning the head of school of the charter school shall be approved by the charter school's board of directors and requests concerning all other applicants shall be approved by the charter school's head of school.

***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/april2025/proposed/28 DE Reg 712 04-01-25.htm>

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Doula Services

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 Title XIX Medicaid State Plan regarding Doula Services, specifically, to provide additional postpartum visits with a recommendation by a practitioner or clinician licensed under Delaware Code Title 24 acting within their scope of practice.

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 May 1, 2025. Please identify in the subject line: Doula Services

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 Title XIX Medicaid State Plan regarding Doula Services.

Statutory Authority

- 42 CFR §440.130 (c), Diagnostic, screening, preventive, and rehabilitative services
- 42 CFR §440.170, Any other medical care or remedial care recognized under State law and specified by the Secretary
- 42 CFR §447, Payments for services

Background

Effective January 1, 2024, Delaware updated the State Plan to provide doula services for pregnant individuals during pregnancy, childbirth, and the postpartum period. Community based doulas are non-medical professionals who provide emotional, physical, and informational support and guidance in different aspects of reproductive health. Doulas do not provide medical care and do not replace medical providers. Rather, doulas provide additional non-medical support in places and at times where medical providers cannot or do not. Doulas typically come from the same community as the pregnant and postpartum individuals they serve. Service components include Perinatal support services, Labor support, Postpartum support services, and coordination with community-based services, to improve beneficiary outcomes.

Summary of Proposal

Purpose

The purpose of this proposed regulation is to provide additional postpartum visits with a recommendation by a practitioner or clinician licensed under Delaware Code Title 24 acting within their scope of practice.

Summary of Proposed Changes

Effective April 1, 2025, the DHSS/DMMA proposes to amend Title XIX Medicaid State Plan to clarify doula services.

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 May 1, 2025.

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

	Federal Fiscal Year 2025	Federal Fiscal Year 2026
General (State) funds	\$32,642	\$33,581

Federal funds	\$49,269	\$49,149
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***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/april2025/proposed/28 DE Reg 716RFA 04-01-25.pdf>

Attachment 3.1-A
Page 6 Addendum 11

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
STATE/TERRITORY: **DELAWARE**

LIMITATIONS ON AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL CARE AND
SERVICES PROVIDED TO THE CATEGORICALLY NEEDY

13c. Preventive Services Continued

Doula Services

1. Doulas are non-medical professionals who provide emotional, physical, and informational support and guidance during key events related to the prenatal, birth, and postpartum periods. Doula services are recommended by a physician or OLP.

Delaware Medicaid doula benefit is coverage for doula support in the perinatal period, including prenatal support, labor and delivery support, and postpartum support. Visits are ninety (90) minutes (home or virtual). The scope of the Medicaid doula benefit is to provide doula support to Medicaid members that include:

- Maximum of three (3) prenatal visits and minimum of one (1) prenatal visit
- Maximum of three (3) postpartum visits (must be completed within 90 days of delivery date) without licensed provider recommendation form
- An addition of five (5) postpartum visits (must be completed within 180 days of delivery date) for now, a maximum of eight (8) total postpartum visits with the Additional Postpartum Doula Visit Form signed by a licensed provider
- Labor/birth attendance
- Maximum of three (3) postpartum visits may be provided following the loss of a pregnancy; however, one (1) prenatal doula visit must have been conducted to qualify for postpartum doula visits

New Doulas

EDUCATION/TRAINING

A minimum of 16 total hours of birth and labor doula education which includes: Lactation support, childbirth education, nonmedical comfort measures, prenatal support, labor support techniques, and postpartum support. Documentation of current CPR certification; certificate(s) must include competencies for adults and infants.

Documentation of HIPAA training: 1 hour

EXPERIENCE

Documentation of a total of three (3) births, of which one (1) the applicant is the primary doula providing labor support to the client within last three (3) years.

Experienced Doulas - Legacy Period

EDUCATION/TRAINING

Documentation of current CPR certification; certificate(s) must include competencies for adults and infants.

Documentation of HIPAA training: 1 hour

*There is no time limit on when the education/training was received. All education/training must be documented.

EXPERIENCE

A minimum of 15 clients, nine (9) births attended within the last three (3) years.

*Acceptable documentation of experience includes copies of client contractor client evaluations. All documentation must include the date of services.

CLIENT AND PROFESSIONAL RECOMMENDATIONS

Total of two (2) evaluations from any of the following: a physician, licensed behavioral health provider, nurse practitioner, nurse midwife, licensed midwife, enrolled doula, or community-based organization.

STATEMENT OF LIVED EXPERIENCE

Submission of an essay on lived experience. Statement must be at least 250 words.

TN No. SPA # 24-0004 <u>25-0002</u>	Approval Date: 06/18/2024
Supersedes	
TN No. SPA # NEW 24-0001	Effective Date: January 1, 2024 <u>April 1, 2025</u>

Attachment 4.19-B

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

STATE/TERRITORY: **DELAWARE**

METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES- OTHER TYPES OF CARE

Reimbursement for Preventive Services: Doula Services

The Doula reimbursement timeframe can run from the date of confirmed conception through 180 days (six months) after delivery, contingent on the member maintaining Medicaid eligibility.

Delaware Medicaid will reimburse members for up to three (3) prenatal service visits (minimum of 1), up to three (3) postpartum service visits (must be completed within 90 days of delivery date) without licensed provider recommendation form, up to eight (8) postpartum visits (must be completed within 180 days of delivery date) with an Additional Postpartum Doula Visit Form signed by a licensed provider, and attendance at the birth event. Also maximum of three (3) postpartum visits may be provided following the loss of pregnancy; however, one (1) prenatal doula visit must have been conducted to qualify for postpartum doula visits.

Each perinatal service visit may be billed for and reimbursed separately. All visits are reimbursed in fifteen (15) minute increments. Each visit has a maximum unit capacity of six (6) units.

Reimbursement for attendance during delivery is set at a flat rate determined by the State. Doula services can be billed following each service. Following the completion of the third postpartum visit, there will be an incentive payment made to the Doula if the Doula has performed all three (3) prenatal visits, attended the birth event, and performed all three (3) postpartum visits for the same member. Multiple births (i.e., twins, triplets) are not eligible for additional reimbursement.

The applicable fee schedules with effective date of January 1, 2024 can be found on the state website at <http://www.dmap.state.de.us/downloads.html>.

TN No. SPA # 24-0004 <u>25-0002</u>	Approval Date: 06/18/2024
Supersedes	
TN No. SPA # 47-006 <u>24-0001</u>	Effective Date: January 1, 2024 <u>April 1, 2025</u>

DEPARTMENT OF STATE**DIVISION OF PROFESSIONAL REGULATION****Board of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers**

Statutory Authority: 24 Delaware Code, Section 3706(a)(1) (24 Del.C. §3706(a)(1))

24 DE Admin. Code 3700

PUBLIC NOTICE**3700 Board of Examiners of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers**

The Delaware Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers ("Board"), pursuant to 24 Del.C. §3706(a)(1), proposes to amend its regulation.

On October 1, 2024, proposed revisions to the regulation were published in the *Delaware Register of Regulations*, Volume 28, Issue 4. The revisions included clarification of the licensure requirements for the professions regulated by the Board. Specifically, training requirements for hearing aid dispensers were amended to add successful completion of the International Hearing Society's curriculum "Distance Learning for Professionals in Hearing Health Sciences." Proposed amendments also eliminated the cap on the number of times that a hearing aid dispenser applicant may take the licensure examination. Sections pertaining to audiology and speech/language pathology aides were stricken because the Board does not license these professions. In addition, continuing education requirements were amended to add two hours in ethics.

A public hearing was held on November 19, 2024 before the Board. The Board deliberated on the evidence presented at its meeting on January 21, 2025. Based on those deliberations, the Board has proposed further revisions to the regulation. Therefore, the Board withdraws the proposed regulation published October 1, 2024, and submits a revised proposed regulation attached as Exhibit A.

The Board will hold a public hearing on the proposed regulation changes on May 20, 2025, at 2:00 p.m., virtually and in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Anyone wishing to receive a copy of the proposed regulation may obtain a copy from the Delaware Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers, 861 Silver Lake Boulevard, Dover, Delaware 19904. Written comments should be sent to Jessica Lobaccaro, Administrative Specialist for the Board, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904 or at jessica.lobaccaro@delaware.gov. Written comments will be accepted until June 4, 2025 pursuant to 29 Del.C. §10118(a).

Summary of the Evidence and Information Submitted

Following publication of the Public Notice in the *Delaware Register of Regulations* on October 1, 2024, a public hearing was held on November 19, 2024. The written comment period was held open for thirty days, and an additional fifteen days following the public hearing. At the hearing, the Board accepted as evidence and marked the following as the Board's Exhibits:

Board Exhibit 1: Affidavit of publication of the public hearing notice in the *News Journal*.

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

Board Exhibit 3: November 10, 2024 letter from J. Benigas and P. Lewis of Fix SLP

Board Exhibit 4: November 19, 2024 email from O. Veasey

Board Exhibit 5: November 26, 2024 email from K. Martin

In Board Exhibit 3, representatives of Fix SLP objected to proposed changes that would mandate AHSA certification as the sole qualification for initial licensure. There was also objection that requiring SLPs to maintain ASHA certification would limit access to care, adversely impact professional mobility, and place a financial burden on SLPs.

In Board Exhibit 4, Ms. Veasey questioned the need for SLPs to maintain ASHA certification.

In Board 5, Ms. Martin stated that requiring ASHA certification would limit the pool of candidates because of yearly costs and would impact Delaware's ability to participate in the Interstate Compact.

In addition to documentary evidence, the Board was also presented with testimony at the hearing.

Jeanette Benigas testified that the letter submitted on behalf of Fix SLP had been signed by 37 people, some of whom were in attendance at the meeting. Ms. Benigas was representing Fix SLP.

Liz Merrick testified that requiring certification from ASHA for licensure as an SLP was out-of-line with other states. She expressed concern with handing licensure to a third party which does not serve or answer to the people of Delaware. She further stated that there is a shortage of SLPs and requiring ASHA certification will shrink the pool of service providers in that qualified people without certification will not be eligible for licensure. Ms. Merrick commented that the certification requirement places unnecessary financial burdens and creates confusion for SLPs, and continuing education requirements for ASHA and Delaware are not on the same schedule. Ms. Merrick asked that the Board hold off on adopting the proposed regulations in favor of a legislative solution.

Lindsay Williams testified that she echoed the concerns expressed by Ms. Merrick and commented that power will be handed over to ASHA in granting licensure. She stated that the costs of certification may outweigh the benefits in Delaware. The ASHA certification requirement may also be a detriment to candidates considering a career as an SLP in Delaware. Ms. Williams also expressed concern regarding the handling of complaints.

Kathleen Riley testified that audiologists are not required to have ASHA certification for licensure and the same standard should apply to SLPs. Ms. Riley also stated that allowing a hearing aid dispenser to have a temporary license for up to 4 years does not serve the public well due to concerns regarding applicant competence.

Preston Lewis testified that the ASHA certification requirement will act as a stop sign at the state line with respect to reciprocity. Mr. Lewis also expressed concerns regarding the certification requirement's impact on the Interstate Compact. Mr. Lewis stated that ASHA is not a regulatory body and SLP licensure should not be outsourced. He asked for a pause in moving forward with the regulations.

Meredith Sullivan testified that she agreed with the comments provided by other commenters regarding ASHA as the only way for licensure. She expressed concerns that licensure is being handed off to a private entity and that ASHA can always change its rules.

Megan McElroy testified that she agreed with other commenters. She stated that handing over requirements to ASHA will give up Board autonomy. Ms. McElroy commented that ASHA could change anything and take away state requirements, and handing over licensure structure to ASHA will hurt the integrity of the profession.

Jeannette Benigas testified regarding concerns posed by the ASHA requirement with respect to the Interstate Compact. Ms. Benigas stated that the requirement will encourage people to leave Delaware, and that a continuing ASHA requirement is not in line with other states.

Findings of Fact and Conclusions

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulation.

2. Most of the public comments addressed proposed revisions to Section 2.0 which sets forth the requirements for licensure as a speech/language pathologist ("SLP"). Specifically, the requirements pertaining to the clinical practicum, clinical fellowship, and the national examination were stricken. The Board found that these revisions were required to ensure that the regulation is consistent with statutory requirements. The Board's Practice Act, Chapter 37 of Title 24 of the Delaware Code, was amended in 2023 pursuant to SB 141, 152nd General Assembly to state:

- (a) An applicant who is applying for licensure under this chapter shall submit evidence, verified by oath and satisfactory to the Board, that such person:
 - (1) For licensure as a speech/language pathologist, has current certification of clinical competence issued

by the American Speech-Language-Hearing Association (ASHA) or its successors.

a-d. [Repealed.]

24 **Del.C.** §3708(a). While the Board has the authority to promulgate regulations pursuant to the Administrative Procedure Act, such regulations may only "implement or clarify a specific section" of the Practice Act. 24 **Del.C.** §3706(a)(1). The current regulation pertaining to the licensure of SLPs expressly conflicts with Section 3708(a)(1) which requires an SLP applicant to have current certification of clinical competence issued by the American Speech-Language-Hearing Association ("ASHA"). The Board therefore has proposed amendments to Section 2.0 to ensure that the regulation is consistent with the Practice Act. In these circumstances, the Board declines to amend the proposed regulation in response to public comment. The Board reserves the option to review the current statutory requirement of ASHA certification at a later time.

3. Certain commenters expressed concerns that SLPs would need to maintain ASHA certification to maintain licensure. However, Section 3708(a)(1) provides only that an SLP applicant must have "current" ASHA certification. Section 3712(b) of Title 24, addressing license renewal, does not impose a requirement of ongoing ASHA certification. However, in the interests of clarity, proposed subsection 2.1 has been revised to state that ongoing ASHA certification is not required to maintain Delaware licensure.

4. The Board also concluded, in response to public comment, that the proposed regulation does not conflict with the Interstate Compact, as codified in Chapter 37A of Title 24 of the Delaware Code. 24 **Del.C.** § 3704A(f). Further, reciprocity licensure would not be adversely impacted in that ASHA certification is not required for licensure by reciprocity. 24 **Del.C.** §3710.

5. In further review of the proposed regulation, the Board determined that subsections relating to temporary licensure for SLPs were inadvertently stricken. Section 2.1 has been revised accordingly. Applicants applying for a temporary license will be required to document supervised clinical practicum hours and a CF plan.

6. The Board considered public comment with respect to subsection 4.3 which addresses temporary licensure for hearing aid dispensers. Subsection 4.3.4 extends the period within which an applicant may take the licensure examination. The Board concluded that this proposed language does not pose a risk to the public in that applicants who do not successfully pass the examination will be required to complete additional training. The Board declined to revise the proposed regulation in response to public comment.

7. Pursuant to 24 **Del.C.** §3706(a)(1), the Board has the statutory authority to promulgate regulations. 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 regulation. The Board considered both written comments and testimony presented by various stakeholders. On the basis of public comment, the Board made certain revisions to the proposed regulation. Therefore, the proposed regulation, published on October 1, 2024, is withdrawn. The Board's proposed regulation is attached hereto as Exhibit A.

***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/april2025/proposed/28 DE Reg 720RFA 04-01-25.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/april2025/proposed/28 DE Reg 720 04-01-25.htm>

DIVISION OF PROFESSIONAL REGULATION**Board of Social Work Examiners**

Statutory Authority: 24 Delaware Code, Section 3906(a)(1) (24 **Del.C.** §3906(a)(1))
24 **DE Admin. Code** 3900

PUBLIC NOTICE**3900 Board of Social Work Examiners**

Pursuant to 24 **Del.C.** §3906(a)(1), the Delaware Board of Social Work Examiners ("Board") has proposed revisions to its regulation. Subsection 3.1.2.1 has been revised to provide that up to 25 hours of the required 100 hours of direct professional supervision may be obtained through group supervision. Groups supervision may include no more than 7 supervisees. Subsection 7.2.1, concerning acceptable continuing education activities, has been amended to clarify that courses taken to satisfy degree requirements do not qualify as continuing education.

A public hearing will be held on April 21, 2025 at 9:00 a.m. in the second floor conference room A 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 Social Work Examiners, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address or at jennifer.jacoby@delaware.gov.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be May 6, 2025. The Board will deliberate on all public comments at its next regularly scheduled meeting.

***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/april2025/proposed/28 DE Reg 723RFA 04-01-25.pdf>

3900 Board of Social Work Examiners
(Break in Continuity of Sections)

3.0 Licensure of Licensed Clinical Social Workers

- 3.1 Experience. In addition to the requirements set forth in Section 2.0, a Licensed Clinical Social Worker (LCSW) applicant must meet the following experience requirements:
 - 3.1.1 The applicant must provide documentation, verified by oath and acceptable to the Board, of not less than 3,200 hours of post-degree supervised clinical social work experience, acceptable to the Board, obtained over a period of not less than 2 years and not more than 5 years. The required 3,200 hours of post-degree clinical social work experience shall be under professional supervision acceptable to the Board. Supervision acceptable to the Board means the professional relationship between a clinical supervisor and a social worker that provides evaluation and direction over the services that the social worker provides and promotes continued development of the social worker's knowledge, skills, and abilities to provide social work services in an ethical and competent manner. The required 3,200 hours of total experience must be completed under the professional supervision of an individual who meets the requirements of subsection 3.2.
 - 3.1.2 In addition to the requirements set forth in subsection 3.1.1, 1,600 of the required 3,200 hours must be clinical experience hours completed under the direct professional supervision of an individual who meets the requirements of subsection 3.2. Direct supervision acceptable to the Board means supervision overseeing the supervisee's application of clinical social work principles, methods or procedures to assist individuals in the continued development of social work knowledge, skills and abilities. The 1,600 hours of supervised clinical experience must be fulfilled as follows:

- 3.1.2.1 Within the required 3,200 hours of post-degree supervised clinical social work experience, 1,600 clinical experience hours must be completed under direct professional supervision, which means that at least ~~400~~ 75 hours shall be 1-to-1 supervision provided by an approved supervisor, pursuant to the requirements of subsection 3.2 and no more than 25 hours may be obtained through group supervision. Group supervision may include no more than 7 supervisees. The direct supervisory contact must be on a ~~1-to-1~~ face-to-face basis or by live video conferencing. Up to 100% of ~~1-to-1~~ direct supervision may be by live video conferencing, at the discretion of the supervisor. Supervision by telephone or e-mail is expressly not permitted.

(Break in Continuity of Sections)

7.0 Continuing Education

(Break in Continuity Within Section)

7.2 Definition and Scope of Continuing Education:

- 7.2.1 Continuing Education is defined to mean acceptable courses offered by colleges and universities, except for courses taken to satisfy degree requirements, televised and internet courses, independent study courses which have a final exam or paper, workshops, seminars, conferences and lectures oriented toward the enhancement of clinical social work practice, values, skills and knowledge, as well as acceptable self-directed activities as described herein.

***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/april2025/proposed/28 DE Reg 723 04-01-25.htm>

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Sections 203F and 209 (26 Del.C. §§203F & 209)

PUBLIC NOTICE

3014 Regulations Governing Certificates of Public Convenience and Necessity for the Siting of Renewable Energy Interconnection Facilities

PSC REGULATION DOCKET NO. 67

Opened: January 29, 2025 (Order No. 10643)

The Delaware Public Service Commission ("Commission" or "PSC"), pursuant to 26 Del.C. § 203F, proposes to issue regulations governing certificates of public convenience and necessity for the siting of renewable energy interconnection facilities. The proposed regulations, Regulations Governing Certificates of Public Convenience and Necessity for the Siting of Renewable Energy Interconnection Facilities are proposed to be codified at 26 DE Admin. Code § 3014.

A copy of the proposed regulations is being published in the April 2025 issue of the *Delaware Register of Regulations*, and is also available in the PSC's electronic filing system, Delafile, located at <http://delafile.delaware.gov/> (Docket No. "Reg. 67"). If you wish to obtain written copies of the implementing Order and proposed regulations, please contact the PSC at (302) 736-7500. Copies in excess of the first twenty (20) pages are \$0.25 per page. Payment is expected prior to copying (if you wish the copies to be mailed) or at the time the copies are retrieved (if you retrieve them in person).

In accordance with 29 Del.C. §10116, written comments, suggestions, briefs, and compilations of data or other written materials concerning the proposed regulations should be submitted via e-mail to PSC@delaware.gov with the subject line "Regulation 3014 - PSC Docket No. 67" or mailed to: Crystal Beenick, Public Service Commission,

Cannon Building, 861 Silver Lake Blvd., Suite 100, Dover, DE 19904.

The Commission will hold a public hearing on the proposed regulations on April 23, 2025, at 1:00 p.m. at the hearing room located at 861 Silver Lake Blvd., Suite 100, Dover, DE 19904. To be considered at the April 23, 2025 hearing, written comments must be submitted on or before April 16, 2025. Pursuant to 29 **Del.C.** §10118(a), written comments will be accepted after the hearing until May 13, 2025.

On or after May 13, 2025, following review of any public comments, the Commission will determine whether to amend its regulations by adopting the proposed amendments or make additional changes.

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

IN THE MATTER OF THE ADOPTION OF
RULES AND REGULATIONS TO
IMPLEMENT THE PROVISIONS OF TITLE
26 §203F DELAWARE CODE
RELATING TO RENEWABLE ENERGY
INTERCONNECTION FACILITIES
(OPENED JANUARY 14, 2025)

PSC REGULATION DOCKET
NO. 67

ORDER NO. 10643

AND NOW, this 29th day of January 2025, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, on September 5, 2024, the Governor of the State of Delaware signed into law Senate Bill 265, which amended Title 26 of the Delaware Code by adding section 203F relating to the siting of Renewable Energy Interconnection Facilities; and

WHEREAS, Commission Staff ("Staff") has drafted proposed regulations governing certificates of public convenience and necessity for the siting of renewable energy interconnection facilities; and

WHEREAS, Staff asks the Commission to open PSC Regulation Docket No. 67, allowing Staff to coordinate publication of the proposed regulations to become 26 *DE Admin. Code* § 3014; and

WHEREAS, Staff now recommends that the Commission issue the proposed *Regulations Governing Certificates of Public Convenience and Necessity for the Siting of Renewable Energy Interconnection Facilities* for publication in the *Delaware Register of Regulations* (the "Regulations");

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

1. The Commission determines good cause exists to promulgate the Regulations.
2. Pursuant to 26 *Del. C.* § 209(a)(1) and 29 *Del C.* § 10111 *et seq.*, the Commission proposes to promulgate the Regulations as Staff has recommended in the attached Exhibit A.
3. Staff shall work with its Deputy Attorney General and submit the appropriate documents required by 29 *Del C.* § 10111 *et seq.* and 29 *Del C.* § 10401 *et seq.* to the Delaware Office of the Registrar of Regulations (the "Registrar") for publication of the proposed Regulations in the *Delaware Register of Regulations*. Staff shall also work with its Deputy Attorney General to revise the proposed Regulations as recommended by the Registrar.
4. Pursuant to 26 *Del. C.* § 102A, the Secretary of the Commission shall publish the proposed Regulations, attached as Exhibit B, and a Public Notice, on the Commission's website located at <https://depssc.delaware.gov> as required.
5. Once the proposed Regulations are published in the *Delaware Register of Regulations*, persons wishing to submit written comments, suggestions, briefs, and compilations of data or other written materials concerning the amendments may do so as provided by the published Public Notice, located on the Commission's website and in the *Delaware Register of Regulations*.

6. The Commission will hold a public hearing on the proposed Regulations as provided by the published Public Notice.

7. Following review of any public comments, the Commission will determine whether to amend its Regulations by adopting the proposed amendments or make additional changes.

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

Dated: _____ BY ORDER OF THE COMMISSION:

/s/ Dallas Winslow, Chairman

Manubhai "Mike" Karia, Commissioner

**Voted via Teleconference pursuant to 29 Del. C. §
10006(A)(d)**

Joann Conaway, Commissioner

Kim F. Drexler, Commissioner

(ABSENT) Harold Gray, Commissioner

ATTEST: Crystal Beenick, Commission Secretary

***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/april2025/proposed/28 DE Reg 724RFA 04-01-25.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/april2025/proposed/28 DE Reg 724 04-01-25.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) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 922

ORDER

922 Children with Disabilities Subpart A, Purposes and Definitions

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §122(b), the Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 922 Children with Disabilities Subpart A, Purposes and Definitions. This regulation is being amended to add definitions that help clarify changes made to 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies, as well as 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs. Other grammatical changes were made to comply with the *Delaware Administrative Code Drafting and Style Manual*.

This regulation was originally published on January 1, 2024, with several comments being received. Due to the comments received and the substantive changes that were required to the regulation, the Department republished the regulation in the July 1, 2024 *Delaware Register of Regulations*. The Department also held public hearings on the proposed regulation changes on July 23, 2024 and July 30, 2024. The effective date of this order will be July 1, 2025.

The Department of Education received three sets of written comments concerning the proposed amendments.

Issue: The term and definition for "homebound or hospita placement" is unnecessary and problematic and should be removed.

Response: The Department appreciates that this placement should be temporary and limited to situations where the IEP Team identifies no alternative. IDEA allows for placement in hospitals and other institutions as part of the continuum of alternative placement. The purpose of defining this placement identified in 925 is to have a common understanding of the language. We believe there are enough protections throughout the regulations to ensure that children are educated in the least restrictive environment. No change will be made to the regulation.

Issue: Define "child with a print disability" rather than "print disability", and be defined instead, using the criteria for the Accessible Instructional Material program, i.e. www.aimdelaware.org.

Response: The Department notes that adding "child with a print disability" would be confusing, since "print disability" is not a classification in 925. The addition of this term relates to the Marrakesh Treaty and copyright law, with the intent to ensure students may receive accessible format materials. The Accessible Instructional Material program will be referenced in guidance to LEAs. No change will be made to the regulation.

II. FINDINGS OF FACTS

Pursuant to 14 **Del.C.** §122(b), the Secretary of Education finds that it is appropriate to amend 14 **DE Admin. Code** 922 Children with Disabilities Subpart A, Purposes and Definitions. This regulation is being amended to add definitions that help clarify changes made to 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies, as well as 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs. Other grammatical changes were made to comply with the *Delaware Administrative Code Drafting and Style Manual*.

III. ASSESSMENT OF THE IMPACT ON ACHIEVEMENT OF THE STATE'S GREENHOUSE GAS EMISSIONS REDUCTION TARGETS AND RESILIENCY TO CLIMATE CHANGE

The Secretary of Education has reviewed the proposed regulation as required by 29 **Del.C.** §10118(b)(3) and has determined that any assessment of the impact of the proposed regulation is not practical.

IV. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 922 Children with Disabilities Subpart A, Purposes and Definitions. Therefore, pursuant to 14 **Del.C.** §122 and 14 **Del.C.** §3110(a), 14 **DE Admin. Code** 922 Children with Disabilities Subpart A, Purposes and Definitions attached hereto as *Exhibit "A"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e) and 14 **Del.C.** §3110(a), 14 **DE Admin. Code** 922 Children with Disabilities Subpart A, Purposes and Definitions 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.

V. TEXT AND CITATION

The text of 14 **DE Admin. Code** 922 Children with Disabilities Subpart A, Purposes and Definitions amended hereby shall be in the form attached hereto as *Exhibit "A"*, and said regulation shall be cited as 14 **DE Admin. Code** 922 Children with Disabilities Subpart A, Purposes and Definitions in the *Administrative Code of Regulations* for the Department of Education.

VI. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 and 14 **Del.C.** §3110(a) on February 20, 2025. The effective date of this Order July 1, 2025.

IT IS SO ORDERED the 20th day of February 2025.

Department of Education

Cynthia Marten, Secretary of Education

Approved this 20th day of February 2025

State Board of Education

/s/ Shawn Brittingham, President

/s/ Deborah Stevens, Vice President

/s/ Meredith L. Griffin, Jr.

/s/ Rajalakshmi Lodhavia

/s/ Rev. Provey Powell, Jr.

/s/ James L. Simmons III

***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 July 2024 issue of the *Register* at page 11 (28 DE Reg. 11). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/april2025/final/28 DE Reg 727 04-01-25.htm>

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 923

ORDER

923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §122(b), the Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies. This regulation is being amended to update Section 16.0 Placements so that it aligns with 14 DE Admin. Code 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs. Other grammatical changes were made to comply with the *Delaware Administrative Code Drafting and Style Manual*.

This regulation was originally published on January 1, 2024, with several comments being received. Due to the comments received and the substantive changes that were required to the regulation, the Department republished the regulation in the July 1, 2024 *Delaware Register of Regulations*. The Department also held public hearings on the proposed regulation changes on July 23, 2024 and July 30, 2024. The effective date of this regulation is July 1, 2025.

The Department of Education received three sets of written comments concerning the proposed amendments.

Issue: The proposed regulations would infringe on the rights of students, especially those with medical conditions, to be educated in the least restrictive environment (LRE) and provided with a free appropriate public education (FAPE).

Response: The Department appreciates that "supportive instruction and related services at home" should be temporary and limited to situations where the IEP Team identifies no alternative. IDEA allows for placement in hospitals and other institutions as part of the continuum of alternative placement. We believe there are enough protections throughout the regulations to ensure that children are educated in the least restrictive environment. 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 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies to update Section 16.0 Placements so that it aligns with 14 DE Admin. Code 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs. Other grammatical changes were made to comply with the *Delaware Administrative Code Drafting and*

Style Manual.

III. ASSESSMENT OF THE IMPACT ON ACHIEVEMENT OF THE STATE'S GREENHOUSE GAS EMISSIONS REDUCTION TARGETS AND RESILIENCY TO CLIMATE CHANGE

The Secretary of Education has reviewed the proposed regulation as required by 29 **Del.C.** §10118(b)(3) and has determined that any assessment of the impact of the proposed regulation is not practical

IV. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies. Therefore, pursuant to 14 **Del.C.** §122 and 14 **Del.C.** §3110(a), 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies attached hereto as *Exhibit "A"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e) and 14 **Del.C.** §3110(a), 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies. 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.

V. TEXT AND CITATION

The text of 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies amended hereby shall be in the form attached hereto as *Exhibit "A"*, and said regulation shall be cited as 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies.in the *Administrative Code of Regulations* for the Department of Education.

VI. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 and 14 **Del.C.** §3110(a) on February 20, 2025. The effective date of this Order shall July 1, 2025.

IT IS SO ORDERED the 20th day of February 2025.

Department of Education

Cynthia Marten, Secretary of Education

Approved this 20th day of February 2025

State Board of Education

/s/ Shawn Brittingham, President

/s/ Deborah Stevens, Vice President

/s/ Meredith L. Griffin, Jr.

/s/ Rajalakshmi Lodhavia

/s/ Rev. Provey Powell, Jr.

/s/ James L. Simmons III

***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 July 2024 issue of the *Register* at page 12 (28 DE Reg. 12). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/april2025/final/28 DE Reg 729 04-01-25.htm>

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 925

ORDER

925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §122(b), the Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs. This regulation is being amended to ensure alignment with current practice. The following sections have been revised: Additional Requirements for Evaluations and Re-Evaluations, Determination of Eligibility, Individualized Education Program (IEP), IEP Team, When IEPs Shall Be In Effect, Development, and Review of IEP, Educational Placement in the Least Restrictive Environment, and High School Graduation. Other grammatical changes were made to comply with the *Delaware Administrative Code Drafting and Style Manual*.

This regulation was originally published on January 1, 2024, with several comments being received. Due to the comments received and the substantive changes that were required to the regulation, the Department republished the regulation in the July 1, 2024 *Delaware Register of Regulations*. The Department also held public hearings on the proposed regulation changes on July 23, 2024 and July 30, 2024. The effective date of this order is July 1, 2025.

The Department of Education received two sets of written comments and one public hearing comment concerning the proposed amendments.

Issue: 925.5.5.2 no longer has a sentence stating that local education agencies (LEA) may use the "summary of performance form provided by [DDOE]" when a student is being exited from services due to aging out.

Response: Upon legal review, it was decided that it is unnecessary to explicitly reference the "summary of performance" form in the regulations, instead this will be referred to in guidance to LEAs. No change will be made to the regulation.

Issue: In 925.6.3.2, add a preference for the school psychologist who conducted the student's testing, be the one who attends the eligibility meeting.

Response: While it is ideal for the school psychologist who conducted testing to be present at the eligibility meeting, this is not always possible. The specialization of the school psychologist includes interpretation of test results and it is the Department's position that a certified school psychologist would be qualified. We will recommend, through technical assistance, that schools include the school psychologist who conducted the testing. No change will be made to the regulation.

Issue: The proposed change to 925.6.5.5.1 makes the student's eligibility depend on the calendar of the LEA in which the student is enrolled and introduces confusion over when a student will lose their eligibility.

Response: In order to make eligibility more equitable for students with August birth dates, the Department chose the start date for the district in which a child is enrolled. District start dates are readily available to families. No change will be made to the regulation.

Issue: For grammatical clarity, move "the child" from the end of 925.6.6.1 and add those words to the beginning of both 6.6.1.1 and 6.6.1.2.

Response: This non-substantive change will be made in the regulation.

Issue: Examples of adverse effects on educational performance for the hearing impairment classification were removed in section 925.6.10 for consistency across classifications. Provide guidance on what constitutes adverse effects on educational performance.

Response: The Department appreciates this feedback and will provide such guidance.

Issue: 6.11.1.3 shows both "team" and "Team" as struck through.

Response: Striking both terms was an error. The word "team" when appearing in IEP Team should be capitalized throughout. This error appears in 6.9.4.5 as well. These non-substantive changes will be made in the regulation.

Issue: The requirement that an orientation and mobility specialist be a member of the student's IEP team for purposes of eligibility determination was removed from 925.6.17. Include clarification that COMS involvement in IEPs generally are not modified by this change.

Response: The Department will provide guidance to LEAs on the distinction between required members for eligibility meetings versus IEP meetings. No change will be made to the regulation.

Issue: Section 6.17.7 appears twice in the regulation.

Response: The repeat of section 6.17.7 was in error and will be removed.

Issue: 925.8.5.2 prohibits excusal of required IEP team members for purposes of eligibility determinations. Why would the Department allow the exception of the CTE and / or Pathway teacher from this requirement?

Response: The exception in Section 8.5.2 for pathway teachers is for the eligibility meeting only. These Team members are required for the IEP meeting. This distinction will be described in guidance to LEAs. No change will be made to the regulation.

Issue: Remove requirement in section 10.0 where a student transfers from one Delaware public agency to another, the receiving agency must "[a]dopt the child's Evaluation Summary Report (ESR) from the previous public agency or conduct a new evaluation that meets the applicable eligibility requirements.

Response: This amendment to section 10.0 was added for clarity. The LEA must implement the child's IEP; whereas this code clarifies the procedures required in Delaware, which specifically requires the ESR be adopted or amended by the receiving agency. No change will be made to the regulation.

Issue: In 925.11.2.6, make clear that it is not JUST "grade-level textbooks and other core materials" that districts must consider and adapt - instead, it should be anything that the student would need to enable access to the general education curriculum.

Response: The Department appreciates this comment and will make guidance available to LEAs on this matter. No change will be made to the regulation.

Issue: Why does section 13.3 no longer include LRE placement options? Will guidance on the options be made available?

Response: The removal of the LRE options is consistent with how this section appears in IDEA. The Department does not expect any impact on student placement options, which will continue to be available. Guidance on placement options will be available to LEAs. No change will be made to the regulation.

Issue: In Section 13.1.1, the reference to subsection 11.12 should instead be to section 11.13.

Response: The Department will make this non-substantive change.

II. FINDINGS OF FACTS

The Secretary of Education finds that it is appropriate to amend 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs. This regulation is being amended to ensure alignment with current practice. The following sections have been revised: Additional Requirements for Evaluations and Re-Evaluations, Determination of Eligibility, Individualized Education Program (IEP), IEP Team, When IEPs Shall Be In Effect, Development, and Review of IEP, Educational Placement in the Least Restrictive Environment, and High School Graduation. Other grammatical changes were made to comply

with the *Delaware Administrative Code Drafting and Style Manual*.

III. ASSESSMENT OF THE IMPACT ON ACHIEVEMENT OF THE STATE'S GREENHOUSE GAS EMISSIONS REDUCTION TARGETS AND RESILIENCY TO CLIMATE CHANGE

The Secretary of Education has reviewed the proposed regulation as required by 29 **Del.C.** §10118(b)(3) and has determined that any assessment of the impact of the proposed regulation is not practical

IV. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs.. Therefore, pursuant to 14 **Del.C.** §122 and 14 **Del.C.** §3110(a), 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs attached hereto as *Exhibit "A"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e) and 14 **Del.C.** §3110(a), 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs 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.

V. TEXT AND CITATION

The text of 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs amended hereby shall be in the form attached hereto as *Exhibit "A"*, and said regulation shall be cited as 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs in the *Administrative Code of Regulations* for the Department of Education.

VI. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 and 14 **Del.C.** §3110(a), on February 20, 2025. The effective date of this Order shall be July 1, 2025

IT IS SO ORDERED the 20th day of February 2025.

Department of Education

Cynthia Marten, Secretary of Education

Approved this 20th day of February 2025

State Board of Education

/s/ Shawn Brittingham, President

/s/ Deborah Stevens, Vice President

/s/ Meredith L. Griffin, Jr.

/s/ Rajalakshmi Lodhavia

/s/ Rev. Provey Powell, Jr.

/s/ James L. Simmons III

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

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

<https://regulations.delaware.gov/register/april2025/final/28 DE Reg 731 04-01-25.htm>

PROFESSIONAL STANDARDS BOARD

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

14 **DE Admin. Code** 1517

ORDER

1517 Paraeducator Permit

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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** 1517 Paraeducator Permit. The regulation concerns the requirements for a Paraeducator Permit. The proposed amendments in this regulation include revising subsection 4.1.1.1, which concerns the requirements for an applicant for an Instructional Paraeducator Permit to clarify that a secondary credential approved by a state can also be used to qualify for a permit. Identical revisions are found in subsections 5.1.1 concerning the requirements for a Service Paraeducator Permit, and in 7.3.1 and 7.4.1 concerning the application process. The proposed amendments include grammatical and style changes to comply with the *Delaware Administrative Code Drafting and Style Manual*.

Notice of the proposed regulation was published in the *Register of Regulations* on January 1, 2025. The Board received two written submittals concerning the proposed regulation. Ann C. Fisher, Chairperson of the Governor's Advisory Council for Exceptional Citizens ("GACEC") commented that GACEC "supports the proposed changes because they appear to encourage more paraeducators to serve in the educational system in Delaware." Susannah Ryan-Eaton, Chairperson of the State Council for Persons with Disabilities ("SCPD") commented that SCPD supports the proposed changes as they appear to create flexibility in the requirements for paraeducators.

II. ASSESSMENT OF THE IMPACT ON ACHIEVEMENT OF THE STATE'S GREENHOUSE GAS EMISSIONS REDUCTION TARGETS AND RESILIENCY TO CLIMATE CHANGE

The Secretary of Education has reviewed the proposed regulation as required by 29 **Del.C.** §10118(b)(3) and has determined that any assessment of the impact of the proposed regulation is not practical.

III. FINDINGS OF FACTS

On February 6, 2025, the Board considered the two written submittals and determined that further changes as a result of the written submittals were not necessary. The Board voted to propose 14 **DE Admin. Code** 1517 Paraeducator Permit, 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** 1517 Paraeducator Permit.

IV. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1517 Paraeducator Permit subject to the State Board of Education's approval. On February 20, 2025, the State Board of Education approved amending 14 **DE Admin. Code** 1517 Paraeducator Permit. Therefore, pursuant to 14 **Del.C.** §§1203, 1205(b), 14 **DE Admin. Code** 1517 Paraeducator Permit, attached hereto as Exhibit A, is hereby amended.

V. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1517 Paraeducator Permit amended hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1517 Paraeducator Permit in the *Administrative Code of Regulations* for the Department.

VI. 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 20th day of February, 2025.

Department of Education

Cynthia Marten, Secretary of Education

Approved this 20th day of February, 2025.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Rev. Provey Powell, Jr.

/s/ Deborah Stevens, Vice President

/s/ James L. Simmons III

/s/ Meredith L. Griffin, Jr.

/s/ Rajalakshmi Lodhavia

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

***Please note that no changes were made to the regulation as originally proposed and published in the January 2025 issue of the *Register* at page 490 (28 DE Reg. 490). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/april2025/final/28 DE Reg 734 04-01-25.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 1554

ORDER**1554 Family and Consumer Sciences Teacher****I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

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 1554 Family and Consumer Sciences Teacher. The regulation concerns the requirements for a Family and Consumer Sciences Teacher Standard Certificate in accordance with 14 Del.C. §1220. The proposed amendments in this regulation include revising Section 1.0 to specify that as of September 1, 2025 the Department will no longer issue a Family and Consumer Sciences Teacher Standard Certificate and moving language from Section 9.0 into Section 2.0 and revising its title which concerns recognizing past certificates that were issued by the Department. New language in Section 3.0 addresses the effective date of the proposed amendments.

Notice of the proposed regulation was published in the *Register of Regulations* on January 1, 2025. The Board received one written submittal concerning the proposed regulation. Ashley Monet-Holloway submitted a comment that was unrelated to the proposed amendments but concerned wellness centers in schools.

II. ASSESSMENT OF THE IMPACT ON ACHIEVEMENT OF THE STATE'S GREENHOUSE GAS EMISSIONS REDUCTION TARGETS AND RESILIENCY TO CLIMATE CHANGE

The Secretary of Education has reviewed the proposed regulation as required by 29 Del.C. §10118(b)(3) and has determined that any assessment of the impact of the proposed regulation is not practical.

III. FINDINGS OF FACTS

On February 6, 2025, the Board determined that the comment submitted was unrelated to the pending regulatory changes and voted to propose 14 **DE Admin. Code** 1554 Family and Consumer Sciences 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** 1554 Family and Consumer Sciences Teacher.

IV. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1554 Family and Consumer Sciences Teacher subject to the State Board of Education's approval. On February 20, 2025, the State Board of Education approved amending 14 **DE Admin. Code** 1554 Family and Consumer Sciences Teacher. Therefore, pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, 14 **DE Admin. Code** 1554 Family and Consumer Sciences Teacher, attached hereto as Exhibit A, is hereby amended.

V. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1554 Family and Consumer Sciences Teacher amended hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1554 Family and Consumer Sciences Teacher in the *Administrative Code of Regulations* for the Department.

VI. 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 20th day of February, 2025.

Department of Education

Cynthia Marten, Secretary of Education

Approved this 20th day of February, 2025.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Rev. Provey Powell, Jr.

/s/ Deborah Stevens, Vice President

/s/ James L. Simmons III

/s/ Meredith L. Griffin, Jr.

/s/ Rajalakshmi Lodhavia

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

***Please note that no changes were made to the regulation as originally proposed and published in the January 2025 issue of the *Register* at page 492 (28 DE Reg. 492). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/april2025/final/28 DE Reg 735 04-01-25.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** 1572

ORDER

1572 Teacher of Students Who Are Gifted or Talented

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

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** 1572 Teacher of Students Who are Gifted or Talented. The regulation concerns the requirements for a Teacher of Students Who are Gifted or Talented Standard Certificate in accordance with 14 **Del.C.** §1220. The proposed amendments in this regulation include adding subsection 4.1.1.6 which outlines a pathway toward achieving the Teacher of Students Who Are Gifted or Talented Standard Certificate via the completion of Micro-credentials. Additional proposed amendments include, in Section 2.0, revising the definition of "Regionally Accredited" based on the changes the U.S. Department of Education made to its recognition of accrediting bodies, amending the definition of the term "Employing Authority" to eliminate a redundant phrase, adding a definition of Micro-credential; and amending subsection 3.2 to eliminate a redundant phrase. The proposed amendments include grammatical and style changes to comply with the *Delaware Administrative Code Drafting and Style Manual*.

Notice of the proposed regulation was published in the *Register of Regulations* on January 1, 2025. The Board received written submittals from Shivam Nagar, Ann C. Fisher, Chairperson of the Governor's Advisory Council for Exceptional Citizens ("GACEC"), and Susannah Ryan-Eaton, Chairperson of the State Council for Persons with Disabilities ("SCPD"). Shivam Nagar stated that the regulation could emphasize how this time enriched one's understanding of education. Both GACEC and SCPD stated that they did not support the proposed amendments because they introduce certification via the completion of Micro-credentials, which do not provide the same level of preparation as traditional pro-grams.

II. ASSESSMENT OF THE IMPACT ON ACHIEVEMENT OF THE STATE'S GREENHOUSE GAS EMISSIONS REDUCTION TARGETS AND RESILIENCY TO CLIMATE CHANGE

The Secretary of Education has reviewed the proposed regulation as required by 29 **Del.C.** §10118(b)(3) and has determined that any assessment of the impact of the proposed regulation is not practical.

III. FINDINGS OF FACTS

On February 6, 2025, the Board considered the written submittals. The Board found that the Teacher of Students Who are Gifted or Talented Standard Certificate can only be granted to educators who already hold a content area standard certificate and who have gone through an educator preparation program. It also found that there are neither university-based nor non-credit bearing programs within the State of Delaware for a Teacher of Students Who are Gifted or Talented Standard Certificate. Further, it found that the Department had already approved the Micro-credentials included in the regulation as a "Department-approved program" under sub-section 4.1.1.4, and the deletion of sub-section 4.1.1.6 would make no material difference to that approval. The Board determined not to make any changes as a result of the written submittals and voted to propose 14 **DE Admin. Code** 1572 Teacher of Students Who are Gifted or Talented, 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** 1572 Teacher of Students Who are Gifted or Talented.

IV. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1572 Teacher of Students Who are Gifted or Talented subject to the State Board of Education's approval. On February 20, 2025, the State Board of Education approved amending 14 **DE Admin. Code** 1572 Teacher of Students Who are Gifted or Talented. Therefore, pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, 14 **DE Admin. Code** 1572 Teacher of Students Who are Gifted or Talented, attached hereto as Exhibit A, is hereby amended.

V. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1572 Teacher of Students Who are Gifted or Talented amended hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1572 Teacher of Students Who are Gifted or Talented in the *Administrative Code of Regulations* for the Department.

VI. 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 20th day of February, 2025.

Department of Education

Cynthia Marten, Secretary of Education

Approved this 20th day of February, 2025.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Rev. Provey Powell, Jr.

/s/ Deborah Stevens, Vice President

/s/ James L. Simmons III

/s/ Meredith L. Griffin, Jr.

/s/ Rajalakshmi Lodhavia

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

***Please note that no changes were made to the regulation as originally proposed and published in the January 2025 issue of the *Register* at page 497 (28 DE Reg. 497). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/april2025/final/28 DE Reg 737 04-01-25.htm>

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

Statutory Authority: 7 Delaware Code, Sections 901(c) and (d) and 903(e)(2)a (7 Del.C. §§901(c) and (d) & 903(e)(2)a)
7 DE Admin. Code 3550

Secretary's Order No: 2025-F-0012

RE: Approving Final Regulation, pursuant to 7 Del.C. § 903(e)(2)a.1, to Amend 7 DE Admin. Code 3550
Cobia (Rachycentron canadum)

Date of Issuance: February 23, 2025

Effective Date of the Amendment: 48 hours following publication of this Secretary's Order and regulation on the Department's website: <https://de.gov/dnrecorders>

3550 Cobia (*Rachycentron canadum*)

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

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

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

Background, Procedural History and Findings of Fact

This order amends 7 DE Admin. Code 3550 *Cobia (Rachycentron canadum)* as part of an effort to reduce Cobia mortality in the recreational and commercial fisheries by adopting the specified management measures approved by the ASMFC Coastal Pelagics Management Board ("Board"). Specifically, this amendment increases the minimum size of Cobia that can be possessed by Delaware's recreational and commercial fishermen from 37 to 43 inches and increases the recreational daily possession limit from one to two Cobia. This order is required for Delaware to remain compliant with ASMFC Addendum II to Amendment 1 of the Atlantic Cobia Interstate Fishery Management Plan ("FMP"). The Board approved this management requirement by consent on January 31, 2025.

The Board determined that the Northern Cobia Management Region, which includes Delaware, was likely to exceed its target Cobia harvest in 2025 unless management action was taken to reduce harvest. Although this action increases the possession limit, the increase in the size limit and the seasonal restrictions on harvest for non-*de minimis* states (NC, VA, and MD) are anticipated to reduce harvest for the region by over 20% in 2025 and 2026.

The Department has the statutory basis and legal authority to act with regard to promulgation of the proposed amendment to 7 DE Admin. Code 3550 *Cobia (Rachycentron canadum)* pursuant to 7 Del.C. §§ 901 (c & d) and 903(e)(2)a.1.

ORDER

In accordance with 7 Del.C. § 903(e)(2)a.1, it is hereby ordered, this 23rd day of February, 2025 that the above referenced amendments to 7 DE Admin. Code 3550 *Cobia (Rachycentron canadum)*, a copy of which is hereby attached, are supported by the evidence contained herein and are hereby adopted. The above referenced amendment shall take effect 48 hours following publication of this Secretary's Order and regulation on the Department's website in accordance with 7 Del.C. § 903(e)(2)a.2.

Gregory Patterson
Secretary
Feb. 23, 2025

3550 Cobia (*Rachycentron canadum*)

1.0 Recreational Possession Limits

- 1.1 It is unlawful for a recreational fisherman to possess more than ~~one~~ two Cobia per day or per trip, whichever is longer.
- 1.2 Except in accordance with Section 3.0 of this regulation, it is unlawful to have aboard any vessel more than ~~one~~ two Cobia.

2.0 Recreational Size Limit

It is unlawful for a recreational fisherman to possess any Cobia that measures less than ~~37~~ 43 inches in total length.

3.0 Commercial Possession Limits

- 3.1 A commercial fisherman may take and reduce to possession no more than two Cobia per day or per trip, whichever is longer, using commercial fishing gear for which said fisherman is lawfully permitted.
- 3.2 It is unlawful for a commercial fisherman to possess more than two Cobia per day or per trip, whichever is longer.
- 3.3 Notwithstanding subsections 3.1 and 3.2, a commercial fishing vessel may have up to six Cobia per day or per trip, whichever is longer, onboard provided the number of Cobia does not exceed twice the number of commercial fishermen onboard that vessel.

4.0 Commercial Size Limit

It is unlawful for a commercial fisherman to possess, trade, barter or sell or attempt to trade, barter or sell any Cobia that measure less than ~~37~~ 43 inches in total length.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
Board of Medical Licensure and Discipline

Statutory Authority: 24 Delaware Code, Sections 1713(a)(12) and 1770A (24 **Del.C.** §§1713(a)(12) & 1770A)
24 **DE Admin. Code** 1700

ORDER

1700 Board of Medical Licensure and Discipline

Pursuant 24 **Del.C.** §§1713(a)(12) and 1770A, the Regulatory Council for Physician Assistants ("Council") of the Delaware Board of Medical Licensure and Discipline ("Board") proposed to revise its regulation to comply with a law change regarding the relationship between physicians and physician assistants. The proposed regulation replaces "supervision" with "collaboration" and clarifies when a physician is limited to collaborating with only four physician assistants.

Summary of the Evidence and Information Submitted

Following publication of the Public Notice in the Delaware *Register of Regulations* on November 1, 2024, Volume 28, Issue 5, a public hearing was held before the Council on December 3, 2024. The written comment period was held open for thirty days, and an additional fifteen days following the public hearing. At the hearing, the Council accepted as evidence and marked the following as the Council's Exhibits:

Council Exhibit 1: Affidavit of publication of the public hearing notice in the *News Journal*.

Council Exhibit 2: Affidavit of publication of the public hearing notice in the *Delaware State News*.

There was no verbal testimony given at the public hearing on December 3, 2024. No written comments were received by the Council during the initial thirty-day public comment period; nor were any written comments received after the public hearing during the fifteen-day second public comment period. 29 **Del.C.** § 10118(a).

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Council with comments in writing and by testimony at the public hearing on the proposed amendments to the Council's regulation.
2. There were no public comments provided to the Council during the two written public comment periods, or the public hearing.
3. Pursuant to 24 **Del.C.** §§1713(a)(12) and 1770A, the Council has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
4. The Council proposed to amend its regulation to comply with a law change regarding the relationship between physicians and physician assistants. The proposed regulation replaces "supervision" with "collaboration" and clarifies when a physician is limited to collaborating with only four physician assistants.
5. The public was given notice and an opportunity to provide the Council with comments in writing and by testimony at the public hearing on the proposed changes to the Council's regulation.
6. Having received no public comments, the Council finds no reason to amend the regulation as proposed.
7. The Council has reviewed the proposed regulation as required by 29 **Del.C.** §10118(b)(3) and has determined

that any assessment of the impact of the proposed regulation on the State's resiliency to climate change is not practical.

RECOMMENDATION TO THE BOARD OF MEDICAL LICENSURE AND DISCIPLINE

8. By the unanimous affirmative vote of the undersigned members, the Regulatory Council for Physician Assistants hereby adopts the regulation as published in the *Register of Regulations* on November 1, 2024, Volume 28, Issue 5, and recommends approval of such regulation to the Board of Medical Licensure and Discipline.

9. If approved by the Board of Medical Licensure and Discipline, the regulation will be effective ten days after publication of the Final Order in the *Register of Regulations*.

Respectfully submitted this 4th day of March 2025.

/s/ Bethany Melo, PA-C

/s/ Kaila Glenn, PA-C

/s/ Joseph M. Parise, D.O.

/s/ Lauren Davey, PA-C

ABSENT Tiwana Miller, PA-C

ABSENT Gregory Wanner, D.O.

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

WHEREAS, the Board of Medical Licensure and Discipline has considered the attached recommendation of the Regulatory Council for Physician Assistants for approval of the amended regulation which implements compliance with a law change regarding the relationship between physicians and physician assistants. The proposed regulation replaces "supervision" with "collaboration" and clarifies when a physician is limited to collaborating with only four physician assistants.; and

WHEREAS, the Board of Medical Licensure and Discipline has determined to approve the aforesaid regulation as proposed by the Regulatory Council for Physician Assistants and attached hereto as Exhibit A.

NOW THEREFORE IT IS ORDERED by the Board of Medical Licensure and Discipline:

1. The regulation recommended by the Regulatory Council for Physician Assistants, which implements compliance with a law change regarding the relationship between physicians and physician assistants, replaces "supervision" with "collaboration" and clarifies when a physician is limited to collaborating with only four physician assistants, is approved; and

2. The regulation shall be effective ten days after publication of this Final Order in the *Register of Regulations*.

SO ORDERED this 4th day of March 2025.

Board of Medical Licensure and Discipline

ABESNT Joseph Rubacky, D.O.

/s/ Sara Moghaddam, M.D.

/s/ Ray Blackwell, M.D.

/s/ Anna D'Amico, M.D.

/s/ Bethany Melo, PA-C

/s/ Melissa Warren

/s/ Janice Truitt

ABSENT Manish Purohit, M.D.

/s/ Joseph Parise, D.O.

/s/ Randeep Kahlon, M.D.

/s/ Garrett Colmorgen, M.D.

/s/ Lauren Davey, PA-C

/s/ Sharon Williams-Mayo

/s/ Mary Lomax, Ed.D.

/s/ Awele Maduka-Ezeh, M.D.

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

*Please note that no changes were made to the regulation as originally proposed and published in the November 2024 issue of the *Register* at page 375 (28 DE Reg. 375). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

<https://regulations.delaware.gov/register/april2025/final/28 DE Reg 741 04-01-25.htm>

OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER
Statutory Authority: 4 Delaware Code, Section 304 (4 Del.C. §304)

ORDER

507 Licensing Third-party Delivery of Alcoholic Beverages

SUMMARY OF THE EVIDENCE

1. Title 4, Section 304 of the Delaware Code authorizes the Alcoholic Beverage Control Commissioner to establish regulations in relation to all powers, duties and functions vested pursuant to the regulation of alcoholic beverages in Delaware.
2. Pursuant to 4 Del.C. §304, the Alcoholic Beverage Control Commissioner ("Commissioner") intends to create a new regulation at 4 DE Admin. Code 507 that sets forth criteria to permit and license third-party delivery service of alcoholic beverages purchased by a customer in the State of Delaware who is 21 years or older and not intoxicated from an on-premise licensee also in this State as authorized by the Commissioner in accordance with the Delaware Liquor Control Act. 4 Del.C. §512(a)(1).
3. Notice of the proposed regulation was published in the January 1, 2025 edition of the *Delaware Register of Regulations* and the public was given thirty (30) days to provide written comment.
4. Public comments were received for the proposed regulation which the Commissioner carefully considered.
5. Having provided the opportunity for public comment on the proposed regulation in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Ch. 101, et. seq., the Commissioner determines the proposed regulation with non-substantive changes is needed and will be adopted.
7. A copy of the final regulation at 4 DE Admin. Code 507 with non-substantive changes is attached hereto.

FINDINGS OF FACT

The Commissioner finds that it is necessary to promulgate a regulation for third party delivery service and changes to the proposed regulation as published previously are not substantive.

NARRATIVE ASSESSEMENT OR STATEMENT

Pursuant to 29 Del.C. §10118(b)(3), the Commissioner states that an assessment is not practical for this regulation or that an impact, if any, would be de minimis on the achievement of the State's greenhouse gas emissions reduction targets and the State's resiliency to climate change.

DECISION AND ORDER

For the foregoing reasons, the Commissioner concludes that it is appropriate to create a new regulation at 4 DE Admin. Code 507 in which the text of the final regulation shall include non-substantive changes to the previously published version and is adopted in accordance with this Order. The new regulation shall become effective ten days after publication of this Order in the *Delaware Register of Regulations*.

IT IS SO ORDERED this 13th day of March 2025 by the Office of the Delaware Alcoholic Beverage Control Commissioner.

The Honorable Jacqueline Paradee Mette, Esq.

Commissioner

500 Initial and Temporary Licensure

507 Licensing Third-party Delivery of Alcoholic Beverages**1.0 Purpose, Applicability and Findings**

- 1.1 The purpose of this regulation is to establish procedures for the issuance of third-party delivery licenses under 4 Del.C. §512(a).
- 1.2 Only on-premise licensees with a license identified in 4 Del.C. §512(a) may contract with third-party delivery licensees to deliver alcoholic beverages to persons 21 years and older and not otherwise intoxicated. On-premise licensees, licensed pursuant to 4 Del.C. §512(a), may not themselves deliver alcoholic beverages to persons 21 years and older.
- 1.3 The Commissioner finds that certification cards issued by server training providers are revocable permits under the Delaware Liquor Control Act, as licenses, and may be subject to administrative sanctions, including suspension or revocation.

2.0 Definitions

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

"Commissioner" means the Alcoholic Beverage Control Commissioner.

"Delivery worker" means an independent contractor or payroll employee of a third-party delivery licensee who performs alcohol-delivery services ~~[at the direction and control of~~ within the scope of a contract or employment with] that third-party delivery licensee.

"Fixed fee" means a pre-determined fee that is not dependent, directly or indirectly, on the sales, profits, or revenues earned by the on-premise licensee.

"Office" means the Office of the Alcoholic Beverage Control Commissioner.

"On-premise licensee" means, for purposes of this regulation, a licensee licensed at all times to sell and serve alcoholic beverages for consumption on the premises where sold pursuant to 4 Del.C. §512(a) that has entered into a written agreement with a third-party delivery licensee to deliver alcoholic beverages.

"Third-party delivery licensee" or "TPDL" means a third-party delivery vendor with a license issued by the Commissioner, authorizing it to arrange for the delivery of alcoholic beverages in original containers and cocktails-to-go in containers securely closed, as further defined by this regulation to customers on behalf of on-premise licensees.

"Third-party delivery vendor" or "TPDV" means an entity that arranges for delivery of food or beverages or both to customers.

3.0 Procedure and Requirements for Licensure

- 3.1 A third-party delivery vendor or TPDV shall pay the \$1,000 non-refundable application processing fee and submit a completed application form to be licensed as a third-party delivery licensee or TPDL, submit other documentation as required by the Commissioner, and submit the following:
 - 3.1.1 Sample agreement between TPDV applicant and on-premise licensee that shall include, at a minimum:
 - 3.1.1.1 All fees, costs, commissions, and other forms of compensation; and
 - 3.1.1.2 Responsibility for insurance and indemnity.
 - 3.1.2 Sample agreement between TPDV applicant and delivery worker that shall include, at a minimum:
 - 3.1.2.1 Delivery worker consent to background check; and
 - 3.1.2.2 Delivery worker consent to maintain a valid driver's license and adequate vehicle insurance coverage.

- 3.1.3 Detailed description of all forms of compensation (e.g., delivery fees, delivery worker tips, etc.) from on-premise licensees and receiving customers, including routing or remitting payments.
- 3.1.4 Proposed server training program for delivery workers for review and approval by the Commissioner.
- 3.2 Any and all fees and other forms of compensation paid or anticipated to be paid to a TPDV by an on-premise licensee must be disclosed during the license application process.
- 3.3 Once approved as a TPDV, all executed agreements with on-premise licensees who wish to have alcoholic beverages delivered lawfully pursuant to 4 Del.C. §512(a) must be provided to the Office by the TPDV within 10 business day of execution. Any future contracts with on-premise licensees entered into after application approval shall also be filed with the Office by the TPDV within 10 business days of execution.
- 3.4 All TPDVs shall verify delivery worker eligibility, including that:
 - 3.4.1 Every delivery worker is 21 years or older, holds a valid driver's license **[and and, for delivery workers who deliver using a motor vehicle, also holds a valid]** vehicle registration, and has adequate vehicle insurance coverage;
 - 3.4.2 All delivery workers undergo a criminal background check and driver history check by the TPDV or a vendor designated by the TPDV to conduct background checks;
 - 3.4.3 All delivery workers complete alcohol server training approved by this Office before delivering alcoholic beverages. The alcohol server training must be renewed in accordance with the Office's protocols.
- 3.5 Proof of general liability insurance with liquor liability endorsement. The TPDV must maintain sufficient general liability insurance with a liquor liability endorsement, which endorsement shall provide coverage for **[the conduct of, whether by act or omission,]** employees and independent contractors of the TPDV.
- 3.6 All records of delivery worker eligibility shall be maintained by the TPDV for 3 years.

4.0 Requirements for Delivery

- 4.1 Deliveries of alcoholic beverages are limited to 2 750-milliliter bottles of wine with each bottle limited to 750 milliliters, 6 servings of beer, and mixed cocktails which are made in the restaurant, brewpub, tavern, taproom, or other entity with a valid on-premise license that has entered into a delivery agreement with the TPDV. Canned, premixed cocktails are not permitted to be delivered. All **[on-premise licensees who provide]** alcoholic beverages **[provided]** for delivery must **[be ensure that the beverages are]** in sealed containers, securely closed, and in a container that does not include a lid with sipping holes, pursuant to the Delaware Liquor Control Act and the Commissioner's regulations.
 - 4.1.1 TPDV must have a valid, executed written agreement **[or an independent contractor agreement]** with an on-premise licensee on file with this Office before the TPDV may make any deliveries of alcoholic beverages.
 - 4.1.2 TPDV must have a valid, executed written employment agreement **[or an independent contractor agreement]** with each delivery worker before the delivery worker may make any deliveries of alcoholic beverages.
- 4.2 Deliveries are prohibited to the following locations:
 - 4.2.1 State-operated facility;
 - 4.2.2 Correction and prison facilities;
 - 4.2.3 Hospital;
 - 4.2.4 Locker mailbox;
 - 4.2.5 Post office box;
 - 4.2.6 Package shipping or storage facility;
 - 4.2.7 Retail licensee licensed by this Office;
 - 4.2.8 All schools, including public, private, and charter schools through and including the 12th grade;

- 4.2.9 Undergraduate housing at an institution of higher learning;
- 4.2.10 Vacant home or building;
- 4.2.11 Locations where alcoholic beverages are otherwise prohibited, such as places of public accommodation, public beaches, etc.; and
- 4.2.12 Outside of the State of Delaware.
- 4.3 Process for delivery
 - 4.3.1 TPDL must transmit delivery-related information to delivery workers in real-time and alert them that an order contains an age-restricted alcoholic beverage.
 - 4.3.2 Delivery workers must have a copy of the invoice or bill of sale stating the name and address of the receiving customer and the type, brand, and quantity of each alcoholic beverage being delivered. Each package of alcoholic beverages **[to be delivered]** must be clearly marked **[by the on-premise licensee,]** in 26-point legible type or larger, "CONTAINS **[ALCOHOLIC BEVERAGES; AGE VERIFICATION REQUIRED ALCOHOL]**."
 - 4.3.3 Delivery workers must verify that receiving customers are of legal age and are not visibly intoxicated before delivering alcoholic beverages. At a minimum, this includes electronic verification of a customer's identification as well as ~~[verbal and]~~ observable verification, i.e., "multifactor" verification.
 - 4.3.4 Delivery workers must obtain the signature (electronic or paper) or "finger scan" of the receiving customer before handing over possession of the alcoholic beverages.
 - 4.3.5 Delivery workers must refuse delivery to the customer and return the alcoholic beverage to the on-premise licensee if:
 - 4.3.5.1 The receiving customer is underage or intoxicated;
 - 4.3.5.2 The customer refuses to sign for delivery or to provide a valid and current I.D.;
 - 4.3.5.3 The third-party delivery licensee or its delivery worker doubts the authenticity of the customer's ID;
 - 4.3.5.4 There is reason to suspect the customer is accepting delivery on behalf of an underage person; or
 - 4.3.5.5 Other valid reason as determined by the third-party delivery licensee.
 - 4.3.6 Delivery workers are prohibited from:
 - 4.3.6.1 Collecting payment for the alcoholic beverage from the receiving customer;
 - 4.3.6.2 Subcontracting or delegating to another person the delivery of alcoholic beverages;
 - 4.3.6.3 Delivering alcoholic beverages to prohibited locations identified in subsection 4.2 of this regulation;
 - 4.3.6.4 Leaving alcoholic beverages unattended or storing alcoholic beverages overnight under any circumstances;
 - 4.3.6.5 Delivering alcoholic beverages not identified in an invoice from the on-premise licensee who is the merchant of record for the delivery; and
 - 4.3.6.6 Engaging in no-contact deliveries without face-to-face interaction with the receiving customer.
 - 4.3.7 The TPDL shall ensure all deliveries by its delivery workers occur only during the hours of operation of the on-premise licensee with whom it has contracted to deliver alcoholic beverages.
- 4.4 The third-party delivery licensee may receive a fixed fee as defined in Section 2.0 of this regulation for its delivery services.
- 4.5 The third-party delivery licensee does not have any retail sales privileges and therefore cannot charge a commission or receive a percentage of the proceeds from the sale of alcoholic beverages.
 - 4.5.1 The on-premise licensee must retain control of all aspects of alcoholic beverage commerce, including product selection, pricing, and collecting the sales proceeds.
 - 4.5.2 The Commissioner, upon request, may approve the third-party delivery licensees and on-premise licensees to use an integrated third-party payment processing platform (e.g., Stripe.com,

Square.com or other platform) to aggregate their charges and bifurcate and remit the proceeds as appropriate (i.e., on-premise licensee is promptly remitted payment for sale of alcohol and third-party delivery licensee is remitted the fixed fee for the delivery of alcohol). The portion of the payment attributable to the alcoholic beverage purchase must be promptly remitted by the payment processing platform directly to the on-premise licensee, defined to mean the remittance would take place within ~~[24 to 48]~~ 72] hours of the sales transaction.

4.6 The TPDL is prohibited from:

4.6.1 Selling or reselling alcoholic beverages; and

4.6.2 Setting the prices of alcoholic beverages or determining which beverages are available for delivery.

5.0 Recordkeeping Requirements

5.1 TPDLs shall retain electronic records of each delivery for 3 years from the date of delivery and make available to the Division of Alcohol and Tobacco Enforcement or DATE upon request for the purpose of investigating and enforcing the Delaware Liquor Control Act and all of its corresponding regulations. The record of each delivery shall include the following:

5.1.1 On-premise licensee's name and address;

5.1.2 Name of customer who placed the order and the date, time and method of the order;

5.1.3 Name of delivery worker and the date, time and address of the delivery; and

5.1.4 Type, brand, and quantity of each alcoholic beverage delivered.

[5.1.5 Age verification data collected under subsection 4.3.3 of this regulation.]

5.2 The TPDL shall retain electronic records of every on-premise licensee agreement for 3 years and make them available to DATE upon request for the purpose of investigating and enforcing the Delaware Liquor Control Act and all of its corresponding regulations.

5.3 The TPDL shall retain an electronic record of all delivery workers by name and address, and eligibility records for 3 years, and make them available to DATE upon request for the purpose of investigating and enforcing the Delaware Liquor Control Act and all of its corresponding regulations.

5.4 DATE may also request a copy of a delivery worker's server training certificate at any time.

5.5 The TPDL shall store electronic records in a manner that allows for retrieval and production of requested records within 10 business days of receiving a request for records by DATE, unless a variance to subsection 5.5 of this regulation has been requested for good cause shown and approved.

6.0 Administrative Procedures

6.1 DATE agents have the authority to administratively cite any TPDL or delivery worker for violating provisions of the Delaware Liquor Control Act or Commissioner regulations. The TPDL will also be held administratively liable for the violative actions or omissions of its delivery workers if those actions or omissions are contrary to the conditions of license issuance, the Delaware Liquor Control Act, or the Commissioner's regulations.

6.2 A certified server trained delivery worker who violates the Liquor Control Act or Commissioner regulations shall be notified of the alleged violation by the investigating agent as promptly as is possible.

6.2.1 A Notice of Violation will be mailed "Return Receipt Requested" to the delivery worker. The delivery worker shall have 10 working days after receipt of the notice to request a hearing by the Commissioner.

6.2.2 Should a delivery worker fail to request a hearing after receiving notice in conformity with 29 Del.C. §10122, the delivery worker shall be assessed by the DATE the sanction listed in subsection 6.3 of this regulation which may then be ratified by the Commissioner at the next regularly scheduled meeting.

6.2.3 If a delivery worker timely requests a hearing before the Commissioner pursuant to 29 Del.C. §10125, the delivery worker shall be placed on the next available agenda before the Commissioner and shall retain the rights set forth in 29 Del.C. §10122.

6.3 Sanctions

6.3.1 In addition to the Commissioner's power and authority to cancel or suspend a license, or impose a fine, or both against a licensee, including a TPD, if the Commissioner finds that a delivery worker has violated the Delaware Liquor Control Act or Commissioner regulations, the Commissioner may, in addition to the power to impose a fine, suspending or canceling the TPD's license, impose any or all of the sanctions in subsections 6.3.1.1-6.3.1.2:

6.3.1.1 Require that delivery workers re-take the mandatory server training program; or

6.3.1.2 Suspend or cancel the server training certification of the delivery worker for a period determined by the Commissioner.

6.3.2 Suspension or cancellation of the server training certification of a delivery worker shall preclude that person from employment as a delivery worker pursuant to this regulation. Any TPD employing a delivery worker whose server training certification has been suspended or canceled may be subject to administrative sanctions pursuant to 4 Del.C. Ch. 12.

DEPARTMENT OF TRANSPORTATION

DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 17 Delaware Code, Sections 131, 132 and 143; 26 Delaware Code, Chapters 9, 11 and 13 (17 Del.C. §§131, 132 & 143; 26 Del.C. Ch. 9, 11 & 13)
2 DE Admin. Code 2401

ORDER

2401 Utilities Manual Regulations

Pursuant to the authority provided in Title 17 of the **Delaware Code**, Sections 131, 132 and 143, as well as 26 **Delaware Code** Chapters 9, 11, and 13 the Delaware Department of Transportation (DelDOT), adopted the 2401 Utilities Manual Regulations.

The Department, through its Division of Transportation Solutions, published proposed revisions to the existing regulation, the Utilities Manual Regulations, seeking public comment through the public notice appearing in **28 DE Reg. 575 (2/1/25)**.

The Department indicated in its February 1, 2025 notice that it would accept written public comments on the proposed changes to the Utilities Manual Regulations from February 1, 2025 through March 2, 2025.

Summary of the Evidence and Information Submitted.

1. During the established comment period (from February 1, 2025, through March 2, 2025) the Department received written comments from several entities that are stakeholders in the implementation and enforcement of the regulations.

Stakeholders offering written comments included:

- Artesian Water Company
- Century Engineering a Kleinfelder Company
- DelDOT - Canal District Public Works
- DelDOT - Traffic Operations/Traffic Safety
- Delmarva Power & Light Company an Exelon Company
- Tidewater Utilities, Inc. a Middlesex Water Company Affiliate

2. The Department thoroughly reviewed and considered the various comments received, and determined some changes to the proposed regulations were appropriate and considers the changes to be non-substantive. These changes to the proposed regulation consist of several minor corrections (including typographical edits, clarifications, and formatting changes). The changes which have been made to the proposed regulation do not affect its original intent or meaning. Accordingly, the final regulation is being republished with appropriate **[Bracketing]** and formatting of the several changes.

3. A summary of the various written comments and the Department's responses to these written comments is provided below.

Artesian Water Company

Comment #1: Section Entrance Permits: Currently, entrance permits are required to be signed by the property owner. Many utilities have infrastructure on easements, access to which is only permissible with a DelDOT entrance permit. DelDOT rules, manuals, and/or forms should be updated to expressly allow utilities and/or easement holders to apply for and obtain entrance permits without the signature of the property owner.

Response #1: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register.

Comment #2: Section 4.8.2.5: Traveled Way - General: Resurfacing of a roadway up to 400-ft in total length, 200-ft maximum on each side of a trench crossing, is excessive. Resurfacing of a roadway should be limited to 50-ft in total length, 25-ft. maximum on each side of a trench crossing, or to the next joint (whichever is closer).

Response #2: The Department has reviewed these comments and amended the proposed language to clarify the intent of the regulation with the following correction: Subsection 4.8.2.5 proposed that roadway surfacing extend 200 feet ... on each side of a trench crossing. This has been clarified as extending 100 feet ... on each side of a trench crossing (for a total of 200 feet). Language of Subsection 4.8.2.5 amended as follows for clarity "... require resurfacing of the roadway up to a maximum of 100 feet (as measured along the roadway centerline) on each side of a trench crossing a highway to tie into an existing joint line.)"

Century Engineering, a Kleinfelder Company

Comment #1: Section 4.5.3.2.1: Add "The utility shall be serviced without access from the fully controlled access highway." This would clarify that this requirement applies to both longitudinal and crossings (see 4.5.3.2.3.)

Response #1: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register.

Comment #2: Section 4.5.3.2.2: Change "shall be moved outside of the public rights-of-way" to "shall be moved to areas outside of the denial of access lines" to be consistent with 4.5.3.2.1

Response #2: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register.

Comment #3: Section 4.6.4.5.5: States: "Encasement, a sleeve, or other suitable protection shall be given for any pipeline with less than minimum cover, across unstable or subsiding ground, near other locations where hazardous conditions may exist." Add the word "or" prior to the word "near"?

Response #3: The Department has reviewed these comments and amended the proposed language to correct the typographical omission of the word "or" within a set of potential conditions: Language of Subsection 4.6.4.5.5 amended as follows: "Encasement, a sleeve, or other suitable protection shall be

given for any pipeline with less than minimum cover, across unstable or subsiding ground, or near other locations where hazardous conditions may exist

DeIDOT Canal District Public Works

Comment #1: Section 2: Clarify the method for determining the "effective clear zone" distance

Response #1: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register. Due to the variability and combinations of existing conditions that are encountered in the field when establishing Effective Clear Zone, an exhaustive listing is not feasible within the regulations. Stakeholder feedback on this issue after the implementation of these regulations will be taken into consideration as future training and guidance documents are developed.

Comment #2: Section 4.5.1.9: This subsection has been positioned under incorrect section of regulation. This subsection is related to aerial (above grade) utility pole installation for aerial cable and wire installation. You have incorrectly indented this subsection under a category for underground conduit and underground pipeline installation.

Response #2: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register.

Comment #3: Section 4.5.1.9: Many of the subsections beneath Section 4.5.1 have been indented improperly. Four-digit section numbers and five-digit numbers should have different indentations. Improper indentations make the Regulation confusing to interpret.

Response #3: The Department has reviewed these comments and amended the formatting to correctly display the indenting of the referenced subsections.

Comment #4: Section 4.5.1.9: We frequently receive requests from Utility company to install midspan poles in clear zone. These are not replacement poles. These are additional proposed midspan poles to be added to the existing pole alignment within clear zone. The justification is to provide lateral service connection to property owners, and to construct aerial transformer facilities in right-of-way. This issue of installing additional midspan poles in the clear zone must be clarified in this regulation. Otherwise, there will be a continual disputes and hardship requests with Delmarva Electric.

Response #4: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register.

Comment #5: Section 4.5.1.9: This subsection must be clarified to specifically address the clear zone issue. Re-word as follows: Pole replacement work involving up to 5 contiguous poles on an existing longitudinal alignment may utilize the existing horizontal alignment. If existing pole alignment is located within clear zone, then replacement poles may be installed within clear zone for replacement of five contiguous poles or less. See subsection 4.5.4.1.1 of this regulation for relocation requirements along the outside of roadway curves.

Response #5: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register.

Comment #6: Section 4.5.2.3.1.1.1: Clarify the method for determining the "effective clear zone" distance. The definition provided in Chapter 2 is insufficient. Add the following sentence: "Effective Clear zone distance is determined by measuring the horizontal distance from travel lane stripe to non-breakaway aboveground roadside obstruction, or non-traversable terrain, such as existing wall structure or drainage ditch in clear zone".

Response #6: The Department has reviewed these comments and has determined that the regulation will

remain as proposed in the February 2025 Register. Due to the variability and combinations of existing conditions that are encountered in the field when establishing Effective Clear Zone, an exhaustive listing is not feasible within the regulations. Stakeholder feedback on this issue after the implementation of these regulations will be taken into consideration as future training and guidance documents are developed.

Comment #7: Section 4.5.2.3.1.1.1: Contradicts Section 4.5.1.9. The Regulation must clarify which section has precedence over the other.

Response #7: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register. The cited subsections apply to separate conditions and do not constitute a conflict in their intended implementation. Stakeholder feedback on this issue after the implementation of these regulations will be taken into consideration as future training and guidance documents are developed.

Comment #8: Section: 4.5.4.1.2: Section 4.5.4.1.2 contradicts Section 4.5.1.9. The Regulation must clarify which section has precedence over the other.

Response #8: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register. The cited subsections apply to separate conditions and do not constitute a conflict in their intended implementation. Stakeholder feedback on this issue after the implementation of these regulations will be taken into consideration as future training and guidance documents are developed.

Comment #9: Section: 4.5.4.1.3: Section: 4.5.4.1.3 contradicts Section 4.5.1.9. The Regulation must clarify which section has precedence over the other.

Response #9: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register. The cited subsections apply to separate conditions and do not constitute a conflict in their intended implementation. Stakeholder feedback on this issue after the implementation of these regulations will be taken into consideration as future training and guidance documents are developed.

Comment #10: Section 4.5.4.1.6: Section 4.5.4.1.6 contradicts Section 4.5.1.9. The Regulation must clarify which section has precedence over the other.

Response #10: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register. The cited subsections apply to separate conditions and do not constitute a conflict in their intended implementation. Stakeholder feedback on this issue after the implementation of these regulations will be taken into consideration as future training and guidance documents are developed.

DelDOT Traffic Operations/Traffic Safety

Comment #1: Section All: Note: Suggestion to add the TTC abbreviation after it was defined in Chapter 1 under the definitions. Searching the document found the spelling in multiple locations.

Proposed Revision: ~~temporary traffic control~~ TTC

Response #1: The Department has reviewed these comments and amended the proposed language to introduce an additional abbreviation (TTC) within the definition of the term "Temporary Traffic Control". To limit repetitive use of the term throughout the regulation, multiple instances of the term "Temporary Traffic Control" have been replaced with "TTC" for simplicity.

Comment #2: Section 2.0: Note: The definition of "Traffic control devices" is defined in the federal 11th

edition of the MUTCD but is sectioned out in the current DE MUTCD. We would recommend we keep this definition to the reference of the latest publication of the DE MUTCD and ATSSA quality guidelines while removing the current text from the DE MUTCD:

Proposed Revision: "Traffic control devices" means a device as defined in the latest publication of the DE MUTCD, signs, signals, markings, or other devices used to regulate, warn, or guide traffic, placed on, over, or adjacent to a street, highway, private road open to public travel, pedestrian facility, or shared-use path by authority of a public agency or official having jurisdiction, or, in the case of a private road open to public travel, by authority of the private owner or private official having jurisdiction. Temporary traffic control devices including signs, channelizing devices, lighting devices, and shadow vehicles are governed by the DE MUTCD and ATSSA quality guidelines.

Response #2: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register. The comments are related to potential changes to a standalone regulation, the DE MUTCD. Future changes to the DE MUTCD Regulations will be assessed upon their implementation for possible implications or revisions to this Utility Regulation.

Comment #3: Section 2.0: Note: The definition of Typical application is per chapter 6 and will remain in the 11th edition of the MUTCD but work edit the word specific to various roadway activities.

Proposed Revision: "Typical applications" means predesigned temporary traffic control plans for various roadway activities specific solutions as illustrated and described in Chapter 6 of the latest publication of the DE MUTCD, Standard Specifications and Standard Construction Details.

Response #3: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register. The comments are related to potential changes to a standalone regulation, the DE MUTCD. Future changes to the DE MUTCD Regulations will be assessed upon their implementation for possible implications or revisions to this Utility Regulation.

Comment #4: Section 4.3.1.1: Note: Work is to follow the plan or TA.

Proposed Revision: All temporary traffic control shall conform to the requirements specified on the approved temporary control plan or in the DE MUTCD and any other applicable State and federal regulations.

Response #4: The Department has reviewed these comments and amended the proposed language to clarify the intent of the regulation to allow an approved TTC Plan to establish the TTC requirements of this subsection. Language of Subsection 4.3.1.1 amended as follows: "All TTC shall conform to the requirements specified on the approved temporary traffic control plan or in the DE MUTCD and any other applicable State and federal regulations."

Comment #5: Section 4.3.2.3: Note: As we determine the federal 11th edition MUTCD, items from the current DE MUTCD may need to find their way back into other documents. This would also keep the current references to the DE MUTCD as items are transitioned into other sources listed. Guidelines may be created too for items that are currently in the DE MUTCD, but these would not be a standard and therefore not enforceable to the Utility.

Proposed Revision: Failure to meet the standards of the DE MUTCD, Standard Specifications, and Standard Construction Details per the start of work or issuance of the permit will result in stoppage of work until deficiencies are brought into compliance.

Response #5: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register. The comments are related to potential changes to a standalone regulation, the DE MUTCD. Future changes to the DE MUTCD Regulations will be assessed

upon their implementation for possible implications or revisions to this Utility Regulation.

Comment #6: Section 4.3.3.2.3: Note: As we determine the federal 11th edition MUTCD, items from the current DE MUTCD may need to find their way back into other documents

Proposed Revision: In the case of emergency work where there is no prior approval of a TTC plan, the utility is still required to follow the DE MUTCD, Standard Specifications, and Standard Construction Details. The utility shall be prepared to immediately set up whatever temporary traffic control may be required to protect the public and perform necessary repair work. See subsection 4.3.6 of this regulation.

Response #6: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register. The comments are related to potential changes to a standalone regulation, the DE MUTCD. Future changes to the DE MUTCD Regulations will be assessed upon their implementation for possible implications or revisions to this Utility Regulation.

Comment #7: Section 4.3.4: Note: As we determine the federal 11th edition MUTCD, items from the current DE MUTCD may need to find their way back into other documents

Proposed Revision: 4.3.4.1 ~~Certified~~ Flaggers per the DE MUTCD, Standard Specifications, and Standard Construction Details are required in controlling traffic when flagging operations are needed.

4.3.4.2 ~~DelDOT has specific requirements for flagger warning signs, safety clothing, training, and associated flagger concerns, as described in the DE MUTCD. Utility personnel acting as flaggers shall abide by these requirements per section 4.3.4.1 of this regulation.~~

Response #7: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register. The comments are related to potential changes to a standalone regulation, the DE MUTCD. Future changes to the DE MUTCD Regulations will be assessed upon their implementation for possible implications or revisions to this Utility Regulation.

Comment #8: Section 4.3.6.1: Note: As we determine the federal 11th edition MUTCD, items from the current DE MUTCD may need to find their way back into other documents

Proposed Revision: When a utility initiates an emergency, the utility shall promptly notify the Transportation Management Center (TMC) at 302-659-4600 prior to performing work. The utility is responsible for communicating the type of emergency and location of the work to be performed and other pertinent information. Work may commence following verbal notification to the TMC. The utility company shall install the required temporary traffic control devices and personnel in accordance with the DE MUTCD, Standard Specifications, and Standard Construction Details to protect the public and the workers performing emergency work and restoring the site.

Response #8: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register. The comments are related to potential changes to a standalone regulation, the DE MUTCD. Future changes to the DE MUTCD Regulations will be assessed upon their implementation for possible implications or revisions to this Utility Regulation.

Comment #9: Section 4.8.2.9.5: Note: As we determine the federal 11th edition MUTCD, items from the current DE MUTCD may need to find their way back into other documents. This is in reference to the vertical difference and storage of equipment that are Delaware specific items currently in the DE MUTCD.

Proposed Revision: Excavated material not meeting the requirements for backfill shall be removed from the area immediately after excavation. Material that is satisfactory for backfill shall be stockpiled in a safe and orderly manner. For permit work, District Public Works can approve storage on the roadway if necessary. For work related to a DelDOT highway project, DelDOT Construction can approve. Material

stockpiled in the immediate work area shall not pose a hazard to the traveling public. All materials shall be stockpiled in accordance with the rules established by the DE MUTCD, Standard Specifications, and Standard Construction Details.

Response #9: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register. The comments are related to potential changes to a standalone regulation, the DE MUTCD. Future changes to the DE MUTCD Regulations will be assessed upon their implementation for possible implications or revisions to this Utility Regulation.

Comment #10: Section 5.1.1.1.2: Note: As we determine the federal 11th edition MUTCD, items from the current DE MUTCD may need to find their way back into other documents. Also minor suggestion to add the TTC abbreviation since with was defined in chapter 1.

Proposed Revision: A utility construction permit or utility safety permit shall not be required for utility maintenance work that takes less than 1 day to complete and does not physically disturb the roadway pavement, degrade the roadway surface, degrade sub-grade stability, or require occupancy of travel lanes or auxiliary lanes. However, the utility shall notify the District Public Works Office prior to setting up or commencing utility work. The notification shall include the location, duration, and type of work to be performed. The utility shall ensure that proper ~~temporary traffic control~~ TTC is utilized in accordance with the DE MUTCD, Standard Specifications, and Standard Construction Details, and shall account for potential encroachment near vehicular, including bicycles and non-motorized devices, and pedestrian traffic.

Response #10: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register. The comments are related to potential changes to a standalone regulation, the DE MUTCD. Future changes to the DE MUTCD Regulations will be assessed upon their implementation for possible implications or revisions to this Utility Regulation.

Comment #11: Note: As we determine the federal 11th edition MUTCD, items from the current DE MUTCD may need to find their way back into other documents

Proposed Revision: A description of the proposed MOT needed to perform utility work; plans may be required if MOT requires more detailed planning than what is provided through the typical applications of the DE MUTCD, Standard Specifications, and Standard Construction Details.

Response #11: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register. The comments are related to potential changes to a standalone regulation, the DE MUTCD. Future changes to the DE MUTCD Regulations will be assessed upon their implementation for possible implications or revisions to this Utility Regulation.

Delmarva Power & Light, an Exelon Company

Comment #1: Section 4.1.2.1: Delmarva Power requests clarification as to whether the reference in the last sentence to the "owner" means the landowner that is to execute a Use and Occupancy Agreement as provided in this paragraph.

Response #1: Comment given was not a comment on proposed changes to the Utility Regulations, as published in the February 2025 Register. The Department will review these comments and respond to Delmarva Power in due course, but the Department does not intend to make any changes the proposed regulation at this time.

Comment #2: Section 4.2.1.1: This paragraph directly contradicts paragraph 5.1.1.1.2.

Proposed Revision: ~~4.2.1.1 Maintenance. This work consists of maintaining existing utility facilities in kind. Upgrading facilities requires additional consideration and shall be considered new service~~

installation.

Response #2: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register. The cited subsections apply to separate conditions and do not constitute a conflict in their intended implementation. Stakeholder feedback on this issue after the implementation of these regulations will be taken into consideration as future training and guidance documents are developed.

Comment #3: Section 4.2.1.2: Delmarva Power requests clarification or definition of what DelDOT contemplates to constitute a "substantial upgrad[e]" to existing facilities.

Response #3: Comment given was not a comment on proposed changes to the Utility Regulations, as published in the February 2025 Register. The Department will review these comments and respond to Delmarva Power in due course, but the Department does not intend to make any changes the proposed regulation at this time.

Comment #4: 4.2.1.4: Due to the practical timing of preparing the necessary paperwork, Delmarva Power proposes revising the timeline for submitting a permit to, at minimum, five business days following the commencement of work.

Proposed Revision: 4.2.1.4 Emergency Work. Emergency work is utility work associated with an emergency as defined in 26 Del.C. Ch. 8. The utility shall submit a utility construction permit to the District Public Works office via the UPA within 2 five business days following the commencement of work.

Response #4: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register.

Comment #5: Section 4.2.3: Delmarva Power proposes establishing a timeframe for dispute resolution, as lengthy review periods delay necessary projects.

Proposed Revision: 4.2.3 Responsibility and Dispute Resolution. The District Public Works Section administers permit work in its respective district under the authority of the district engineer and, ultimately, the Director of Maintenance and Operations. The construction group engineer administers DelDOT highway construction projects under the authority of the assistant director of construction. The assistant directors of project development and bridge are responsible for project designs and the assistant director of right-of-way (Chief of ROW) is responsible for the utility section. The Chief Engineer has authority over the project development, bridge, right-of-way/utilities, and construction sections of DelDOT. Any situations that cannot be resolved through the normal process may be forwarded to the appropriate authority. DelDOT shall review any exceptions submitted to DelDOT within 10 business days.

Response #5: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register.

Comment #6: Section 4.3.6.6: Requiring the pole owner (i.e., the utility) to supervise the repair work of attachers following replacement of the pole and infrastructure imposes unnecessary costs and is an inefficient use of resources.

Proposed Revision: 4.3.6.3 For situations involving utility poles, responsibility falls to the pole owner to ensure all work is occurring in accordance with this policy, including MOT. The pole owner shall identify all utilities that are attached to their pole. They shall update TMC with the utility attacher information along with notifying and coordinating with utility attachers. ~~The pole owner shall maintain the site and oversee work associated with all parties on their pole.~~

Response #6: The Department has reviewed these comments and has determined that the regulation will

remain as proposed in the February 2025 Register.

Comment #7: Section 4.3.6.5: Delmarva Power proposes a revision of the timeframe for a permanent resolution to three weeks to account for the practicalities of workflow and design processes.

Proposed Revision: 4.3.6.5 If a utility intends to utilize temporary measures to safely resolve the immediate emergency, they shall coordinate measures with DelDOT throughout the process. Any temporary measures shall be permanently resolved under the standard utility permit process within 2 three weeks of the emergency.

Response #7: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register.

Comment #8: Section 4.5.1.3: In Delmarva Power's experience, placement of facilities close to the right-of-way line is not the ideal location in all design situations. As a result, Delmarva Power must seek hardship exceptions from the requirement, which is costly and time-consuming.

Proposed Revision: 4.5.1.3 Safe Traffic Operation and Preservation of Future Space. New longitudinal installations shall be located as close to the right-of-way line as feasible, considering design practicality and design standards, while maintaining a uniform alignment relative to the centerline of the roadway or traveled way to provide a safe environment for traffic operation and preserve space for future highway improvements or other utility installations.

Response #8: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register.

Comment #9: Section 4.5.1.6: Utilities are often looped for reliability purposes, which is more properly governed by company standards.

Proposed Revision: 4.5.1.6 Design of utility installations shall evaluate redundancies with existing permanent or temporary facilities and limit the number of redundant service laterals or forcemains, except where prohibited by documented citations from applicable regulations. ~~Looping or secondary service mains required for system resiliency and limiting outages shall be permitted on the basis of documented citations from applicable regulations.~~

Response #9: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register.

Comment #10: Section 4.5.2.1.1: Delmarva Power requests further detail regarding the "insight" that DelDOT will provide. Delmarva Power further seeks clarification whether DelDOT intends to prohibit utilities from retiring assets in place, as such requirement would potentially impose significant project costs ultimately borne by ratepayers.

Response #10: Comment given was not a comment on proposed changes to the Utility Regulations, as published in the February 2025 Register. The Department will review these comments and respond to Delmarva Power in due course, but the Department does not intend to make any changes the proposed regulation at this time.

Comment #11: Delmarva Power proposed modified timeframes to reflect the requirements of coordination between multiple attachers and scheduling crews to perform pole removal.

Proposed Revision: 4.5.2.1.3 Above ground utilities shall not be retired in place without an exception in accordance with subsection 4.9 of this regulation. When a new pole is being installed to replace an existing pole, all utilities shall be transferred from the old pole within ~~60 calendar days~~ a reasonable timeframe. The

owner of the original pole within the DelDOT-maintained portion of the public right-of-way is responsible for ensuring its removal within 10 30 calendar days of the last utility being removed unless otherwise agreed to by the District Public Works office.

Response #11: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register.

Comment #12: Section 4.5.2.1.5: Because abandoned cables are locatable, RFID markers are unnecessary.

Proposed Revision: 4.5.2.1.5 ~~The utility shall also install RFID markers along any subsurface retired facilities at disconnected or capped locations so they can more easily be identified in the future. RFID markers that are programmable are preferred and shall be programmed with utility owner name, contact phone number, facility material type, and facility size at a minimum. In lieu of RFID markers, u~~Utilities may supply DelDOT with GIS databases outlining all active and retired utility facilities. Utilities that provide GIS shall provide updated GIS data on an annual basis or more frequently.

Response #12: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register.

Comment #13: Section 4.5.2.3.6: Delmarva Power uses reflective sheets that are not solid and compliance would require changes to internal standards and material stocking changes.

Proposed Revision: 4.5.2.3.6 Utility poles that are placed within the public right-of-way shall be properly delineated unless it can be documented that the fixed object is further from the travel lane than the applicable clear zone based on the highway characteristics. Delineation shall be either a 6-inch-tall ~~solid~~ yellow retroreflective band installed around the utility pole or a 6-inch wide by 12 inches tall vertical rectangular object marker with solid yellow retroreflective sheeting. If an object marker is used, 1 shall be used on each side of the utility pole facing approaching traffic. The marker must be placed between 4 and 5 feet above the ground.

Response #13: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register.

Comment #14: Section 4.5.4.1.4: As new developments entail utilities being run on both sides of a roadway, Delmarva Power proposes language excluding new developments from this requirement. Otherwise, this provision would require utilities to seek hardship exceptions for every new development. Furthermore, Delmarva Power proposes to exclude guying, which requires the guy to cross the roadway and terminate on an opposite pole.

Proposed Revision: 4.5.4.1.4 Occupy One Side of the Roadway. Every effort shall be made to place a single utility's at-grade or underground facilities on 1 side of the roadway, except in new developments or for guying purposes so long as the guy pole is located outside the clear zone or at the back of the right-of-way. DelDOT will not issue a Utility Construction Permit authorizing the placement of utility facilities by the same company along both sides of a highway absent an authorized exception. Aerial utility lines owned by the same company may be placed on both sides of a roadway if poles exist on both sides of the highway regardless of pole ownership.

Response #14: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register.

Comment #15: Section 4.5.4.2.2: It is not always possible to utilize an existing crossing, and requiring utilities to do so undermines the permission for new aerial utility line crossings.

Proposed Revision: 4.5.4.2.2 Aerial utility line crossings shall be allowed on all highways except those with fully controlled access. Utilities proposing new aerial utility line crossings ~~shall~~ may utilize existing aerial crossing locations and combine crossings whenever feasible.

Response #15: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register.

Comment #16: Section 4.6.1.1.5: Delmarva Power submits that a joint approach is not always appropriate. Delmarva Power is moving away from common trench as a standard and toward common trench as an exception, due to safety concerns from co-locating electric and gas facilities as well as electric facilities from different utility companies.

Proposed Revision: ~~4.6.1.1.5 Except where prohibited by documented citations from applicable regulations, utilities shall coordinate and collocate facilities in joint trenches, conduit runs, or duct banks.~~

Response #16: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register.

Comment #17: Section 4.6.1.1.5: The standard depth of cover is 36 inches for main lines and 24 inches for service lines. Requiring additional depth of crossings of both main and services will impose significant project costs, such as from extra excavation and backfill, borne by ratepayers.

Proposed Revision: 4.6.2.3 Minimum depth of cover for all installations under the roadway is ~~42 inches~~ 24 inches (for service lines) and 36 inches (for main lines) below the finished paved surface of the highway.

Response #17: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register.

Comment #18: Section 4.6.3.4.2: Main as-built plan do not show depth (or vertical location) unless it is extremely deep or extremely shallow.

Proposed Revision: 4.6.3.4.2 As-built plans shall portray the size, type, and material of the facilities along with the horizontal ~~and vertical~~ location.

Response #18: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register.

Comment #19: Section 4.6.5.2: Delmarva Power submits that a joint approach is not always appropriate. Delmarva Power is moving away from common trench as a standard and toward common trench as an exception, due to safety concerns from co-locating electric and gas facilities as well as electric facilities from different utility companies.

Proposed Revision: 4.6.5.2 Burial Methods. Where the burying of cable is permitted along the edge of pavement, it may be done by plowing or trenching methods. The nearest edge of the trench shall be at least 5 feet from the edge of the pavement. Plowing or trenching for longitudinal installations shall be located on a uniform alignment relative to the centerline of the roadway or traveled way between intersecting roads. ~~Except where prohibited by documented citations from applicable regulations, utilities shall coordinate and collocate facilities in joint trenches, conduit runs, or duct banks.~~

Response #19: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register.

Comment #20: Section 4.8.2.1: Delmarva Power proposes modifying the timeframe for restoration due to the coordination efforts required for repaving once asphalt plants reopen.

Proposed Revision: 4.8.2.1 Damage to highway traveled way, shoulders, and drainage features caused by utility installations or repairs shall be immediately restored to their original condition unless conditions such as cold weather warrant temporary restoration. Temporary restoration is required prior to reopening an area to traffic at the end of a construction phase or work shift. The temporary roadway restoration shall be performed immediately to ensure a drivable condition with asphalt pavement material and made flush with the surface of the roadway or as otherwise agreed to by the District Public Works Office for permit projects. The utility shall complete all permanent restoration within 30 days, or as directed by the Public Works Engineer. If utilities have not completed restoration within 30 days, noncompliance regulations as discussed in subsection 4.10 of this regulation will take effect. Temporary patches from winter months shall be permanently restored by ~~May~~ June 15 before noncompliance action as outlined in subsection 4.10 of this regulation will be taken. Damage to roadside areas in the DelDOT-maintained portions of public right-of-way shall be repaired as specified by the District Public Works Section.

Response #20: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register.

Comment #21: Section 4.8.2.4: Factors other than the quality of restoration work can impact the affected areas within the lengthy proposed monitoring timeframes. Active maintenance within the proposed timeframes could impose significant operating costs, particularly with respect to non-pavement restoration.

Proposed Revision: ~~4.8.2.4 After satisfactory completion, utilities shall maintain non-pavement restoration for 12 months. Furthermore, utilities must maintain pavement patches in areas impacted by utility work including Pedestrian Access Routes (PAR) such as sidewalks for a period of 3 years.~~

Response #21: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register.

Comment #22: Section 4.9.1.1: In Delmarva Power's experience, exceptions may be necessary where a utility standard or best practice conflicts with regulatory requirements.

Proposed Revision: 4.9.1.1 Where a conflict between this regulation and other statutory or regulatory standards or utility standards and/or best practices exists.

Response #22: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register.

Comment #23: Section 4.10.6: As written, this proposal could be interpreted to allow DelDOT unilaterally to remove, modify, or take possession of a utility's facilities and equipment. If so, Delmarva Power strongly objects to this provision. Among other issues, DelDOT's control of a utility's assets would pose significant safety and reliability concerns and could amount to an unconstitutional taking.

Proposed Revision: 4.10.6 The utility shall correct the non-compliance within 30 days after receiving written notice from DelDOT, unless otherwise agreed to by DelDOT. ~~After the 30-day period, DelDOT will take any action necessary to protect the safety of the traveling public. This may include restoration of highways or taking possession of and removing poles, pole lines, wires, pipelines, conduits, fixtures, or other structures or property owned by the utility and located on DelDOT-maintained portions of public right-of-way. DelDOT will bear no cost for this work. All costs associated with this shall be borne by the non-compliant utility.~~

Response #23: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register.

Comment #24: Section 4.10.8: Delmarva Power objects to a 60-day timeframe for revocation of a utility

master franchise as unduly burdensome and unreasonable. Delmarva Power further objects to the contemplated DelDOT control or removal of a utility's assets, as such action would pose significant safety and reliability concerns and could amount to an unconstitutional taking.

Response #24: Comment given was not a comment on proposed changes to the Utility Regulations, as published in the February 2025 Register. The Department will review these comments and respond to Delmarva Power in due course, but the Department does not intend to make any changes the proposed regulation at this time.

Comment #25: Section 5.1.1.1.2: As written, this paragraph is negated by paragraph 5.1.1.6, which requires a permit for any utility work that physically disturbs a public right-of-way, roadway, or roadside, which as a practical matter includes all utility maintenance work.

Response #25: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register. The cited subsections apply to separate conditions and do not constitute a conflict in their intended implementation. Stakeholder feedback on this issue after the implementation of these regulations will be taken into consideration as future training and guidance documents are developed.

Comment #26: Section 5.1.1.7.1: Delmarva Power requests clarification or definition of "temporary occupancy." Delmarva Power further requests clarification of whether "temporary occupancy" contemplates utility maintenance work that takes less than one day to complete, as provided in paragraph 5.1.1.1.2. See also comment to paragraph 5.1.1.1.2.

Response #26: Comment given was not a comment on proposed changes to the Utility Regulations, as published in the February 2025 Register. The Department will review these comments and respond to Delmarva Power in due course, but the Department does not intend to make any changes the proposed regulation at this time.

Comment #27: Section 5.1.4.2: With respect to 5.1.4.2.2, Delmarva Power uses the DelDOT GIS system to determine right-of-way lines, unless the project requires a more detailed method, such as surveying. Requiring a survey of every project imposes significant costs. With respect to the remaining plan components, Delmarva Power proposes removing items that are already available to DelDOT or reflect information that DelDOT is in the best position to provide.

Proposed Revision: 5.1.4.2 The plans shall show applicable information where relevant to the type of proposed work within DelDOT-maintained portions of public right-of-way, such as:

- 5.1.4.2.1 Roadway name.
- 5.1.4.2.2 Width of the public right-of-way and method of right-of-way determination.
- ~~5.1.4.2.3 Type of roadway material.~~
- ~~5.1.4.2.4 Width of traveled way.~~
- 5.1.4.2.5 Speed limit of the affected highway.
- 5.1.4.2.6 Proposed work.
- 5.1.4.2.7 Areas of pavement disturbance including sidewalks and shared use paths.
- 5.1.4.2.8 Distance from the crossroad or side road to the installation.
- 5.1.4.2.9 Distance from cross arm to existing public right-of-way.
- 5.1.4.2.10 Distance from the centerline of the roadway to the installation.
- ~~5.1.4.2.11 Type of shoulder material.~~
- ~~5.1.4.2.12 Width of shoulder.~~
- 5.1.4.2.13 Approximate bore pit locations.
- 5.1.4.2.14 Test pit locations.
- 5.1.4.2.15 Drainage system or systems in the utility area.
- 5.1.4.2.16 Location of existing utilities, both aerial and underground.

~~5.1.4.2.17 Trench and restoration details.~~
~~5.1.4.2.18 North arrow, scale, and legend.~~
~~5.1.4.2.19 Railroad crossings of roadways, if within 1,000 feet of proposed work.~~
~~5.1.4.2.20 Location, material type, and width of sidewalk and shared-use path.~~
~~5.1.4.2.21 Location, material type, and width of pedestrian connections; and~~
~~5.1.4.2.22 Sidewalk and pedestrian restoration details.~~

Response #27: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register.

Comment #28: Section 5.1.4.3: Delmarva Power proposes removing items that are unnecessary for assessing a utility construction permit.

Proposed Revision: 5.1.4.3 All plans for pressure pipeline installations shall specify the type of transmittant, ~~the design standards for the carrier, and the maximum working pressure or maximum design pressure.~~

Response #28: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register.

Comment #29: Section [Proposed Addition] 5.1.4.7: Delmarva Power proposes a provision that specifies a timeline for review of submitted plans, as lengthy review periods delay required projects. Furthermore, citations to the Regulations in DelDOT's comments will enable the utility to better understand the basis for the comments and resolve such comments in a timely and efficient manner.

Proposed Addition: 5.1.4.7 DelDOT shall provide to the utility initial comments within 10 business days of submission of a plan. The utility shall provide responses or revisions within 5 business days of DelDOT's comments. During the course of DelDOT's review, any comments shall cite applicable sections of the Utilities Manual Regulations.

Response #29: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register.

Tidewater Utilities, Inc. a Middlesex Water Company Affiliate

Comment #1: Section 4.6.2.4: This section restricts approx. 6.5 ft. (for water/sanitary utilities) from the EOP to accommodate the 5 ft. trench requirement. On many roads, this amounts to half of the available greenspace in the ROW. As the number of utilities/companies permitted in this space continues to grow, the available greenspace in the ROW is becoming ever more limited. Section 4.5.1.3 already provides the State's guidance in this regard; furthermore, Section 4.5.1.4.3 permits new installations under paved shoulders and right turn lanes. Utilizing this specific 6.5 ft. area of the ROW should not require special permission via the Exception Request process.

Response #1: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register. The cited subsections apply to separate conditions and allow the utility to make informed decisions when roadway impacts are avoidable to limit disturbance of the roadway and the need to repave full-width travel lanes.

Comment #2: Section 4.6.4.5.3: Define guidance that would not require casing for entrances to "small" commercial facilities. Many smaller commercial entities have very little traffic similar to residential entrances.

Response #2: The Department has reviewed these comments and has determined that the regulation will remain as proposed in the February 2025 Register. Stakeholder feedback on this issue after the

implementation of these regulations will be taken into consideration as future training and guidance documents are developed.

Comment #3: Section 4.8.2.5: More clearly define the parameters for the width of restoration relative to new/existing cuts, seams, etc.

Response #3: The Department has reviewed these comments and amended the proposed language to clarify the intent of the regulation with the following correction: Subsection 4.8.2.5 proposed that roadway surfacing extend 200 feet ... on each side of a trench crossing. This has been clarified as extending 100 feet ... on each side of a trench crossing (for a total of 200 feet). Language of Subsection 4.8.2.5 amended as follows for clarity "... require resurfacing of the roadway up to a maximum of 100 feet (as measured along the roadway centerline) on each side of a trench crossing a highway to tie into an existing joint line.)"

4. Having provided the opportunity for public comment on the proposed regulations in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Ch. 101, et. seq., this is the Order adopting the proposed regulations published previously with non-substantive changes.

5. The final version of the proposed Utilities Manual Regulations inclusive of all previously proposed edits and non-substantive changes is intended to revise Regulation 2401 to account for procedural changes which are administrative and non-substantive in nature and clarify the intent of the Department as enacted through these regulations.

Findings of Fact and Conclusions

Based on the record in this docket, I make the following findings of fact:

1. The proposed amendments to the Utilities Manual Regulations are useful and proper. The public comment period was appropriately held open for thirty days and public comments were received.

2. The adoption of these proposed changes to the Utilities Manual Regulations is in the best interests of the State of Delaware. Having received and responded to public comment, the Department finds that it is necessary to promulgate the proposed regulations published previously with changes determined to be non-substantive.

3. The Department reviewed the proposed regulation as required by 29 Del.C. §10118(b)(3) and determined that if promulgated, the regulation would have a de minimis impact on the State's resiliency to climate change because neither implementation nor compliance with the regulation would reasonably involve the increase in greenhouse gas emissions.

Decision and Effective Date

The Department hereby adopts the Regulations as proposed, to be effective April 11, 2025.

IT IS SO ORDERED this 28th day of March 2025.

Shanté Hastings, PE
Secretary, Delaware Department of Transportation

***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/april2025/final/28 DE Reg 748 04-01-25.htm>

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
BOARD OF FUNERAL SERVICES

Statutory Authority: 24 Delaware Code, Section 3105(a)(1) (24 **Del.C.** §3105(a)(1))
24 **DE Admin. Code** 3100

NOTICE

3100 Board of Funeral Services

Pursuant to 24 **Del.C.** §3105(a)(1), the Delaware Board of Funeral Services (“Board”) has proposed revisions to its Rules and Regulations. This proposed amendment is required by 84 **Del. Laws**, c. 261 §§15-16 (requiring the Board to promulgate regulation concerning the practice of human natural organic reduction). See *also*, 24 **Del.C.** §3105(a)(17).

The Delaware General Assembly passed, and on May 16, 2024 Governor John Carney signed, 84 **Del. Laws**, c. 261 (formerly House substitute no. 1 for House bill no. 162 as amended by House amendment no. 5). That action requires the Board to promulgate regulations, within 1 year of May 16, 2024. This law requires the Board to define those practices that are necessary to establish the practice of the natural organic reduction of human remains and the operation of facilities offering the service of the natural organic reduction of human remains and to coordinate with other relevant State agencies and instrumentalities to reach a conclusion. Amendments proposed to Sections 4.0, 13.0, and 14.0 respond to the requirement established by law to do so.

Other amendments, in Sections 13.0 and 14.0, are intended to clarify and improve the Board's inspection program of funeral establishments. That program was created pursuant to 24 **Del.C.** §3105(a)(15).

Further amendments in Section 4.0 define and clarify the Board's requirements for funeral establishments and branch funeral establishments, each of which are permitted pursuant to 24 **Del.C.** §3117. These proposed amendments include requirements for obtaining permits for funeral establishments and branch funeral establishments. The proposed amendments also provide the way permitted establishments shall be required to identify their facilities to the Board. The proposed amendments also set forth the required disclosures to be made to the Board concerning the facilities available at permitted establishments and branch establishments as well as the requirements for decommissioning previously available facilities.

Amendments to Section 7.0 propose to delete outdated provisions that are no longer relevant to the Board or its licensees and permit holders.

The other proposed amendments reflect technical and style changes consistent with the *Delaware Administrative Code Drafting and Style Manual*.

These proposed amendments were published on page 660 of the March 1, 2025 issue of the *Delaware Register of Regulations* (28 **DE Reg.** 660 (3/1/25)). The Board planned to hold a hearing on March 25, 2025, but the hearing was cancelled due to an error in the required newspaper publication. As a result, the Board will now hold a public hearing on the proposed regulation changes on April 24, 2025, at 10:00 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 Funeral Services, 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 Pamela.Zickafoose@delaware.gov.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be **May 9, 2025**. The Board will deliberate on all public comments at its next meeting thereafter, currently scheduled for May 27, 2025.

GENERAL NOTICES

DEPARTMENT OF TRANSPORTATION

DIVISION OF TRANSPORTATION SOLUTIONS

Traffic Engineering Section

Statutory Authority: 21 Delaware Code, Section 4505(d)(1) (21 **Del.C.** §4505(d)(1))

NOTICE

Senate Bill 89 as amended by Senate Amendment 1 - Old Park Avenue (S318C)

February 18, 2025

Yvette Smallwood
Registrar of Regulations
411 Legislative Avenue
Dover, DE 19901

Ms. Smallwood,

The Delaware General Assembly introduced Senate Bill 89 as amended by Senate Amendment 1 on March 18, 2021. The legislation which relates to traffic control devices for size and weight of vehicles and loads was subsequently signed by Governor Carney on June 30, 2021.

The legislation, which amends §4505 of Title 21 of the Delaware Code, provides as follows:

§4505. Traffic control devices.

(d)(1) The Secretary of the Department shall submit an order issued under subsection (c) of this section to the Registrar of Regulations for publication in the Register of Regulations. The Secretary shall also publish the order on the Department's website with other similar orders.

In accordance with 21 *Del. C.* §4505(d)(1), Notice is hereby given by Delaware Department of Transportation, Traffic Engineering Section, as approved and ordered by the Secretary of the Department of Transportation pursuant to 21 *Del. C.* §4505(c), for the following permanent traffic control devices for the safe movement of traffic in the area:

"No Trucks Over 2 Axles Except Local Services" on Old Park Avenue (S318C).

Please accept this notification by the Delaware Department of Transportation in order to publish the information in the Register of Regulations.

Thank you,
Peter Haag
Chief of Traffic Engineering

DELAWARE RIVER BASIN COMMISSION
PUBLIC NOTICE

The Delaware River Basin Commission will hold a public hearing on Wednesday, May 7, 2025, commencing at 1:30 p.m. The public hearing will be conducted remotely. The draft docket decisions and draft resolutions that will be subjects of the public hearing, along with details about the remote platform and how to attend, will be posted on the Commission's website, <https://www.drbc.gov>, at least ten (10) days prior to the meeting date.

For additional information, including links to live streams of this event, please visit the DRBC website at <https://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

DELAWARE RIVER BASIN COMMISSION
PUBLIC NOTICE

The Delaware River Basin Commission will hold its quarterly business meeting on Wednesday, June 11, 2025, commencing at 10:30 a.m. The business meeting will take place in person in Easton, Pennsylvania, and will also be live-streamed. Details about the location and how to attend the meeting in person, as well as links to live streams of this event and an agenda, will be available on the DRBC website at <https://www.drbc.gov> at least ten (10) days prior to the meeting date, or by contacting 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 Delaware Thoroughbred Racing Commission ("Commission") proposes to amend its Regulation adopted in accordance with Title 3, Section 10103(c) of the Delaware Code. The proposed changes include amendments to subsections 2.5, 8.8, 10.7, 21.3, 21.4, 21.5, and 21.8. The proposed changes to subsection 2.5 clarify the Commission's authority to refuse to register or to issue an authorization or permit to an applicant, or to suspend or revoke a registration, permit, or authorization previously issued, or order disciplinary measures on the basis of age, citizenship, or financial irresponsibility. The proposed changes to subsection 8.8 replace the set jockey fees with a requirement that jockey fees be set by the Commission or through special agreement approved by the Commission. The proposed changes to subsection 10.7 add a requirement that the registered trainer shall be responsible for the cost of a postmortem examination, testing, and disposal when the Commission finds that the horse suffered an injury in another jurisdiction and subsequently died or was euthanized on a Delaware licensee's grounds as a result of such injury. The proposed changes to subsections 21.3 and 21.4 include minor technical corrections to improve wording and numbering. The proposed changes to subsection 21.5 include minor technical corrections to improve wording, eliminate the requirement for confirmatory testing at a Commission approved laboratory unless requested in writing by the individual tested, and include procedural requirements for how confirmatory testing is elected and conducted. Finally, the proposed changes to subsection 21.8 include technical corrections to improve wording and numbering and make clarifications regarding the penalties for first, second, and third violations of Rule 21 relating to substance abuse or addiction. Other regulations issued by the Delaware Thoroughbred Racing Commission are not affected by this proposal. The Delaware Thoroughbred Racing

Commission is issuing this proposed regulation 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 regulation is being published in the April 1, 2025 edition of the *Delaware Register of Regulations*. A copy is also on file in the office of the Delaware 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 Delaware Thoroughbred Racing Commission at the above address as to whether this proposed regulation should be adopted, rejected or modified. Pursuant to 29 **Del.C.** §10118(a), public comments must be received on or before May 1, 2025. 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/>

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

PUBLIC NOTICE

Doula Services

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 Title XIX Medicaid State Plan regarding Doula Services, specifically, to provide additional postpartum visits with a recommendation by a practitioner or clinician licensed under Delaware Code Title 24 acting within their scope of practice.

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 May 1, 2025. Please identify in the subject line: Doula Services

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.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
Board of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers
PUBLIC NOTICE
3700 Board of Examiners of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers

The Delaware Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers ("Board"), pursuant to 24 **Del.C.** §3706(a)(1), proposes to amend its regulation.

On October 1, 2024, proposed revisions to the regulation were published in the *Delaware Register of Regulations*, Volume 28, Issue 4. The revisions included clarification of the licensure requirements for the professions regulated by the Board. Specifically, training requirements for hearing aid dispensers were amended to add successful completion of the International Hearing Society's curriculum "Distance Learning for Professionals in Hearing Health Sciences." Proposed amendments also eliminated the cap on the number of times that a hearing aid dispenser applicant may take the licensure examination. Sections pertaining to audiology and speech/language pathology aides were stricken because the Board does not license these professions. In addition, continuing education requirements were amended to add two hours in ethics.

A public hearing was held on November 19, 2024 before the Board. The Board deliberated on the evidence presented at its meeting on January 21, 2025. Based on those deliberations, the Board has proposed further revisions to the regulation. Therefore, the Board withdraws the proposed regulation published October 1, 2024, and submits a revised proposed regulation attached as Exhibit A.

The Board will hold a public hearing on the proposed regulation changes on May 20, 2025, at 2:00 p.m., virtually and in the Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Anyone wishing to receive a copy of the proposed regulation may obtain a copy from the Delaware Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers, 861 Silver Lake Boulevard, Dover, Delaware 19904. Written comments should be sent to Jessica Lobaccaro, Administrative Specialist for the Board, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904 or at jessica.lobaccaro@delaware.gov. Written comments will be accepted until June 4, 2025 pursuant to 29 **Del.C.** §10118(a).

DIVISION OF PROFESSIONAL REGULATION
Board of Social Work Examiners
PUBLIC NOTICE
3900 Board of Social Work Examiners

Pursuant to 24 **Del.C.** §3906(a)(1), the Delaware Board of Social Work Examiners ("Board") has proposed revisions to its regulation. Subsection 3.1.2.1 has been revised to provide that up to 25 hours of the required 100 hours of direct professional supervision may be obtained through group supervision. Groups supervision may include no more than 7 supervisees. Subsection 7.2.1, concerning acceptable continuing education activities, has been amended to clarify that courses taken to satisfy degree requirements do not qualify as continuing education.

A public hearing will be held on April 21, 2025 at 9:00 a.m. in the second floor conference room A 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 Social Work Examiners, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address or at jennifer.jacoby@delaware.gov.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be May 6, 2025. The Board will deliberate on all public comments at its next regularly scheduled meeting.

PUBLIC SERVICE COMMISSION**PUBLIC NOTICE****3014 Regulations Governing Certificates of Public Convenience and Necessity for the Siting of Renewable Energy Interconnection Facilities**

PSC REGULATION DOCKET NO. 67

Opened: January 29, 2025 (Order No. 10643)

The Delaware Public Service Commission ("Commission" or "PSC"), pursuant to 26 **Del.C.** § 203F, proposes to issue regulations governing certificates of public convenience and necessity for the siting of renewable energy interconnection facilities. The proposed regulations, Regulations Governing Certificates of Public Convenience and Necessity for the Siting of Renewable Energy Interconnection Facilities are proposed to be codified at 26 DE Admin. Code § 3014.

A copy of the proposed regulations is being published in the April 2025 issue of the *Delaware Register of Regulations*, and is also available in the PSC's electronic filing system, Delafile, located at <http://delafile.delaware.gov/> (Docket No. "Reg. 67"). If you wish to obtain written copies of the implementing Order and proposed regulations, please contact the PSC at (302) 736-7500. Copies in excess of the first twenty (20) pages are \$0.25 per page. Payment is expected prior to copying (if you wish the copies to be mailed) or at the time the copies are retrieved (if you retrieve them in person).

In accordance with 29 **Del.C.** §10116, written comments, suggestions, briefs, and compilations of data or other written materials concerning the proposed regulations should be submitted via e-mail to PSC@delaware.gov with the subject line "Regulation 3014 - PSC Docket No. 67" or mailed to: Crystal Beenick, Public Service Commission, Cannon Building, 861 Silver Lake Blvd., Suite 100, Dover, DE 19904.

The Commission will hold a public hearing on the proposed regulations on April 23, 2025, at 1:00 p.m. at the hearing room located at 861 Silver Lake Blvd., Suite 100, Dover, DE 19904. To be considered at the April 23, 2025 hearing, written comments must be submitted on or before April 16, 2025. Pursuant to 29 **Del.C.** §10118(a), written comments will be accepted after the hearing until May 13, 2025.

On or after May 13, 2025, following review of any public comments, the Commission will determine whether to amend its regulations by adopting the proposed amendments or make additional changes.

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