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# Delaware Register of Regulations

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Issue Date: April 1, 2024

Volume 27 - Issue 10, Pages 703-790

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## IN THIS ISSUE:

Errata

Regulations:  
Proposed  
Final

General Notices

Calendar of Events &  
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before March 15, 2024.

*Cover Photo by*  
Arun Reddy  
Dover

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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

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

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

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## SUBSCRIPTION INFORMATION

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

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

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

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

**ERRATA****1341 Workers' Compensation Regulations**

\* **Please Note:** The Department of Labor regulation, 19 **DE Admin. Code** 1341 Workers' Compensation Regulations, was published as proposed in the *Delaware Register of Regulations*, 27 **DE Reg.** 317 (11/01/23) and as final in the *Delaware Register of Regulations*, 27 **DE Reg.** 614 (02/01/24). The following subsections were inadvertently published incorrectly.

New proposed and final subsection 4.10.6 was published as:

~~4.9.6~~ 4.10.6 Inpatient Care

~~4.9.6.1~~ 4.10.6.1 ~~Definition~~ Definition.

~~4.9.6.1.1~~ 4.6.10.1.1 For purposes of this fee schedule, "inpatient" means being admitted to a hospital setting for ~~twenty-four (24)~~ 24 hours or more. An inpatient admission does not require official admission to the hospital.

New proposed and final subsection 4.10.6 should have read:

~~4.9.6~~ 4.10.6 Inpatient Care

~~4.9.6.1~~ 4.10.6.1 ~~Definition~~ Definition.

~~4.9.6.1.1~~ 4.10.6.1.1 For purposes of this fee schedule, "inpatient" means being admitted to a hospital setting for ~~twenty-four (24)~~ 24 hours or more. An inpatient admission does not require official admission to the hospital.

New proposed and final subsection 4.10.7.1 was published as:

~~4.9.7.1~~ 4.10.7.1 ~~Definition~~ Definition.

~~4.9.7.1.1~~ Observation services are those services furnished by a hospital on the hospital's premises, and include use of a bed and periodic monitoring by a hospital's staff. The service must be reasonable and necessary to evaluate a patient's condition or to determine need for inpatient admission. To qualify for observation status, the patient needs observation due to an unforeseen circumstance or has a medical condition with a significant degree of instability.

New proposed and final subsection 4.10.7.1 should have read:

~~4.9.7.1~~ 4.10.7.1 ~~Definition~~ Definition.

~~4.9.7.1.1~~ Observation services are those services furnished by a hospital on the hospital's premises, and include use of a bed and periodic monitoring by a hospital's staff. The service must be reasonable and necessary to evaluate a patient's condition or to determine need for inpatient admission. To qualify for observation status, the patient needs observation due to an unforeseen circumstance or has a medical condition with a significant degree of instability.

New proposed and final subsection 4.13.3 was published as:

~~4.12.3~~ 4.12.3 The payment system will be adjusted yearly pursuant to 19 **Del.C.** §2322B(5) for a procedure, treatment or service in effect in January of that year.

New proposed and final subsection 4.13.3 should have read:

~~4.12.3~~ 4.13.3 The payment system will be adjusted yearly pursuant to 19 **Del.C.** §2322B(5) for a procedure, treatment or service in effect in January of that year.

New proposed and final subsection 4.17 was published as:

~~4.16~~ 4.17 Fees for Non-Clinical Services

4.16.1 4.17.1 Pursuant to 19 **Del.C.** §2322B(13), fees for certain non-clinical services are set as follows, and will be periodically revised upon recommendation of the Workers' Compensation Oversight Panel to reflect changes in the cost of providing such services:

New proposed and final subsection 4.17 should have read:

~~4.16~~ 4.17 Fees for Non-Clinical Services

~~4.16.1~~ 4.17.1 Pursuant to 19 **Del.C.** §2322B(13), fees for certain non-clinical services are set as follows, and will be periodically revised upon recommendation of the Workers' Compensation Oversight Panel to reflect changes in the cost of providing such services:

New proposed and final subsection 4.19.2.2 was published as:

~~4.18.2.2~~ 4.19.2.2 The Delaware Workers' Compensation Health Care Practice Guidelines remain in effect and care is presumed compensable when followed. It is the intent of ~~these new Rules and Regulations~~ that care that was allowed under the previous billing system is still compensable, and under no circumstances is the new billing system defining what care is acceptable, but rather a maximum allowable reimbursement.

New proposed and final subsection 4.19.2.2 should have read:

~~4.18.2.2~~ 4.19.2.2 The Delaware Workers' Compensation Health Care Practice Guidelines remain in effect and care is presumed compensable when followed. It is the intent of these ~~new Rules and Regulations~~ regulations that care that was allowed under the previous billing system is still compensable, and under no circumstances is the new billing system defining what care is acceptable, but rather a maximum allowable reimbursement.

New proposed and final subsection 4.21.4.2.4.2 was published as:

o 4.21.4.2.4.2 When an anesthesiologist provides medical direction to the CRNA ~~or AA~~ providing the anesthesia service, then the reimbursement will be divided between the ~~two~~ of them at ~~fifty percent (50%)~~ 50%.

New proposed and final subsection 4.21.4.2.4.2 should have read:

o 4.21.4.2.4.2 When an anesthesiologist provides medical direction to the CRNA ~~or AA~~ providing the anesthesia service, then the reimbursement will be divided between the ~~two~~ 2 of them at ~~fifty percent (50%)~~ 50%.

New proposed and final subsections 4.22.1 and 4.22.1.1 was published as:

4.21.1 ~~General Guidelines~~ General Guidelines

4.21.1.1 ~~Global Reimbursement~~ Global Reimbursement. The reimbursement allowances for surgical procedures are based on a global reimbursement concept that covers performing the basic service and the normal range of care required after surgery.

New proposed and final subsections 4.22.1 and 4.22.1.1 should have read:

~~4.21.1~~ 4.22.1 ~~General Guidelines~~ General Guidelines

~~4.21.1.1~~ ~~4.22.1.1~~ ~~**Global Reimbursement**~~ Global Reimbursement. The reimbursement allowances for surgical procedures are based on a global reimbursement concept that covers performing the basic service and the normal range of care required after surgery.

New proposed and final subsection 4.22.1.1.2 was published as:

o 4.22.1.1.2 Local infiltration, metacarpal/metatarsal/digital block or topical ~~anesthesia~~ anesthesia.

New proposed and final subsection 4.22.1.1.2 should have read:

o 4.22.1.1.2 Local infiltration, metacarpal/metatarsal/digital block or topical ~~anesthesia~~ anesthesia;

New proposed and final subsection 4.22.1.1.5 was published as:

o 4.22.1.1.5 Evaluating the patient in the post anesthesia recovery area

New proposed and final subsection 4.22.1.1.5 should have read:

o 4.22.1.1.5 Evaluating the patient in the post anesthesia recovery ~~area~~ area;

New proposed and final subsection 4.22.1.19, **50 Bilateral Procedure** was published as:

**50 Bilateral Procedure:** Unless otherwise identified in the listings, bilateral procedures that are performed at the same session should be identified by adding modifier 50 to the appropriate five-digit code. **Note:** This modifier should not be appended to designated "add-on" codes (see Appendix D of CPT).

**State Note:** There will be no reductions to the procedures billed with the modifier 50.

**State Note:** Procedures performed bilaterally are reported as two line items and modifier 50 is not appended. These codes are identified with CPT specific language at the code or subsection level. Modifiers RT and LT may be appended as appropriate.

New proposed and final subsection 4.22.1.19, **50 Bilateral Procedure** should have read:

**50 Bilateral Procedure:** Unless otherwise identified in the listings, bilateral procedures that are performed at the same session should be identified by adding modifier 50 to the appropriate five-digit code. **Note:** This modifier should not be appended to designated "add-on" codes (see Appendix D of CPT).

**State Note:** There will be no reductions to the procedures billed with the modifier 50.

**State Note:** Procedures performed bilaterally are reported as two line items and modifier 50 is not appended. These codes are identified with CPT specific language at the code or subsection level. Modifiers RT and LT may be appended as appropriate.

New proposed and final subsection 4.23.2.5.3 was published as:

o 4.23.2.5.3 Sterile ~~supplies~~ supplies;

New proposed and final subsection 4.23.2.5.3 should have read:

o 4.23.2.5.3 Sterile ~~supplies~~ supplies;

New proposed and final subsections 4.26.3.2 and 4.26.3.3 were published as:

4.25.3.2 Diagnostic arthroscopy is not billed when followed by arthroscopic surgery.

4.25.3.3 If there are only minor findings that do not confirm a significant preoperative diagnosis, the procedure should be billed as a diagnostic arthroscopy.

New proposed and final subsections 4.26.3.2 and 4.26.3.3 should have read:

~~4.25.3.2~~ 4.26.3.2 Diagnostic arthroscopy is not billed when followed by arthroscopic surgery.

~~4.25.3.3~~ 4.26.3.3 If there are only minor findings that do not confirm a significant preoperative diagnosis, the procedure should be billed as a diagnostic arthroscopy.

New proposed and final subsection 4.26.6.12 was published as:

e 4.26.6.12Closure of ~~wound~~ wound.

New proposed and final subsection 4.26.6.12 should have read:

e 4.26.6.12Closure of ~~wound~~ wound.

New proposed and final subsections 4.28.1.1.2 through 4.28.1.1.5 were published as:

~~4.27.1.1.2~~ 4.27.1.1.2Whenever the health care payment system does not set a specific fee for a procedure, treatment or service in the schedule, the amount of reimbursement shall be a percentage reduction from 85% of the actual charge.

~~4.27.1.1.3~~ 4.27.1.1.3The payment system will be adjusted yearly pursuant to 19 **Del.C.** §2322B(5).

~~4.27.1.1.4~~ 4.27.1.1.4Physicians should include CPT codes for specific performance of diagnostic tests/studies for which specific CPT codes are available. Items used by all physicians in reporting their services are presented in the introduction. Definitions and explanations unique to pathology and laboratory are included below.

~~4.27.1.1.5~~ 4.27.1.1.5The maximum number of times that drug screening, testing, or the like, may occur is ~~four (4)~~ 4 samples per year absent written pre-authorization by the employer or its insurance carrier. If the point of care testing is not consistent with that which the prescriber expected based on the drug or medicine prescribed, then, and only then, will confirmatory testing be permitted and subject to payment. A maximum charge of ~~one hundred dollars (\$100.00)~~ \$100 for point of care testing, or the provider's actual charge, whichever is less, shall be permitted, regardless of the number of drugs being screened for and/or the number of dip sticks, testing instruments, materials, or the like, used.

New proposed and final subsections 4.28.1.1.2 through 4.28.1.1.5 should have read:

~~4.27.1.1.2~~ 4.28.1.1.2Whenever the health care payment system does not set a specific fee for a procedure, treatment or service in the schedule, the amount of reimbursement shall be a percentage reduction from 85% of the actual charge.

~~4.27.1.1.3~~ 4.28.1.1.3The payment system will be adjusted yearly pursuant to 19 **Del.C.** §2322B(5).

~~4.27.1.1.4~~ 4.28.1.1.4Physicians should include CPT codes for specific performance of diagnostic tests/studies for which specific CPT codes are available. Items used by all physicians in reporting their services are presented in the introduction. Definitions and explanations unique to pathology and laboratory are included below.

~~4.27.1.1.5~~ 4.28.1.1.5The maximum number of times that drug screening, testing, or the like, may occur is ~~four (4)~~ 4 samples per year absent written pre-authorization by the employer or its insurance carrier. If the point of care testing is not consistent with that which the prescriber expected based on the drug or medicine prescribed, then, and only then, will confirmatory testing be permitted and subject to payment. A maximum charge of ~~one hundred dollars (\$100.00)~~ \$100 for point of care testing, or the provider's actual charge, whichever is less, shall be permitted, regardless of the number of drugs being screened for and/or the number of dip sticks, testing instruments, materials, or the like, used.

New proposed and final subsection 4.29.1.2 was published as:



~~4.28.1.2 4.29.1.2~~ **Initial Evaluation and Re-evaluation by Physical Therapists or Occupational Therapists** Initial Evaluation and Re-evaluation by Physical Therapists or Occupational Therapists

New proposed and final subsection 4.29.1.2 should have read:

~~4.28.1.2 4.29.1.2~~ **Initial Evaluation and Re-evaluation by Physical Therapists or Occupational Therapists** Initial Evaluation and Re-evaluation by Physical Therapists or Occupational Therapists

New proposed and final subsection 4.29.1.3 was published as:

~~4.28.1.3 4.29.1.3~~ **Exam Visits to Occupational Therapists or Physical Therapists** Exam Visits to Occupational Therapists or Physical Therapists. Services performed by a physical therapist and/or occupational therapist shall be performed in conjunction with the authorized treating physician detailing the type, frequency, and duration of therapy to be provided. Only physical therapists and/or occupational therapists procedures and services are billable.

New proposed and final subsection 4.29.1.2 should have read:

~~4.28.1.3 4.29.1.3~~ **Exam Visits to Occupational Therapists or Physical Therapists** Exam Visits to Occupational Therapists or Physical Therapists. Services performed by a physical therapist and/or occupational therapist shall be performed in conjunction with the authorized treating physician detailing the type, frequency, and duration of therapy to be provided. Only physical therapists therapists and/or occupational therapists therapists procedures and services are billable.

New proposed and final subsection 4.30 was published as:

~~4.29~~ **4.30 Durable Medical Equipment and Supplies**

New proposed and final subsection 4.30 should have read as:

~~4.29~~ **4.30 Durable Medical Equipment and Supplies** Durable Medical Equipment and Supplies

New proposed and final subsection 5.4.4 was published as:

5.4.4 In the instance of a compensable claim in which open surgery is recommended by the health care provider and stated by ~~him/her~~ the provider to be within the applicable Practice Guideline, the following procedure may be followed by the operating surgeon to facilitate resolution of payment for such treatment: The operating surgeon must specify the particular surgery to be performed and must certify in writing that:

5.4.4.1.1 ~~(a) the~~ The surgery is causally related to the work ~~accident~~, accident; and

5.4.4.1.2 ~~(b) the~~ The surgery is within the Practice Guideline, with specific reference to the Practice Guideline provision relied upon.

~~5.4.4.1~~ 5.4.4.2 The information set forth above must be set forth by the operating surgeon in a separate written report, not through a copy of office notes and/or records. The employer/carrier must within 30 days from receipt of the above either accept/pre-authorize or deny such treatment. If the treatment is denied as non-compliant with the Practice Guidelines, it must be referred to Utilization Review within 15 days of date of denial in accordance with §2322F(h)(j). If the treatment is denied as not causally related to the compensable work accident, the claimant may file a Petition with the Industrial Accident Board to determine whether the treatment is compensable. If the employer/carrier neither accepts/pre-authorizes nor denies the treatment within the 30-day period referenced above, then the treatment will be deemed compensable if performed.

New proposed and final subsection 5.4.4 should have read as:

5.4.4 In the instance of a compensable claim in which open surgery is recommended by the health care provider and stated by ~~him/her~~ the provider to be within the applicable Practice Guideline, the following procedure may be followed by the operating surgeon to facilitate resolution of payment for such treatment:

5.4.4.1 The operating surgeon must specify the particular surgery to be performed and must certify in writing that:

5.4.4.1.1 ~~(a) the~~ The surgery is causally related to the work ~~accident,~~ accident; and

5.4.4.1.2 ~~(b) the~~ The surgery is within the Practice Guideline, with specific reference to the Practice Guideline provision relied upon.

~~5.4.4.1~~ 5.4.4.2 The information set forth above must be set forth by the operating surgeon in a separate written report, not through a copy of office notes and/or records. The employer/carrier must within 30 days from receipt of the above either accept/pre-authorize or deny such treatment. If the treatment is denied as non-compliant with the Practice Guidelines, it must be referred to Utilization Review within 15 days of date of denial in accordance with §2322F(h)(j). If the treatment is denied as not causally related to the compensable work accident, the claimant may file a Petition with the Industrial Accident Board to determine whether the treatment is compensable. If the employer/carrier neither accepts/pre-authorizes nor denies the treatment within the 30-day period referenced above, then the treatment will be deemed compensable if performed.

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**Symbol Key**

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

**Proposed Regulations**

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

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**DELAWARE STATE FIRE PREVENTION COMMISSION**

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

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

The Delaware State Fire Prevention Commission, pursuant to 16 **Del.C.** § 6604(1), proposes to revise regulation 710. The proposed regulations change the age requirement for EMT students in subsection 15.4.3. This amendment will be in addition to amendments recently proposed in February 2024.

The Board will accept written comments, which should be sent to Sherry Lambertson, Executive Specialist for the Delaware Fire Prevention Commission, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, DE 19904. Written comments may also be sent by email to the following email address: [fire.commission@delaware.gov](mailto:fire.commission@delaware.gov). The Public Comment period will end on Friday, May 3, 2024.

The proposed additions to the rule are reflected in underline. Deletions are reflected in strike through.

**\*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/april2024/proposed/27 DE Reg 719RFA 04-01-24.pdf>

**710 Ambulance Service Regulations  
(Break in Continuity of Sections)****15.0 Criminal History Background Check****(Break in Continuity Within Section)****15.4 Administrative Policy Pertaining to Criminal History Background Checks**

15.4.1 Delaware State Fire School training announcements for EMT courses will include the statement "Criminal History Background checks will be required as per the regulations".

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- 15.4.2 All chiefs of departments, presidents or ambulance captains of volunteer rescue or ambulance squads or officers of private corporations or entities which have students pre-registered for the class shall inform the individual that a criminal history background check will be required. It will be the responsibility of any private EMT training institution to make their students aware that a criminal history background check is required to become a State Certified EMT and the criminal history background check be available in order to receive EMT Certification or authorization by the Commission, or its designee.
- 15.4.3 At the start of the EMT course, the student must be ~~18~~ 17 years of age.
- 15.4.4 All EMT students must submit to a Federal and State Criminal History Background check conducted by the State Bureau of Identification. Any student failing to submit to the above will not be permitted to participate in the course.
- 15.4.5 Any volunteer fire, rescue or ambulance company student accepted into a BLS course conducted by the Delaware State Fire School and does not complete the course will be required to reimburse the Delaware State Fire School the cost of the course materials.

**\*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/april2024/proposed/27 DE Reg 719 04-01-24.htm>

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## DEPARTMENT OF AGRICULTURE HARNES RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 10005 (3 Del.C. §10005)  
3 DE Admin. Code 501

### PUBLIC NOTICE

#### 501 Harness Racing Rules and Regulations

#### Summary

The Harness Racing Commission (the "Commission") proposes to amend its Regulation in accordance with 3 Del.C. §10005. The proposed regulations amend Rules 3.3, 5.3.2.1, 5.3.5, 7.4.1.6, 8.3.5.9.6, and 8.5.1 to change Racing Office operating procedures, impose accountability on substitute trainers for horse conditions on the day of a race, and change horse qualifying eligibility to adhere to the practice used by the Commission. Other sections of the Regulation issued by the Commission are not affected by the aforementioned proposals.

#### Comments

A copy of the proposed regulations is being published in the April 1, 2024 edition of the Delaware Register of Regulations. A copy is also on file in the office of the Harness Racing Commission 2320 South Dupont Highway, Dover, Delaware 19901 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](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 Commission at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 Del.C. § 10118(a), public comments must be received on or before May 1, 2024. Written materials submitted will be available for inspection at the above address.

#### Adoption of Proposed Regulation

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

## Effective Date of Amendments to Regulations

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

Delaware Harness Racing Commission

Mark A. Davis, Executive Director

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

<https://regulations.delaware.gov/register/april2024/proposed/27 DE Reg 720RFA 04-01-24.pdf>

## **501 Harness Racing Rules and Regulations (Break in Continuity of Sections)**

### **3.0 Officials**

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

#### 3.3 Racing Secretary

- 3.3.1 General Authority. The Racing Secretary is responsible for setting the conditions for each race of the race meeting, regulating the nomination of entries and determining the amounts of purses and to whom they are due. The Racing Secretary shall check and verify the eligibility of all horses entered.
- 3.3.2 Race Information. The Racing Secretary shall be familiar with the age, class and competitive ability of all horses racing at the meeting.
- 3.3.3 Classifications. The Racing Secretary shall classify horses in accordance with these rules.
- 3.3.4 Listing of Horses. The Racing Office shall:
  - 3.3.4.1 Examine all entry forms and declarations to verify information as set forth therein; ~~and~~
  - 3.3.4.2 Select the horses to start and the also eligible horses from the declarations in accordance with these ~~rules~~ rules;
  - 3.3.4.3 Provide the listing of horses in the daily ~~program~~ program; ~~and~~
  - 3.3.4.4 Ensure that no horse races within 48 hours of its last race.
- 3.3.5 Nominations and Declarations. The Racing Secretary shall examine nominations and declarations and early closing events, late closing events and stakes events to verify the eligibility of all declarations and nominations and compile lists thereof for publication.
- 3.3.6 Conditions. The Racing Secretary shall establish the conditions and eligibility for entering races and cause them to be published to owners, trainers and the Commission and be posted in the Racing Secretary's office.
- 3.3.7 Posting of Entries. Upon completion of the draw each day, the Racing Secretary shall post a list of entries in a conspicuous location in his office and make the list available to the media.
- 3.3.8 Winnings
  - 3.3.8.1 For the purpose of establishing conditions, winnings shall be considered to include all monies and prizes won up to the time of the start of a race.
  - 3.3.8.2 Winnings during the year shall be calculated by the Racing Secretary from the preceding January 1.
- 3.3.9 Cancellation of a Race. In case of unfavorable weather or other unavoidable cause, Associations, upon notifying of the Presiding Judge may postpone or cancel races.

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

## 5.0 Licensees

*(Break in Continuity Within Section)*

### 5.3 Trainers

*(Break in Continuity Within Section)*

#### 5.3.2 Trainer Responsibility

5.3.2.1 A trainer is responsible for the condition of horses entered in an official race and is responsible for the presence of any prohibited drug, medication or other substance, including permitted medication in excess of the maximum allowable level, in such horses. If there is a principal trainer and one or more additional trainers for a horse, all shall be responsible for any rules violations with respect to the horse. A positive test for a prohibited drug, medication or substance, including permitted medication in excess of the maximum allowable level, as reported by a Commission-approved laboratory, is prima facie evidence of a violation of this rule. In the absence of substantial evidence to the contrary, the trainer shall be responsible. Whenever a principal trainer of a horse names a substitute trainer for program purposes due to his inability to be in attendance with the horse on the day of the race, or for any other reason, ~~both trainers~~ the principal trainer shall be responsible for the condition of the horse should the horse test positive and the substitute trainer may also be held responsible as mitigating and aggravating circumstances are considered.

5.3.2.2 A trainer shall prevent the administration of any drug or medication or other prohibited substance that may cause a violation of these rules.

5.3.2.3 A trainer whose horse has been claimed remains responsible for any violation of rules regarding that horse's participation in the race in which the horse is claimed.

*(Break in Continuity Within Section)*

5.3.5 Substitute Trainers. If any licensed trainer is to be absent from the association grounds where the trainer's horse is programmed to race the Presiding Judge shall be immediately notified and at that time a licensed substitute trainer, acceptable to the Presiding Judge, shall be appointed to assume responsibility for the horses racing during the absence of the regular trainer. ~~The name of the substitute trainer shall appear on the program if possible.~~

*(Break in Continuity of Sections)*

## 7.0 Rules of the Race

*(Break in Continuity Within Section)*

### 7.4 Horses Permitted to Race

7.4.1 A horse shall be eligible to be declared in to race provided the following conditions have been met:

7.4.1.1 the eligibility fee, which shall become due and payable when a horse makes its first start in any type of race in a calendar year, has been paid to the United States Trotting Association, or a current eligibility certificate has been granted for the horse by the United States Trotting Association or by the Canadian Trotting Association.

7.4.1.2 the horse has been registered in the current ownership with the Canadian Standardbred Horse Society or in the United States Trotting Association Register;

7.4.1.3 if leased, a copy of the lease is on file with, and is acceptable to the United States Trotting Association or Canadian Trotting Association, as appropriate. The horse must race in the name of the lessee;

7.4.1.4 for overnight races, the horse has qualified at an extended meeting in accordance with the rules prior to the time of closing of declarations in accordance with the qualifying standards of the track presenting the race.

7.4.1.5 for added money events, the horse has qualified at an extended meeting in accordance with the rules prior to the time of closing of declarations.



- 7.4.1.6 not more than ~~30~~ 60 days prior to ~~the time of closing of declarations~~ racing, the horse was credited with a satisfactory charted past performance line obtained in a purse, qualifying or schooling race conducted at a charted meeting; provided, however, that with the permission of the Presiding Judge, a satisfactory charted past performance ~~within more than~~ than 60 days prior to the ~~time of closing of declarations~~ race may be used;
- 7.4.1.7 the horse is at least two years of age to race at any meeting but not older than 14 years of age;
- 7.4.1.8 the horse has not been denerved by any method above its pastern. The decision at any given time whether the horse has been denerved shall be the State veterinarian's.
- 7.4.1.9 if a mare has been spayed, the United States Trotting Association or Canadian Trotting Association, as appropriate, has been notified in writing by the owner, trainer or veterinarian;
- 7.4.1.10 the horse does not have a trachea tube or a hole in its throat for a trachea tube;
- 7.4.1.11 the horse has unimpaired vision in at least one eye; and
- 7.4.1.12 the horse has been lip tattooed or freeze-branded or Micro Chipped in accordance with the constitution and bylaws and regulations of the United States Trotting Association or Canadian Standardbred Horse Society.

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

## **8.0 Veterinary Practices, Equine Health Medication**

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

- 8.3 Medications and Foreign Substances. Foreign substances shall mean all substances, except those which exist naturally in the untreated horse at normal physiological concentration, and shall include all narcotics, stimulants, depressants or other drugs or medications of any type. Except as specifically permitted by these rules, no foreign substance shall be carried in the body of the horse at the time of the running of the race. Upon a finding of a violation of these medication and prohibited substances rules, the Presiding Judge or other designee of the Commission shall consider the classification level of the violation as listed at the time of the violation by the DHRC Uniform Classification Guidelines found in subsection 8.3.1 of this section, and may consider the most recent recommendations by the Uniform Classification Guidelines of Foreign Substances as promulgated by the Association of Racing Commissioners International. In addition, the Presiding Judge or other designee of the Commission shall consider all other relevant available evidence including but not limited to: i) whether the violation created a risk of injury to the horse or driver; ii) whether the violation undermined or corrupted the integrity of the sport of harness racing; iii) whether the violation misled the wagering public and those desiring to claim the horse as to the condition and ability of the horse; iv) whether the violation permitted the trainer or licensee to alter the performance of the horse or permitted the trainer or licensee to gain an advantage over other horses entered in the race; v) the amount of the purse involved in the race in which the violation occurred. The Presiding Judge may impose penalties and disciplinary measures consistent with the recommendations contained in subsection 8.3.2 of this section.

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

- 8.3.5 Furosemide (Salix) and Aminocaproic Acid (Amicar)

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

- 8.3.5.9 Bleeder List

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

- 8.3.5.9.6 A horse may be removed from the Bleeder List at the request of the owner or trainer, ~~if the horse completes a 5-day rest period following such request, and then re-qualifies.~~ A horse may also discontinue the use of Aminocaproic Acid ~~without a five (5) day rest period or having to re-qualify provided the horse was on Aminocaproic Acid for thirty (30) days or more.~~ In addition, Acid, provided that, once a horse discontinues the use

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of Aminocaproic Acid, it is prohibited from using said medication for ~~ninety (90)~~ 90 days from the date of its last administration for Aminocaproic Acid.

**(Break in Continuity Within Section)**

8.5 Trainer Responsibility. The purpose of this subsection is to identify responsibilities of the trainer that pertain specifically to the health and well-being of horses in his care.

8.5.1 The trainer is responsible for the condition of horses entered in an official workout or race and is responsible for the presence of any prohibited drug, medication or other substance, including permitted medication in excess of the maximum allowable level, in such horses. A positive test for a prohibited drug, medication or substance, including permitted medication in excess of the maximum allowable level, as reported by a Commission-approved laboratory, is prima facie evidence of a violation of this regulation. In the absence of substantial evidence to the contrary, the trainer shall be responsible. Whenever a trainer of a horse names a substitute trainer for program purposes due to his inability to be in attendance with the horse on the day of the race, or for any other reason, ~~both trainers~~ the principal trainer shall be responsible for the condition of the horse should the horse test positive and the substitute trainer may also be held responsible as mitigating and aggravating circumstances are considered; provided further that, except as otherwise provided herein, the trainer of record (programmed trainer) shall be any individual who receives any compensation for training the horse.

**\*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/april2024/proposed/27 DE Reg 720 04-01-24.htm>

## DELAWARE STANDARDBRED BREEDERS' FUND

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

### PUBLIC NOTICE

#### 502 Standardbred Breeders' Fund Regulations

#### Summary

The State of Delaware, Department of Agriculture's Standardbred Breeders' Fund ("the Fund") hereby gives notice of its intention to amend its Regulation in accordance with 29 Del.C. §4815(b)(4)b.2. The proposed regulation amends Rules 10.2.2 and 10.2.3 by eliminating the restriction on Delaware stallions from being able to breed during racing season, and instead, permits stallions to compete and breed simultaneously. This proposal is an attempt to allow greater flexibility to small breeders. Other sections of the Regulation issued by the Commission are not affected by the aforementioned proposals.

#### Comments

A copy of the proposed regulations is being published in the April 1, 2024 edition of the Delaware Register of Regulations. A copy is also on file in the office of the Standardbred Breeders' Fund, 2320 South Dupont Highway, Dover, Delaware 19901 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](https://regulations.delaware.gov/register/current_issue.shtml).

The Fund solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty days (30) after these proposed amended regulations are promulgated in the *Delaware Register of Regulations*. Any such submissions should be mailed or hand-delivered to Ms. Judy Davis-Wilson, Administrator, Delaware Standardbred Breeders' Fund Program whose address is State of Delaware, Department of Agriculture, 2320 South duPont Highway, Dover, Delaware 19901 by May 1, 2024.

## Adoption of Proposed Regulation

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

## Effective Date of Amendments to Regulations

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

Delaware Standardbred Breeders Fund

Judy Davis-Wilson, Executive Administrator

**\*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/april2024/proposed/27 DE Reg 724RFA 04-01-24.pdf>

## **502 Standardbred Breeders' Fund Regulations (Break in Continuity of Sections)**

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

- 10.1 An owner or lessee of a standardbred stallion who desires to use him for breeding purposes and to have him qualify for the Delaware Standardbred Breeders' Fund Program, shall register the stallion by December 1st of the approaching breeding season with the Administrator of the Program or by January 1st, February 1st, and March 1st of the approaching breeding season with an additional supplemental fee as set forth in subsection 11.4 of this regulation.
- 10.1.1 Unless the stallion is contracted to stand at stud in the southern hemisphere, the stallion shall stand in the State of Delaware for the remainder of the breeding season.
- 10.1.2 If a stallion is contracted to stand at stud in the southern hemisphere, a copy of said contract must be provided to the Administrator of the Program at the time of application for registration in the Program or, in the event the contract is entered into at a subsequent date, within ten days of entering into the contract.
- 10.1.3 A virgin standardbred stallion entering stud for the first time shall be registered prior to his first breeding and shall stand in the State of Delaware the remainder of the breeding season, unless he is contracted to stand at stud in the southern hemisphere.
- 10.1.4 A stallion shall be registered on an application established by the Administrator of the Program.
- 10.2 The owner or lessee of a Delaware sire that is eligible to register for the Delaware Standardbred Breeders' Fund Program shall designate an authorized agent who shall be responsible for the registrations and records of the Delaware sire; for the records of the breeding farm; and complying with the requirements of the Delaware Standardbred Breeders' Fund Program.
- 10.2.1 The "authorized agent" name, current phone number and mailing address shall be incorporated into the Delaware sire's registration form and be filed with the Administrator of the Delaware Standardbred Breeders' Fund Program.
- 10.2.2 A Delaware sire may compete for purses within or outside the State of Delaware at any time, including during breeding season. This subsection shall not relieve any Delaware sire from the requirements established by this regulation, except that any Delaware sire who competes for purses shall not be required to be on his registered breeding farm during the time in which he is racing. However, a Delaware sire may compete for purses outside the State of Delaware, or enter claiming races inside or outside the State of Delaware, only after the breeding season in the State of Delaware ends.
- 10.2.3 A violation of this regulation will disqualify the Delaware sire from registering for ~~racing~~ breeding in the Delaware Standardbred Breeders' Fund Program for the ~~racing~~ breeding season of the year following the violation.

**\*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/april2024/proposed/27 DE Reg 724 04-01-24.htm>

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

Statutory Authority: 14 Delaware Code, Sections 122(a) and 151 (14 **Del.C.** §§122(a) & 151)  
14 **DE Admin. Code** 101

**PUBLIC NOTICE**

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

**101 State Assessment System**

**A. TYPE OF REGULATORY ACTION REQUESTED**

Amendment to Existing Regulation

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

Pursuant to 14 **Del.C.** §122(a) and §151, the Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 101 State Assessment System. This regulation is being amended to align with the current assessment system.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, 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, 2024. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

**C. IMPACT CRITERIA**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation helps to improve student achievement as measured against state achievement standards by outlining the current state assessment system.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation will help ensure all students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation does not directly address students' health and safety.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation continues to help ensure that all students' legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation does not change the decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements or mandates on decision makers.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The amended regulation does not change the decision making authority and accountability for addressing the subject to be regulated.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no material costs to implementing this amended regulation.

**\*Please Note:**

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

<https://regulations.delaware.gov/register/april2024/proposed/27 DE Reg 726RFA 04-01-24.pdf>

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

<https://regulations.delaware.gov/register/april2024/proposed/27 DE Reg 726 04-01-24.htm>

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## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(3), 122(b)(8), 181, and 183 (14 Del.C. §§122(b)(3), 122(b)(8), 181 & 183)  
14 DE Admin. Code 506

### PUBLIC NOTICE

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

#### 506 Policies for Dual Enrollment and Awarding Dual Credit

#### A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

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

Pursuant to 14 Del.C. §§122(b)(3), 122(b)(8), 181, and 183, the Delaware Department of Education ("Department"), including the Delaware Higher Education Office, developed amendments to 14 DE Admin. Code 506 Dual Enrollment and Awarding Dual Credit. The regulation requires public schools to develop policies concerning dual enrollment in a high school and postsecondary institution and awarding dual credit. The proposed amendments are to Section 4.0, which concerns quality assurance and granting of postsecondary credit, and are consistent with HB 116 of the 152nd General Assembly. HB 116 was signed into law on February 28, 2024 and is effective August 1, 2024.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, 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/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before May 2, 2024. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

#### C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation concerns dual enrollment and dual credit and is not designed to help improve student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended

regulation will help to ensure that all students receive an equitable education by requiring public schools to develop policies concerning dual enrollment in a high school and postsecondary institution and awarding dual credit.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation concerns dual enrollment and dual credit and is not designed to help ensure that all students' health and safety are adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation concerns dual enrollment and dual credit and is not designed to help ensure that all students' legal rights are respected.

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

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place any unnecessary reporting or administrative requirements or mandates on decision makers at the local board and school levels. The proposed changes are based on HB 116, which was signed into law on February 28, 2024 and is effective August 1, 2024.

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

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

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no material costs to comply 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/april2024/proposed/27 DE Reg 727RFA 04-01-24.pdf>

## 506 Policies for Dual Enrollment and Awarding Dual Credit

### 1.0 Purpose

Pursuant to 14 Del.C. §§122(b)(3), 122(b)(8), 181, and 183, the purpose of this regulation is to ensure all school districts and charter schools have policies regarding dual enrollment and the awarding of dual credit to promote consistency and equity across the state.

### 2.0 Definitions

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

**“Accredited Postsecondary Institution”** means an accredited higher education institution, including any in-state and out-of-state college or university, alternative routes for teacher licensure and certification programs approved by the Delaware Secretary of Education and authorized to operate in Delaware, and adult education career training/registered apprenticeship programs.

**“Articulation Agreement”** means the agreement between the accredited postsecondary institution and school district, school or charter school that specifies, at a minimum, student eligibility and participation requirements, the course syllabus, the expected course competencies, grading policy, attendance policy, and conditions for awarding dual credit. Further provided, student eligibility and participation requirements shall be based on multiple indicators of readiness that may include a combination of tests, course grades, teacher recommendations or portfolios.

**“Dual Credit”** means the credit awarded at both the high school and postsecondary levels.



**"Dual Credit Course"** means a course for which a student may receive both high school credit towards graduation and postsecondary credit. The course may be taken in a variety of settings such as in a high school, on a postsecondary institution campus, or electronically. Examples of a dual credit course include Advanced Placement or "AP", International Baccalaureate or "IB".

**"Dual Enrollment"** means simultaneous enrollment in both a high school and an accredited postsecondary institution.

**"Dual Enrollment Course"** means a course for which a student may receive both high school credit towards graduation and postsecondary credit while simultaneously registered at both the high school and the accredited postsecondary institution.

**"Principal"** or **"Principal's Designee"** means the person at the high school who is assigned to approve the courses that may result in credit for that high school.

**"Student Success Plan"** means a written plan which sets postsecondary goals based on a student's career interest.

### **3.0 District Policy Requirement**

- 3.1 School districts and secondary charter schools shall develop policies for dual enrollment and the awarding of dual credit that at a minimum meet the following criteria:
- 3.1.1 All courses for which dual credit is awarded shall incorporate any applicable state content standards;
  - 3.1.2 All courses for which dual credit is awarded shall be taken at or through an articulation agreement with an accredited postsecondary institution except for AP or IB courses;
  - 3.1.3 All students shall be provided information regarding dual enrollment and the awarding of dual credit opportunities;
  - 3.1.4 All eligible students, as determined in the articulation agreement, shall have access to dual credit and dual enrollment courses;
  - 3.1.5 Funding sources such as College Board waivers or other grants shall be identified as well as the procedures for applying and the procedures for the awarding of such funds or waivers. No student shall be denied access to dual credit or dual enrollment courses because of the student's or family's inability to pay;
  - 3.1.6 All students shall be notified of any resources to help pay for dual enrollment courses;
  - 3.1.7 Students shall have multiple points of access for dual credit and dual enrollment courses including, but not limited to, courses offered on the high school campus, courses offered on the postsecondary institution campus, courses offered online, or a combination of any of the above;
  - 3.1.8 Any school district seeking to contract with an out-of-state institution to offer dual credit courses shall seek an institutional review by the Delaware Higher Education Office prior to executing the contract;
  - 3.1.9 All courses for which dual credit is awarded through an accredited postsecondary institution shall be taught by an approved dual credit instructor;
  - 3.1.10 Any course that offers dual credit shall have the prior approval for the awarding of dual credit by the principal or the principal's designee of the high school in which the credit is to be awarded; and
  - 3.1.11 Dual enrollment and dual credit shall be included in the Student Success Plan (SSP), as required in 14 **DE Admin. Code** 505, for students electing to participate.

### **4.0 Quality Assurance and Granting of Postsecondary Credit**

- 4.1 ~~All AP and IB courses used for purposes of dual credit shall meet the requirements of their respective program authorizers.~~
- 4.1.1 ~~Postsecondary credit for AP or IB courses shall be at the discretion of the credit granting accredited postsecondary institution.~~

# PROPOSED REGULATIONS

- 4.1 All AP courses used for purposes of dual credit shall meet the requirements of their respective program authorizers. Postsecondary credit for AP courses shall meet the requirements of 14 Del.C. §§9001E - 9002E.
- 4.2 All IB courses used for purposes of dual credit shall meet the requirements of their respective program authorizers. Postsecondary credit for IB courses shall be at the discretion of the credit granting accredited postsecondary institution.
- 4.2 4.3 All courses for which dual credit is granted shall meet the requirements of the sponsoring accredited postsecondary institution as outlined in the articulation agreement.
- 4.4 The effective date of Section 4.0 is August 1, 2024.

## 5.0 ~~Reporting of Dual Enrollment and awarding of Dual Credit~~

Each school district and secondary charter school shall indicate on a student's high school transcript any dual enrollment courses or dual credit courses taken and any courses for which dual credit has been granted by the student. In addition, any dual credit that has been awarded to the student shall be indicated on the student's high school transcript.

## 6.0 Policy Reporting Requirements

- 6.1 Each school district and secondary charter school shall have an electronic copy of its current policy for dual enrollment and awarding dual credit on file with the Department of Education.
- 6.2 Each school district and secondary charter school shall provide an electronic copy of any dual enrollment and dual credit policy within 90 days of such revision including any revisions made as a result of changes to Federal, state or local law, regulations, guidance or policies.

### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(2) (14 Del.C. §122(b)(2))  
14 DE Admin. Code 603

### PUBLIC NOTICE

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

### 603 Compliance with the Gun-Free Schools Act

#### A. TYPE OF REGULATORY ACTION REQUIRED

Amendment to Existing Regulation

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

Pursuant to 14 Del.C. §122(b)(2), the Delaware Department of Education ("Department") developed amendments to 14 DE Admin. Code 603 Compliance with the Gun-Free Schools Act. The regulation concerns the written policy requirements to implement the Gun-Free Schools Act (20 U.S.C. §7961) and the reporting requirements for districts and charter schools in Delaware. The regulation was reviewed in accordance with 29 Del.C. §10407. The proposed amendments include adding Section 1.0, which concerns the content of the regulation; adding Section 2.0, which provides defined terms; and changes to Sections 3.0 and 4.0 to align the proposed regulation with 20 U.S.C. §7961 and 11 Del.C. §1457A.

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 2, 2024. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

**C. IMPACT CRITERIA**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation concerns the policy and reporting requirements under the Gun-Free Schools Act and is not designed to help improve student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation concerns the policy and reporting requirements under the Gun-Free Schools Act and is not designed to help ensure all students receive an equitable education.

3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation will help to ensure all students' health and safety are adequately protected by providing policy and reporting requirements to help ensure gun-free schools.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation concerns the policy and reporting requirements under the Gun-Free Schools Act and is not designed to help ensure all 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.

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 reporting requirements in Section 4.0 align with the requirements under the Gun-Free Schools Act.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? By statute (14 **Del.C.** §122(b)(2)), the Department promulgates regulations governing the protection of the health and physical welfare of public school students in Delaware. The amended regulation does not change the Department's decision making authority and accountability for addressing the subject regulated.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies? The amended regulation is consistent with, and not an impediment to, the implementation of other state educational policies, 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/april2024/proposed/27 DE Reg 730RFA 04-01-24.pdf>

**603 Compliance with the Gun-Free Schools Act****1.0 Content**

Pursuant to 14 **Del.C.** §122(b)(2), this regulation provides the written policy requirements to implement the Gun-Free Schools Act (20 U.S.C. §7961) and the reporting requirements for Delaware public schools.

**2.0 Definitions**

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

**"Department"** means the Delaware Department of Education established pursuant to 14 **Del.C.** §101.

**"Firearm"** has the same meaning given such term in the Gun-Free Schools Act (20 U.S.C. §7961(b)(3)).

**4-9 3.0 Written Policy Required**

# PROPOSED REGULATIONS

- 4.4 3.1 Each school district and charter school shall have a written policy implementing the Gun-Free Schools Act [(20 U.S.C. §7961)] and complying with 11 ~~Del.C. §1457(j)~~ §1457A or its successor statute. At a minimum, the policy must contain the following elements:
- 4.4.1 3.1.1A student who is determined to have brought a firearm to school, or to have possessed a firearm at school, shall be expelled for not less than ~~one~~ 1 school year.
- 4.4.2 3.1.2~~Modification Pursuant to 11 Del.C. §1457A(f), modification~~ to the expulsion requirement may be made on a case by case basis by the ~~chief school officer~~ local school board or charter school board of directors. Any modification to the expulsion requirement must be ~~made in writing~~ reported to the Department.
- 4.4.3 ~~The definition of "Firearm" shall be the same as the meaning given to the term in the federal Gun-Free Schools Act.~~
- 3.2 A copy of the school district's or charter school's current policy shall be in the school district or charter school's Student Handbook or Code of Conduct.

## ~~2.0~~ 4.0 **Submission of the Policy Information to the State Department of Education**

- 2.4 4.1 Each school district and charter school shall submit the following to the Delaware Department of Education annually, in such form as the Department requires:
- 2.4.1 4.1.1An electronic copy of its policy implementing the Gun-Free Schools Act [(20 U.S.C. §7961)] and complying with 11 ~~Del.C. §1457(j)~~ §1457A or its successor statute; and
- 2.4.2 4.1.2An electronic copy of any revised policy implementing the Gun-Free Schools Act [(20 U.S.C. §7961)] and complying with 11 ~~Del.C. §1457(j)~~ §1457A or its successor statute ~~under the policy implemented in accord with this regulation~~ within ~~ninety (90)~~ 90 days of such revision regardless of whether revisions were made as a result of changes to federal, state or local law, regulations, guidance or policies; and
- 2.4.3 4.1.3~~Descriptions of the~~ Description of the circumstances surrounding expulsions imposed under 11 ~~Del.C. §1457(j)~~ §1457A or its successor statute ~~and under the policy implemented in accord with this regulation.~~ The description must include all of the following:
- 4.1.3.1 The name of the school;
- 4.1.3.2 The number of students expelled from the school; and
- 4.1.3.3 The type of firearms.

## ~~3.0~~ 5.0 **Individuals with Disabilities Act**

Nothing in this regulation shall alter a district or charter school's duties pursuant to the Individuals with Disabilities Education Act.

### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(a) and 604(b) (14 ~~Del.C. §§~~122(a) and 604(b))  
14 DE Admin. Code 737

### PUBLIC NOTICE

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

### 737 Tuition Billing for Special Schools and Programs

#### A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

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## B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 **Del.C.** §§122(a) and 604(b), the Secretary of Education intends to amend 14 **DE Admin. Code** 737 Tuition Billing for Special Schools and Programs. This amendment is needed to update language pertaining to tuition eligibility and processing of tuition billing and payments per 14 **Del. Code** Chapter 6.

The Department of Education published the proposed amendments in the *Register of Regulations* on November 1, 2023, and published a General Notice in the December 1, 2023 *Register of Regulations* extending the public comment period through January 31, 2024 to ensure all parties were able to provide public comment.

The Department of Education received several written comments, some of which were in support of the amended regulation and some which suggested changes such as the following:

**Issue:** In Section 2.0, the definition of a "Sending School District" be amended to "mean any reorganized school district, eligible to issue tuition tax under Title 14 Chapter 6, which sends a resident student to a receiving school district or charter school. This change would clarify that vocational-technical districts cannot be billed as they are not eligible to issue tuition tax.

**Response:** The Department of Education amended the definition of reorganized school district to clarify that the term does not include vocational-technical or charter schools.

**Issue:** Kendall Massett, Executive Director of the Delaware Charter Schools Network submitted comments on behalf of charter schools in Delaware and Shawn Larrimore, Ed.D., President of the Delaware Chief School Officers Association submitted comments on behalf of Delaware Reorganized School Districts requesting extensive revisions be made to the proposed regulation.

**Response:** After review and consultation with stakeholders, the Department of Education amended the proposed regulation in its entirety to reflect a formulaic approach to alleviate concerns regarding consistency and uncertainty.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or through the Department of Education'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 2, 2024. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department of Education 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? This regulation will provide additional funding to charter schools which could potentially improve achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? This regulation will provide additional funding to charter schools which could potentially improve the equitable education of students.

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? This regulation does not address the legal rights of students.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? This regulation will preserve the necessary authority and flexibility of decision making at the local board and school level.

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

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

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? This regulation will not impede the implementation of other state educational policies.

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? This regulation does not result an additional cost to the State.

**\*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/april2024/proposed/27 DE Reg 732RFA 04-01-24.pdf>

## 737 Tuition Billing for Special Schools and Programs

### 4.0 Purpose

The purpose of this regulation is to outline the process for the tuition billing and payments between local school districts and tuition generating Special Schools and Special Programs.

### 2.0 Definitions

In this regulation, the following terms shall have the meanings indicated below:

~~“Direct Services” means the provision of instructional and educational services by the authorized Special School or Special Program that are readily identifiable to that program.~~

~~“Educational Related Expenses” means those expenses that are necessary to operate the Special School or Special Program to meet the criteria for which it was established and includes, but is not limited to, Direct Services and Indirect Costs as those terms are defined herein.~~

~~“Indirect Costs” means those costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective (e.g. award, project or activity) and cannot be readily and specifically identified with a particular final cost objective without efforts disproportionate to the results achieved. If an authorized Special School or Special Program elects to apply an indirect cost rate it shall not apply a rate that exceeds the Restricted Rate approved by the Department of Education in the fiscal year.~~

~~“Inter-district student” means a student who is attending a Special School or Special Program operated by any school district other than the school district in which the student’s parents, Relative Caregiver or legal guardian resides.~~

~~“Intra-district student” means a student who is attending a Special School or Special Program operated by the school district in which the student’s parents, Relative Caregiver or legal guardian resides.~~

~~“Local School District” means a reorganized school district or vocational technical school district established pursuant to Chapter 10 of Title 14 of the Delaware Code.~~

~~“Special Program” means a program established pursuant to 14 Del.C. §203 or that has been approved as a Special Program by the Department of Education with the consent of the State Board of Education.~~

~~“Special School” means a school established pursuant to 14 Del.C. §203 or that has been approved as a Special School by the Department of Education with the consent of the State Board of Education.~~

~~“Time and Effort Log” means the record of actual time worked in the Special School or Special Program by a local school district employee.~~

~~“Tuition Billing form” means the standardized template developed and approved by the Department of Education, and based on current state law, to determine the tuition costs allowable per pupil attending a Special School or Special Program.~~

**3.0 Process for Determining Tuition Eligibility**

- 3.1 A local school district may charge tuition for an intra- or inter- district student enrolled in a Special School or Special Program based on the following criteria:
  - 3.1.1 The student shall be enrolled and attending the Special School or Special Program as of September 30<sup>th</sup> of the current school year; and
  - 3.1.2 The charges attributed to the Special School or Special Program shall be limited to Educational Related Expenses or those expenses that have been approved by the Department of Education.
- 3.2 A local school district operating a tuition-eligible Special School or Special Program may not reallocate state units earned for the Special School or Special Program, if such reallocation requires an increase in the tuition tax rate or tuition billing amount. If a reallocation of state units earned will not require such an increase, districts may reallocate positions as necessary to ensure the most efficient delivery of services, except for those instances currently prohibited by state law, including but is not limited to, 14 **Del.C.**, §1703(o).

**4.0 Process for Tuition Billing**

- 4.1 A local school district shall calculate the tuition charges by using the most current Tuition Billing forms and instructions developed and approved by the Department of Education.
- 4.2 The local school district shall submit tuition bills to the Department of Education for certification no later than November 15<sup>th</sup> of each year.
- 4.3 The Department of Education shall certify that the billing is true and correct no later than twenty (20) working days after receipt. No bill for tuition charges shall be paid until it has been certified by the Secretary of Education.
- 4.4 Upon certification, the local school district shall provide a copy of the certified tuition bill to the district(s) whose students are being served by the Special School or Special Program.
  - 4.4.1 A district may bill for its students being served by a Special School or Special Program that it operates. All stipulations within this regulation shall be followed for intra-district students.
- 4.5 Any local school district that has received a tuition bill from another local school district shall pay the tuition charges no later than January 1<sup>st</sup> of the current school year.
- 4.6 All billing disputes shall be documented through written explanation and provided to the finance officer of the local school district operating the Special School or Special Program.
  - 4.6.1 Only charges in dispute may be held; the undisputed remainder of the tuition bill shall be paid as described in 4.5.
  - 4.6.2 Billing disputes shall be resolved and charges paid before the end of the current school year.
- 4.7 If any tuition bill is adjusted within the current school year after already being certified by the Department, and if the adjustments alter the Special School or Special Program's cost, individual enrollment, total enrollment or tuition rate per pupil from what was already certified, the district shall resubmit the tuition bill to the Department for approval and include reasons for change(s).
- 4.8 Tuition billings for a Special School or Special Program serving out-of-state students shall be submitted to the Department of Education on a form entitled "Establishment of Tuition Costs for Out-of-State/Country Students with Disabilities." The Department of Education shall certify the tuition bill in accordance with 14 **Del.C.**, Chapter 6 and other sections of this regulation.

**5.0 Tuition Billing Form and Reconciliation**

- 5.1 For all estimated and actual tuition rate data, the sum of the sending district enrollments shall be equal to the exact number of students in the total program enrollment.
- 5.2 Tuition bills shall be prepared and submitted in accordance with this regulation for intra-district students served by an approved Special School or Special Program.
- 5.3 Tuition billings that yield an increase or decrease of 10% or more per pupil over the prior year estimate shall include a detailed explanation for the rate change.

**6.0 Waivers**

Tuition charges may be waived in accordance with 14 **Del.C.** Chapter 6.

**7.0 Audit and Record Retention Requirements**

The local school district shall follow the requirements for audit and record retention as prescribed by the Office of the Auditor of Accounts and Department of State — Delaware Public Archives.

**1.0 Purpose**

The purpose of this regulation is to outline tuition eligibility and the process for tuition billing and payments, per 14 **Del.C.** Ch. 6.

**2.0 Definitions**

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

**"Educational related expenses"** means those expenses that are necessary to operate a special school or special program to meet the criteria for which it was established and includes direct services and indirect costs as defined herein. Direct services mean the provision of instructional and educational services by the authorized special school or special program that are readily identifiable to that program. Indirect costs mean costs incurred for common or joint purposes. Indirect costs benefit more than one cost objective (e.g. award, project or activity) and cannot be readily and specifically identified with a particular final cost objective without efforts disproportionate to the results achieved. If an authorized special school or special program elects to apply an indirect cost rate, it shall not apply a rate that exceeds the restricted rate approved by the Department of Education in the fiscal year.

**"Receiving district"** means any reorganized school district which enrolls in its schools any pupil who is not a resident of such receiving district pursuant to 14 **Del.C.** §601(1).

**"Reorganized school district"** means the same as defined in 14 **Del.C.** §1002(3) and does not include vocational-technical or charter schools.

**"Sending district"** means any reorganized school district which sends to the schools of a receiving district any pupil who is not a resident of such receiving district pursuant to 14 **Del.C.** §601(3).

**"Special program"** means a program established pursuant to 14 **Del.C.** §203, or that has been approved as a special program by the Department of Education with the consent of the State Board of Education.

**"Special school"** means a standalone school, operating with a separate budget unit within the State's accounting system.

**3.0 Process for Determining Tuition Eligibility**

3.1 A local reorganized school district may bill tuition for students enrolled in a special school or special program and those students classified as pre-kindergarten, intensive or complex based on the following criteria:

3.1.1 The student shall be enrolled and attending as of September 30th of the current school year; and

3.1.2 The charges shall be limited to educational related expenses.

3.2 A local reorganized school district operating a tuition-eligible special school or special program may not reallocate state units earned for the special school or special program, if such reallocation requires an increase in the tuition tax rate or tuition billing amount. If a reallocation of state units earned will not require such an increase, districts may reallocate positions as necessary to ensure the most efficient delivery of services, except for those instances currently prohibited by state law, including 14 **Del.C.** §1703(o).

3.3 Pursuant to 14 **Del.C.** §509(f), a charter schools will receive tuition funding for students classified as intensive and complex.



- 3.3.1 The student shall be enrolled and attending the charter school as of September 30th of the current school year.
- 3.3.2 Funding received by a charter school for this purpose shall be placed in a unique appropriation identified by the Department of Education and shall only be used for educational related expenses directly tied to intensive and complex students.

**4.0 Process for Local Reorganized School District Tuition Billing**

- 4.1 A receiving district shall calculate tuition bills by using the most current tuition billing forms and instructions for any tuition expenditures for tuition-eligible students, excluding private placements approved through the Interagency Collaborative Team as authorized by 14 Del.C. §3124. A tuition billing form means the standardized templates developed and approved by the Department of Education.
- 4.2 A receiving district shall submit tuition bills to the Department of Education for certification no later than November 15th of each year.
  - 4.2.1 This timeline is critical to ensuring timely payment of obligations to support students by January 1st in accordance with 14 Del.C. §602(d), and therefore must be met by all reorganized school districts eligible to submit tuition bills.
  - 4.2.2 Failure to meet this deadline may result in the Department of Education's inability to certify tuition bills.
- 4.3 The Department of Education shall certify that the billing is true and correct no later than 20 working days after receipt. No bill for tuition charges shall be paid until it has been certified by the Secretary of Education.
- 4.4 Upon certification, the receiving district shall provide a copy of the certified tuition bill to the sending districts whose students are being served by the special school or special program or who are enrolled in the receiving district and classified as pre-kindergarten, intensive or complex.
- 4.5 In accordance with 14 Del.C. §602(d), any sending district that has received a tuition bill from a receiving district shall pay the tuition charges no later than January 1st of the current school year. In the event payment is delayed beyond the statutorily required date, the Department of Education may process tuition payments from the sending district's local tuition appropriation.
- 4.6 Any billing disputes on behalf of the sending district shall be documented through written explanation and provided to the Chief Financial Officer (or equivalent) of the receiving district and the Department of Education no later than December 31st.
  - 4.6.1 Only charges in dispute may be held, while the undisputed remainder of the tuition bill shall be paid.
  - 4.6.2 Billing disputes shall be resolved by the parties and charges paid before the end of the current school year. If disputes have not been resolved by May 1st of each year, both parties shall notify the Department of Education of the circumstances and the Department of Education shall provide a resolution no later than June 1st of the same year. Upon review, the Department of Education shall provide a written decision to both parties, and that decision will serve as the basis for final certification of the tuition bill for immediate payment.
- 4.7 If any tuition bill is adjusted within the current school year after being certified by the Department of Education, and if the adjustments alter the cost, individual enrollment, total enrollment or tuition rate per pupil from what was already certified, the sending district shall resubmit the tuition bill to the Department of Education for approval and include reasons for changes.
- 4.8 Tuition billings for serving out-of-state students in accordance with 14 Del.C. §606 shall be submitted to the Department of Education on a form entitled "Establishment of Tuition Costs for Out-of-State/Country Students with Disabilities." The Department of Education shall certify the tuition bill in accordance with 14 Del.C. Ch. 6 and this regulation.
- 4.9 For all estimated and actual tuition rate data, the sum of the sending district enrollments shall be equal to the exact number of students in the total program enrollment.

# PROPOSED REGULATIONS

4.10 Tuition billings that yield an increase or decrease of 10% or more per pupil over the prior year estimate shall include a detailed explanation for the rate change.

## **5.0 Process for Charter School Tuition Funding**

5.1 No later than September 15th of each year, the Department of Education shall calculate a per pupil amount for each tuition-eligible student within each local reorganized school district, utilizing the methodology outlined below.

5.1.1 Eligible tuition expenditures are prior year total local tuition expenditures for a reorganized school district less local tuition expenditures for private placements, tuition-eligible English learners (also known as multi language learners) programs and pre-kindergarten services. Reorganized school districts shall use unique appropriations for a pre-kindergarten local tuition and local tuition-eligible English learner programs, as identified by the Department of Education. Additionally, reorganized school districts must follow the established account code guidance to properly identify local tuition expenditures for private placements.

5.1.2 Eligible Division I units are prior year Division I intensive and complex units of a local reorganized school district, excluding units attributed to pre-kindergarten and special schools.

5.2 The per pupil expense amounts shall be calculated as outlined in the following steps:

5.2.1 The eligible tuition expenditures determined in subsection 5.1.1 shall be divided by the number of eligible units determined in subsection 5.1.2.

5.2.2 The intensive per pupil rate shall be determined by dividing the amount calculated in subsection 5.2.1 by the intensive unit ratio as defined in 14 Del.C. §1703 (a).

5.2.3 The complex per pupil rate shall be determined by dividing the amount calculated in subsection 5.2.1 by the complex unit ratio as defined in 14 Del.C. §1703 (a).

5.3 Charter tuition funding shall be calculated by multiplying the number of intensive and complex students enrolled at the charter school in the current school year by the respective amounts calculated in subsections 5.2.2 and 5.2.3 for each respective sending district. The resulting tuition amount shall be multiplied by 50% to arrive at a final charter tuition funding amount.

5.4 Charter tuition funding shall be calculated by the Department of Education by November 30th. The sending district shall pay the tuition charges no later than January 1st of the current school year. In the event payment is delayed beyond the due date, the Department of Education may process tuition payments from the sending district's local tuition appropriation.

### OFFICE OF THE SECRETARY

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

14 DE Admin. Code 1008

### PUBLIC NOTICE

#### 1008 DIAA Junior High and Middle School Interscholastic Athletics

#### A. TYPE OF REGULATORY ACTION REQUESTED

Repeal of Existing Regulation

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

Pursuant to 14 Del.C. §§122(b)(15) and 303, the Delaware Interscholastic Athletic Association ("DIAA"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), proposes to repeal subsection 2.3 of 14 DE Admin. Code 1008 DIAA Junior High and Middle School Interscholastic Athletics because it will be incorporated into a new regulation, 14 DE Admin. Code 1028 Student Athlete Eligibility: Enrollment and Attendance.

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

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, 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/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before May 2, 2024. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

**\*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/april2024/proposed/27 DE Reg 738RFA 04-01-24.pdf>

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

<https://regulations.delaware.gov/register/april2024/proposed/27 DE Reg 738 04-01-24.htm>

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## OFFICE OF THE SECRETARY

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

14 **DE Admin. Code** 1009

### PUBLIC NOTICE

#### 1009 DIAA High School Interscholastic Athletics

#### A. TYPE OF REGULATORY ACTION REQUESTED

Repeal of Existing Regulation

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

Pursuant to 14 **Del.C.** §§122(b)(15) and 303, the Delaware Interscholastic Athletic Association ("DIAA"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), proposes to repeal subsection 2.3 of 14 **DE Admin. Code** 1009 DIAA High School Interscholastic Athletics because it will be incorporated into a new regulation, 14 **DE Admin. Code** 1028 Student Athlete Eligibility: Enrollment and Attendance.

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

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, 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/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before May 2, 2024. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

**\*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/april2024/proposed/27 DE Reg 739RFA 04-01-24.pdf>

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

<https://regulations.delaware.gov/register/april2024/proposed/27 DE Reg 739 04-01-24.htm>

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**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Sections 122(b)(15) and 303(b)(1)d (14 Del.C. §§122(b)(15) & 303(b)(1)d)

**PUBLIC NOTICE**

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

**1028 Student Athlete Eligibility: Enrollment and Attendance**

**A. TYPE OF REGULATORY ACTION REQUESTED**

Adoption of a New Regulation

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

Pursuant to 14 Del.C. §§122(b)(15) and 303(b)(1)d, the Delaware Interscholastic Athletic Association Board of Directors ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), proposes the adoption of 14 **DE Admin. Code** 1028 Student Athlete Eligibility: Enrollment and Attendance. The regulation sets forth the enrollment and attendance requirements for students to be eligible to participate in interscholastic athletics. The proposed regulation includes specifying the content of the regulation in Section 1.0; adding defined terms to, and incorporating defined terms from existing regulations into, Section 2.0; adding the purpose of the Enrollment Rule to subsection 3.1; adding language concerning waivers to subsections 3.2.1 and 3.2.2; adding subsection 3.5, which concerns students who enroll in a school initially under a permanent change of station (PCS); adding proposed subsection 3.6, which concerns students who are not legally enrolled in a Delaware public school due to homelessness; and adding subsection 4.1, which concerns the purpose of the Attendance Rule. Additionally, the Board is simultaneously proposing to repeal existing sections from 14 **DE Admin. Code** 1008 and 14 **DE Admin. Code** 1009 and incorporate them into this new regulation. Specifically, proposed Section 3.0 is formerly subsections 2.3.1, 2.3.2, and 2.3.3 of 14 **DE Admin. Code** 1008 and subsections 2.3.1, 2.3.2, 2.3.3, and 2.3.4 of 14 **DE Admin. Code** 1009, except that "tryout" has been added to subsection 3.2 and proposed subsection 3.3 includes clarification changes. Proposed Section 4.0 is formerly subsections 2.3.5, 2.3.6, and 2.3.7 of 14 **DE Admin. Code** 1008 and subsections 2.3.6, 2.3.7, and 2.3.8 of 14 **DE Admin. Code** 1009, except that "tryout" has been added to subsections 4.2 and 4.3.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, 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/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before May 2, 2024. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

**C. IMPACT CRITERIA**

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation will help improve student achievement as measured against state achievement

standards by setting forth enrollment and attendance requirements for students to be eligible to participate in interscholastic athletics.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation concerns eligibility requirements for students and is not designed to help to ensure students in Delaware public schools receive an equitable education.

3. Will the new regulation help to ensure all students' health and safety are adequately protected? The new regulation will help to help ensure that all students' health and safety are adequately protected. Proposed subsection 4.2.2 mandates that a student who is not in attendance at school due to illness or injury is not permitted to participate in interscholastic athletics.

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation will help ensure students' legal rights are respected by including additional language that is consistent with 14 **Del.C.** §§401-414 (School District Enrollment Choice Program), 14 **Del.C.** §§160A-177A (Interstate Compact on Education for Children of Military Families), and 42 U.S.C. §11434a(2) (McKinney-Vento Education for Homeless Children and Youths Act).

5. Will the new regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The new regulation does not change authority or flexibility of decision makers at the local board and school level. By statute (14 **Del.C.** § 303(b)), DIAA develops rules and regulations relating to middle and secondary school interscholastic athletics for schools in Delaware, including the regulation of athletic programs of all public schools and such nonpublic schools that elect to become full or associate DIAA Member Schools. The Board enforces the regulations (14 **Del.C.** §304).

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Board enforces the regulations relating to interscholastic athletics in Delaware (14 **Del.C.** §304).

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

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

10. What is the cost to the state and to the local school boards of compliance with the new regulation? The new regulation concerns eligibility requirements for students. There is no cost to the state or local school boards for complying with the new 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/april2024/proposed/27 DE Reg 740RFA 04-01-24.pdf>

## **1028 Student Athlete Eligibility: Enrollment and Attendance**

### **1.0 Content**

In accordance with 14 **Del.C.** §303, this regulation sets forth the eligibility to participate in interscholastic athletics at the middle and high school levels for students who enroll in and attend Member Schools.

### **2.0 Definitions**

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

"**Contest**" means a formal competition in which students or school teams compete to determine a winner.

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

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

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# PROPOSED REGULATIONS

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"School day" means an actual school attendance days during the regular academic school year, including a partial day that students are in attendance at school for instructional purposes as adopted by the school district or governing body of the school. School day does not weekends, holidays, and summer school.

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

"Tryout" means a demonstration of skills to make a team in order to be eligible to practice.

"Student with a disability" means a "child with a disability" as that term is defined in 14 DE Admin. Code 922 or a qualified person with a disability under Section 504 of the Rehabilitation Act of 1973.

## **3.0 Eligibility: Enrollment**

3.1 Purpose of the Enrollment Rule - The purpose of the Enrollment Rule is to promote loyalty and school spirit which lends itself to cohesion of the student body, to help promote amateurism by drawing student athletes only from each school's student population, to avoid professionalism and over-emphasis on student athletes, and to discourage team-shopping.

3.2 Enrollment Rule - A student shall be legally enrolled in the Member School which they represent in order to participate in a tryout, practice, scrimmage, or contest. A student who attends 2 different schools during the regular school day shall be eligible to participate only at the school at which the student is receiving instruction in the core academic areas and is satisfying the majority of graduation requirements, not at a school at which the student receives specialized educational instruction such as vocational training. A student shall not participate in a tryout, practice, scrimmage, or contest during the time an in-school or out-of-school suspension is in effect or during the time the student is assigned to an alternative school for disciplinary reasons.

3.2.1 A waiver of the Enrollment Rule does not mean that a student athlete can automatically participate in an interscholastic tryout, practice, scrimmage, or contest with a Member School in which the student is not legally enrolled. If a waiver of the Enrollment Rule is granted, the school that the student athlete wishes to represent determines whether to allow the student athlete to participate in an interscholastic tryout, practice, scrimmage, or contest as a representative of the school. DIAA does not have the authority to authorize a student athlete to participate in interscholastic athletics as a representative of a school in which the student athlete is not legally enrolled.

3.2.2 A request for a waiver of the Enrollment Rule shall be approved by the Superintendent or the Head of School of the school that the student athlete wishes to represent before the request is submitted to DIAA. Any such waiver request that is not approved by the Superintendent or Head of School will be deemed incomplete by DIAA and will not be processed by DIAA.

3.3 A student with a disability who is placed in a school or program by the student's school district or charter school shall be eligible to participate in interscholastic athletics as set forth in subsections 3.3.1 through 3.3.4. Subsection 3.3 does not apply to students who are placed in alternative schools or programs for disciplinary reasons through the Comprehensive School Discipline Improvement Program (14 Del.C. §§ 1601 - 1607). For the purpose of subsection 3.3, campus means a contiguous land area containing 1 or more school buildings.

3.3.1 If the school or program in which the student is placed sponsors the interscholastic sport in question, the student shall be eligible to participate only at the school or program in which the student is placed.

3.3.2 If the school or program in which the student is placed does not sponsor the interscholastic sport in question and the student is served in a regular school for all or part of the school day, the student shall be eligible to participate only at that regular school.

3.3.3 If the school or program in which the student is placed does not sponsor the interscholastic sport in question, the student is served exclusively in the school or program, and the school or program is located on the campus of a regular school, the student shall be eligible to participate only at the regular school on the same campus.

3.3.4 If the school or program in which the student is placed does not sponsor the interscholastic sport in question, the student is served exclusively in the school or program, and the school or program is not located on the campus of a regular school, the student shall be eligible to participate only at the regular school designated to serve the school's or program's students. A school district or charter school that administers schools or programs in which a student with a disability may be placed and that has multiple regular schools determines the regular school at which the student may participate in interscholastic athletics.

**3.4** Enrollment Requirements for the School District Enrollment Choice Program

3.4.1 Pursuant to 14 Del.C. §407(a)(2), a student who is enrolled in a traditional public, vocational, or charter school outside of the student's feeder pattern through the School District Enrollment Choice Program shall remain enrolled in the school for a minimum of 2 years. A waiver request is not required and the student is not ineligible under this subsection if 1 of the exceptions as provided in 14 Del.C. §407(a)(2) applies or the student's enrollment in the school is terminated as provided in 14 Del.C. §407. Even if a waiver request is not required and the student is not ineligible under this subsection, a waiver request may be required and the student may be ineligible under the Transfer Rule.

3.4.2 Pursuant to 14 Del.C. §506(d), a student who is in their first year of attendance at a charter school shall remain enrolled in the charter school for a minimum of 1 year. A waiver request is not required and the student is not ineligible under this subsection if good cause exists as provided in 14 Del.C. §506(d).

**3.5** Consistent with 14 Del.C. §§ 160A-177A (Interstate Compact on Education for Children of Military Families), if a Member School has an insufficient number of enrolled students to form a team in a particular sport and the school district decides to allow a student who has enrolled in the school initially under a permanent change of station (PCS) order to participate in a tryout, practice, scrimmage, or contest on a team at another school within the school district, the student is eligible to participate in a tryout for the team, a practice with the team, and scrimmages and contests against other school teams and is not required to submit a waiver request. For the purpose of this regulation, permanent change of station (PCS) means the assignment or transfer of a military service member to a different permanent duty station, to include relocation to place of retirement, when retirement is mandatory, under a competent authorization/order that does not specify the duty as temporary, provide for further assignment to a new permanent duty station, or direct the military service member to return to the old permanent duty station.

**3.6** If the student is not legally enrolled in a Delaware public school due to homelessness as defined in the McKinney-Vento Education for Homeless Children and Youths Act, 42 U.S.C. §11434a(2), a waiver of the Enrollment Rule is not required and the student shall be eligible to participate in a tryout, practice, scrimmage, or contest at the Delaware public school in which the student seeks to enroll.

**4.0** **Eligibility: Attendance**

**4.1** Purpose of the Attendance Rule - The purpose of the Attendance Rule is to help ensure that student athletes adhere to their school's attendance policy so that they maintain the academic standard required for interscholastic athletic participation and to promote graduation in a timely manner.

**4.2** Attendance Rule

4.2.1 A student shall be legally in attendance at school in order to participate in a tryout, practice, scrimmage, or contest except when excused by proper school authorities in accordance with pre-established written school policy. For the purpose of the Attendance Rule, legally in attendance means present at school as determined by a pre-established policy adopted by the local school board or governing body of the student's school.

4.2.2 A student who is not legally in attendance at school due to illness or injury shall not be permitted to participate in a tryout, practice, scrimmage, or contest on that day.

4.2.3 A student who fails to complete a semester or is absent for 1 or more semesters for reasons other than personal illness or injury shall be ineligible for 90 school days from the student's reentry to school.



- 4.3 An ineligible student who participates in a tryout, practice, scrimmage, or contest in violation of subsection 4.2 shall, when the student regains eligibility, be prohibited from trying out, practicing, scrimmaging or competing for an equivalent number of days.
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**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Sections 122(b)(15) and 303 (14 **Del.C.** §§122(b)(15) & 303)  
14 **DE Admin. Code** 1035

**PUBLIC NOTICE****Educational Impact Analysis Pursuant to 14 Del. C. §122(d)****1035 In-Season Athletic Activities and Contact****A. TYPE OF REGULATORY ACTION REQUESTED**

Amendment to Existing Regulation

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

Pursuant to 14 **Del.C.** §§122(b)(15) and 303, the Delaware Interscholastic Athletic Association Board of Directors ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), proposes to amend 14 **DE Admin. Code** 1035 In-Season Athletic Activities and Contact. The regulation sets forth the requirements for athletic activities and contact during the period of time from the beginning of the season until the last scheduled date for DIAA championships for the sport's season. The proposed amendments are to add "event" as a defined term to Section 2.0 and amend Section 6.0, which concerns sanctioning of invitationals, meets, and tournaments. The proposed amendments are based on the current practice for sanctioning.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, 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/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before May 2, 2024. Any person who wishes to receive a copy of the proposed regulation may obtain a copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

**C. IMPACT CRITERIA**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation concerns requirements for athletic activities and contact during the period of time from the beginning of the season until the last scheduled date for DIAA championships for the sport's season and is not designed to help improve student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation concerns requirements for athletic activities and contact during the period of time from the beginning of the season until the last scheduled date for DIAA championships for the sport's season and is not designed to help 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 concerns requirements for athletic activities and contact during the period of time from the beginning of the season until the last scheduled date for DIAA championships for the sport's season, which will help to ensure all students' health and safety are adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation concerns requirements for athletic activities and contact during the period of time from the beginning of the season until the last scheduled date for DIAA championships for the sport's season 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 or flexibility of decision makers at the local board and school level. By statute (14 **Del.C.** § 303(b)), DIAA develops rules and regulations relating to middle and secondary school interscholastic athletics for schools in Delaware, including the regulation of athletic programs of all public schools and such nonpublic schools that elect to become full or associate DIAA Member Schools. The Board enforces the regulations (14 **Del.C.** §304).

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Board enforces the regulations relating to interscholastic athletics in Delaware (14 **Del.C.** §304).

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

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

10. What is the cost to the state and to the local school boards of compliance with the amended regulation? There is no expected cost to the state or to the local school boards of compliance with the 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/april2024/proposed/27 DE Reg 744RFA 04-01-24.pdf>

**1035 In-Season Athletic Activities and Contact**  
*(Break in Continuity of Sections)*

**2.0 Definitions**

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

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

**"Competition"** means a contest between schools in which student athletes compete.

**"Event"** means an invitational, meet, or tournament.

**"In-Season"** means the period of time from the beginning of the season until the last scheduled date for DIAA championships for the sport's season.

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

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

**"School day"** or **"School days"** means actual school attendance days during the regular academic school year including a partial day that students are in attendance at school for instructional purposes as adopted by the district or governing body of the school not to include weekends, holidays, summer school, etc.

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

**"Unified Partner"** means a student who is not identified as a Unified Athlete, is enrolled at a DIAA Member School, and does not appear on any school eligibility report submitted to DIAA for a non-Unified school team in the same sport.

*(Break in Continuity of Sections)*

## 6.0 Sanctioning of Competitions

- 6.1 Purpose of Sanctioning - The purpose of sanctioning an Event is to enhance the likelihood the Event will adhere to the criteria in subsection 6.3, serve to promote sound regulation of the conditions under which students and teams compete, encourage well-managed rules and regulations, add an element of due diligence that encourages Member Schools' compliance with rules and regulations, protect the welfare of student athletes, protect the existing programs sponsored by Member Schools and thereby promote the opportunity for a larger number of student athletes to gain the benefits of interscholastic competition, help to reduce the abuses of excessive competition, promote uniformity in obtaining approval for Events, and help protect students from exploitation.
- ~~6.4~~ 6.2 Member Schools may participate in ~~tournaments or meets~~ Events involving 4 or more schools only if the ~~event~~ Event has been sanctioned by DIAA and, if applicable, by the NFHS.
- 6.3 Tournaments or meets Events shall be sanctioned by DIAA in accordance with the following criteria: criteria in subsections 6.3.1 through 6.3.8.
- ~~6.4.1~~ 6.3.1 The ~~event~~ Event shall not be for determining a state, regional or national champion.
- ~~6.4.2~~ 6.3.2 The ~~event~~ Event shall be organized, promoted, and conducted by and all profits go to a nonprofit organization. Involvement by a commercial organization shall be limited to providing financial support.
- ~~6.4.3~~ 6.3.3 Nonsymbolic competition awards shall have a value of not more than ~~\$50.00~~ \$150 per recipient and shall require the prior approval of the Executive Director.
- ~~6.4.4~~ 6.3.4 Nonschool ~~event~~ Event organizers shall submit a full financial report to the DIAA office within 90 calendar days of the completion of the ~~event~~ Event.
- ~~6.4.5~~ 6.3.5 The ~~event~~ Event organizer shall submit a list of out of state schools which have been invited to participate in the Event to the DIAA office and such schools shall be subject to approval by the Executive Director.
- ~~6.4.6~~ 6.3.6 Out of state schools which are not members of their state athletic association shall verify in writing that their participating athletes are in compliance with their state athletic association's eligibility rules and regulations.
- ~~6.4.7~~ 6.3.7 The ~~event~~ Event organizer shall not accept financial support or sell advertising to companies involved in the production or distribution of alcohol and tobacco products.
- ~~6.4.8~~ 6.3.8 The ~~event~~ Event organizer shall comply with all applicable NFHS sanctioning requirements, including that the Event shall be sponsored or co-sponsored by a member school of the host state athletic association.
- 6.4 In order to compete in Events out-of-state or in a state that does not border Delaware, a Member School shall ensure that the sponsoring institution or agency applied to its home association for sanctioning and DIAA Member Schools are listed as participants.
- 6.5 Process for Sanctioning
- 6.5.1 Event Involving DIAA Member Schools Only (Sponsored by DIAA Member School)
- 6.5.1.1 For an Event that involves only DIAA Member Schools (4 or more) and is sponsored by a DIAA Member School, the sponsoring DIAA Member School shall complete the "Application for Sanction of DIAA Member Schools Only Athletic Event" form.
- 6.5.1.2 The completed form shall be submitted to the Executive Director at least 30 days prior to the date of the proposed Event.
- 6.5.1.3 The Executive Director or designee will determine whether to grant the application.
- 6.5.2 Event Involving DIAA Member Schools Only (Not Sponsored by DIAA Member School)
- 6.5.2.1 For an Event that involves only DIAA Member Schools (4 or more) and is not sponsored by a DIAA Member School, the organization sponsoring the Event shall complete the "Application for Sanction of DIAA Member Schools Only Athletic Event" form.
- 6.5.2.2 The completed form shall be submitted to the Executive Director at least 30 days prior to the date of the proposed Event.
- 6.5.2.3 The Executive Director or designee will determine whether to grant the application.

## 6.5.3 Event Involving 1 or more Schools from Bordering States (Sponsored by DIAA Member School)

6.5.3.1 For an Event that involves schools located in Maryland, Pennsylvania, or New Jersey and is sponsored by a DIAA Member School, the sponsoring DIAA Member School shall complete the "Application to State Association for Sanction of Interstate Athletic Event" form.

6.5.3.2 The completed form shall be submitted to the Executive Director at least 30 days prior to the date of the proposed Event.

6.5.3.3 The Executive Director or designee will determine whether to grant the application.

## 6.5.4 Out-of-State Event Involving 1 or more DIAA Member Schools

6.5.4.1 For an out-of-state Event involving 1 or more DIAA Member Schools, the state association designee from a border state or NFHS Sanctioning Office shall send the appropriate sanctioning form.

6.5.4.2 The completed form shall be submitted to the Executive Director at least 30 days prior to the date of the proposed Event.

6.5.4.3 The Executive Director or designee will determine whether to grant the application.

6.2 6.6 Participation in a nonsanctioned ~~event~~ Event shall result in payment of a ~~\$100.00~~ \$100 fine. A second offense shall result in a ~~\$250.00~~ \$250 fine and loss of eligibility to participate in sanctioned ~~events~~ Events for the remainder of the sport season. A third offense shall result in a ~~\$500.00~~ \$500 fine and loss of eligibility to participate in sanctioned ~~events~~ Events for the remainder of the school year.

**\*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/april2024/proposed/27 DE Reg 744 04-01-24.htm>

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## OFFICE OF THE SECRETARY

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

14 **DE Admin. Code** 1043

## PUBLIC NOTICE

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

**1043 Officials**

### A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

### B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 **Del.C.** §§122(b)(15) and 303, the Delaware Interscholastic Athletic Association Board of Directors ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1043 Officials. The regulation concerns the requirements for DIAA-recognized officials' associations, requirements for officials who officiate at DIAA Member Schools, and the fees for officiating contests and competitions. The Board proposes to amend the rates for officiating regular season contests in subsection 5.1 and amend the fees for officiating scrimmages in subsection 5.3.

Persons wishing to present their views regarding this matter may do so in writing by submitting them to the Department of Education, 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/delaware-education-laws-and-regulations/provide-public-comment/> by the close of business (4:30 p.m. EST) on or before May 2, 2024. Any person who wishes to receive a copy of the proposed regulation may obtain a

copy from the Department at the Office of the Secretary on the second floor of the Townsend Building, 401 Federal Street, Dover, Delaware.

## C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation pertains to officials and is not designed to help improve student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation pertains to officials and is not designed to 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 does not change the requirement that officials complete a course regarding concussion in sports, which is designed to help ensure that all students' health and safety are adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation pertains to officials 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 or flexibility of decision makers at the local board and school level. By statute (14 **Del.C.** § 303(b)), DIAA develops rules and regulations relating to middle and secondary school interscholastic athletics for schools in Delaware, including the regulation of athletic programs of all public schools and such nonpublic schools that elect to become full or associate DIAA Member Schools. The Board enforces the regulations (14 **Del.C.** §304).

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The Board enforces the regulations relating to interscholastic athletics in Delaware (14 **Del.C.** §304).

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

9. Is there a less burdensome method for addressing the purpose of the 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? In accordance with 14 **Del.C.** §304(6), the Board establishes the fees for officiating contests and competitions at DIAA Member Schools. The Officials' Committee recommended the proposed amendments to the Board.

**\*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/april2024/proposed/27 DE Reg 747RFA 04-01-24.pdf>

1043 Officials  
(*Break in Continuity of Sections*)

## 5.0 Fees for Officiating Contests and Competitions

5.1 Pursuant to 14 **Del.C.** §304(6), the Board has established the following fees for officiating regular season contests and Competitions. The Board has the authority to review and amend the fees.

# PROPOSED REGULATIONS

Sport	Level	Number of Officials per Contest	Time Adjustment	Rate per Official (Regular Season Contests)
Baseball	Varsity	2		<del>\$95</del> <u>\$97</u>
	Subvarsity	2		<del>\$70</del> <u>\$72</u>
	Middle School	2		<del>\$60</del> <u>\$62</u>
Basketball	Boys' Varsity	3, or 2 upon request		<del>\$95</del> <u>\$97</u>
	Girls' Varsity	2, or 3 upon request		<del>\$95</del> <u>\$97</u>
	Subvarsity	2	8 minute quarters	<del>\$70</del> <u>\$72</u>
	Subvarsity	2	7 minute quarters	<del>\$70</del> <u>\$72</u>
	Subvarsity	2	6 minute quarters	<del>\$70</del> <u>\$72</u>
	Middle School	2	6 minute quarters	<del>\$60</del> <u>\$62</u>
Cross Country	Starter/Referee	Upon request		<del>\$80</del> <u>\$82</u>
	Timer/Judge	Upon request		<del>\$80</del> <u>\$82</u>
Field Hockey	Varsity	2		<del>\$95</del> <u>\$97</u>
	Subvarsity	2		<del>\$70</del> <u>\$72</u>
	Middle A	2	25 minute halves	<del>\$60</del> <u>\$62</u>
	Middle B	2	25 minute or less halves at the Member School's discretion	<del>\$60</del> <u>\$62</u>
Football	Varsity	5		<del>\$95</del> <u>\$97</u>
	Timer	1		<del>\$60</del> <u>\$62</u>
	Subvarsity	3	8 or 10 minute quarters	<del>\$70</del> <u>\$72</u>
	Middle School	3	8 minute quarters	<del>\$60</del> <u>\$62</u>
Lacrosse (Boys' and Girls')	Varsity	2, or 3 if requested		<del>\$95</del> <u>\$97</u>
	Subvarsity	2		<del>\$70</del> <u>\$72</u>
	Middle School	2		<del>\$60</del> <u>\$62</u>
Soccer (Boys' and Girls')	Varsity	2, or 3 if requested		<del>\$95</del> <u>\$97</u>
	Subvarsity	2		<del>\$70</del> <u>\$72</u>
	Subvarsity	3		<del>\$60</del> <u>\$62</u>
	Middle A	2	30 minute halves	<del>\$60</del> <u>\$62</u>
	Middle B	2	30 minute or less halves	<del>\$60</del> <u>\$62</u>

**PROPOSED REGULATIONS**

Softball	Varsity	2		<del>\$95</del> <u>\$97</u>
	Subvarsity	2		<del>\$70</del> <u>\$72</u>
	Middle School	2		<del>\$60</del> <u>\$62</u>
Swimming and Diving	Referee	1		<del>\$80</del> <u>\$82</u>
	Judge	1		<del>\$80</del> <u>\$82</u>
Track and Field	Starter/Referee	Upon request		<del>\$80</del> <u>\$82</u>
	Timer/Judge	Upon request		<del>\$80</del> <u>\$82</u>
Volleyball (Boys' and Girls')	Varsity	2		<del>\$95</del> <u>\$97</u>
	Linesman	2 by request		<del>\$45</del> <u>\$46</u>
	Subvarsity	2		<del>\$70</del> <u>\$72</u>
	Middle School	2		<del>\$60</del> <u>\$62</u>
Wrestling	Varsity	1		<del>\$95</del> <u>\$97</u>
	Subvarsity	1		<del>\$70</del> <u>\$72</u>
	Varsity+	1		<del>\$95</del> <u>\$97</u> , then \$5 per match, up to 9 matches; not to exceed \$45
	Middle School	1		<del>\$60</del> <u>\$62</u>
	Middle+	1		<del>\$60</del> <u>\$62</u> , then \$5 per match, up to 9 matches; not to exceed \$45

5.2 Pursuant to 14 **Del.C.** §304(6), the fee for traveling to and from contests and Competitions shall be \$0 for 0 to 15 miles, \$5 for 16 to 40 miles, \$10 for 41 to 60 miles, and \$20 for 61 or more miles from the official's residence.

5.3 Pursuant to 14 **Del.C.** §304(6), the fees for officiating a scrimmage shall be as follows:

Sport	Standard Crew Size	Scrimmage Fee (per hour up to 2 hours)
Baseball	2	<del>\$57</del> ( <del>\$114 total</del> ) <u>\$58</u> ( <u>\$116 total</u> )
Basketball - Boys'	3	<del>\$57</del> ( <del>\$114 total</del> ) <u>\$58</u> ( <u>\$174 total</u> )
Basketball - Girls'	2	<del>\$57</del> ( <del>\$114 total</del> ) <u>\$58</u> ( <u>\$116 total</u> )

Field Hockey	2	<del>\$57 (\$114 total)</del> <u>\$58 (\$116 total)</u>
Football	5	<del>\$57 (\$114 total)</del> <u>\$58 (\$290 total)</u>
Lacrosse - Boys' and Girls'	2	<del>\$57 (\$114 total)</del> <u>\$58 (\$116 total)</u>
Soccer - Boys' and Girls'	2	<del>\$57 (\$114 total)</del> <u>\$58 (\$116 total)</u>
Softball	2	<del>\$57 (\$114 total)</del> <u>\$58 (\$116 total)</u>
Swimming	2	<del>\$48 (\$96 total)</del> <u>\$49 (\$98 total)</u>
Volleyball - Boys' and Girls'	2	<del>\$57 (\$114 total)</del> <u>\$58 (\$116 total)</u>
Wrestling	1	<del>\$57 (\$114 total)</del> <u>\$58</u>

- 5.4 For the purpose of determining the fee for officiating a play day, each court or field is considered a single scrimmage.
- 5.5 The fee for state tournament contests and Competitions shall be the rate at the varsity level as provided in subsection 5.1 and an additional:
  - 5.5.1 \$5 for first, second, and quarterfinal rounds of Competition.
  - 5.5.2 \$10 for the semi-final round of Competition.
  - 5.5.3 \$15 for the final or championship contest.
- 5.6 The Officials' Committee shall work with the Executive Director to help determine the fee amount for officiating a state tournament contest.

**\*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/april2024/proposed/27 DE Reg 747 04-01-24.htm>

**DEPARTMENT OF FINANCE  
OFFICE OF THE STATE LOTTERY**

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

**PUBLIC NOTICE**

**203 Video Lottery and Table Game Regulations**

**A. Type of Regulatory Action Required**

Amendment to Existing Regulations

**B. Synopsis of Subject Matter of the Regulation**

Pursuant to 29 Del.C. §4805, the Delaware State Lottery proposes to amend 10 DE Admin. Code 203 Video Lottery and Table Game Regulations. The Delaware State Lottery will seek public comments on the issue of whether certain amendments to its current regulation should be adopted.

The proposed amendments are to subsections 4.18, 4.19, 14.14.1, 14.14.2, 14.14.3 in 10 DE Admin. Code 203.

The amendment to these subsections will simplify current regulations that unnecessarily assign different term lengths to initial gaming licenses versus renewal gaming licenses.

Persons wishing to present their views regarding this matter may do so by submitting written comments by the close of business on or before May 1, 2024 at the offices of the Delaware State Lottery at 1575 McKee Road, Suite 102, Dover, DE 19904. A copy of these regulations is available from the above address or may be viewed at the Delaware State Lottery office at the same address.

## C. Summary of Proposal

The first proposed amendment is to subsection 4.18 and makes all Gaming Vendor licenses valid for 3 years.

The second proposed amendment is to subsection 4.19 and makes all Non-Gaming Vendor licenses valid for 4 years.

The third proposed amendment is to subsection 14.14.1 and makes all Gaming Room Service licenses valid for 5 years.

The fourth proposed amendment is to subsection 14.14.2 and makes all Gaming Service licenses valid for 4 years.

The fifth proposed amendment is to subsection 14.14.3 and makes all Key licenses valid for 3 years.

**\*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/april2024/proposed/27 DE Reg 751RFA 04-01-24.pdf>

### 203 Video Lottery and Table Game Regulations (Break in Continuity of Sections)

#### 4.0 Licensing of Service Companies; Gaming and Non-Gaming Vendors

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

4.18 Gaming vendors shall be licensed for an initial term of 2 years and succeeding renewal terms a term of 3 years. The ~~initial~~ term of a gaming vendor license shall expire and be renewable on the last day of the month on the ~~second~~ third anniversary of the issuance date. ~~The renewal term for a gaming vendor license shall expire and be renewable on the last day of the month on the third anniversary of the issuance date.~~

4.19 Non-gaming vendors and gaming excursion providers shall be licensed for an initial a term of 3 years and succeeding renewal terms of 4 years. The ~~initial~~ term of a license for a non-gaming vendor or a gaming excursion provider shall expire and be renewable on the last day of the month on the ~~third~~ fourth anniversary of the issuance date. ~~The renewal term for a non-gaming vendor or a gaming excursion provider shall expire and be renewable on the last day of the month on the fourth anniversary of the issuance date.~~

##### (Break in Continuity of Sections)

#### 14.0 Employee License Procedure

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

14.14 License Terms and Renewal Filing Requirements

14.14.1 Gaming room service employee licenses shall be for an initial a term of 5 years. The ~~initial~~ term of a gaming room service employee license shall expire and be renewable on the last day of the month on the fifth anniversary of the issuance date. ~~Gaming room service employee license~~



- ~~renewals shall be for a term of 6 years. The renewal term of a gaming room service employee license shall expire and be renewable on the last day of the sixth anniversary of the issuance date.~~
- 14.14.2 Gaming employee licenses shall be for an initial a term of ~~3~~ 4 years. The initial term of a gaming employee license shall expire and be renewable on the last day of the month on the ~~third~~ fourth anniversary of the issuance date. ~~Gaming employee license renewals shall be for a term of 4 years. The renewal term of a gaming employee license shall expire and be renewable on the last day of the month of the fourth anniversary of the issuance date.~~
- 14.14.3 Key employee licenses shall be for an initial a term of ~~2~~ 3 years. The initial term of a key employee license shall expire and be renewable on the last day of the month on the ~~second~~ third anniversary of the issuance date. ~~Key employee license renewals shall be for a term of 3 years. The renewal term of a key employee license shall expire and be renewable on the last day of the month on the third anniversary of the issuance date.~~
- 14.14.4 At a minimum of 60 days prior to expiration, each employee licensee shall submit a new and updated license application form for a background investigation.
- 14.14.5 An employee license shall remain valid pending the disposition of a license renewal application filed in accordance with the timelines set forth 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/april2024/proposed/27 DE Reg 751 04-01-24.htm>

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Section 6010(a) and (c) (7 **Del.C.** §6010(a) & (c))  
7 **DE Admin. Code** 1130

#### PUBLIC NOTICE

**SAN # 2023-09**  
**DOCKET # 2023-R-A-0015**

#### 1130 Title V State Operating Permit Program

1. TITLE OF THE REGULATIONS:  
7 **DE Admin. Code** 1130 "Title V State Operating Permit Program"

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The Department of Natural Resources and Environmental Control (DNREC) is proposing to amend 7 **DE Admin. Code** 1130, Section 6.0 "Permit Contents", subsections 6.7 and 6.1.3.3.3.1 to remove emergency affirmative defense provisions and references. 7 **DE Admin. Code** 1130 is based on Title 40 of the Code of Federal Regulations (CFR) Part 70, which outlines requirements for state operating permit programs. Subsection 6.7 of 1130 includes guidance on claiming affirmative defenses for emission exceedances for emergencies.

On July 21, 2023, the Environmental Protection Agency (EPA) issued a final rule (88 FR 47029) which removed all emergency affirmative defense provisions for state and federal operating permit programs in 40 CFR Part 70.6(g) and 71.6(g). Therefore, the Division is proposing to remove the emergency affirmative defense provisions and references from 7 **DE Admin. Code** 1130, to maintain consistency with the current federal requirements.

Additional amendments correct a typographical error (7 **DE Admin. Code** 1130, Section 8.0 of Appendix A "Insignificant Activities"). This correction is not substantive and does not change the intent or purpose of the regulation.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. Ch. 60, Section 6010 (a) and (c).

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None.

6. NOTICE OF PUBLIC COMMENT:

A virtual public hearing (Docket # 2023-R-A-0015) will be held on Thursday, April 25, 2024, beginning at 6 p.m. The web link to the virtual hearing can be accessed through the DNREC Public Hearings site at <https://de.gov/dnrehearings>. If prompted for a password, please use: 098243. To access the audio-only portion of the virtual hearing, dial 1-646-931-3860 and enter the Meeting ID 889 9258 3729. Closed captioning in over 20 languages, including English and Spanish, is available to attendees via the Zoom platform utilized for all DNREC Public Hearings.

Those wishing to offer verbal comments during DNREC public hearings must pre-register no later than noon on the date of the virtual hearing at <https://de.gov/dnrecomments> or by telephone at 302-739-9001.

The proposed amendments may be inspected online starting April 1, 2024 at [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml), or in-person, by appointment only, by contacting Taylor Englert by phone at 302-323-4542 or by email at [Taylor.Englert@delaware.gov](mailto:Taylor.Englert@delaware.gov).

The Department will accept public comment through the close of business on Friday, May 10, 2024. Comments will be accepted in written form via email to [DNRECHearingComments@delaware.gov](mailto:DNRECHearingComments@delaware.gov), or by using the online form at <https://de.gov/dnrecomments>, or by U.S. mail to the following address:

Theresa Smith, Hearing Officer  
DNREC - Office of the Secretary  
89 Kings Highway, Dover, DE 19901

7. PREPARED BY:

Taylor Englert  
Division of Air Quality-DNREC  
715 Grantham Ln, New Castle, DE 19720  
Phone: (302)323-4542; email: [Taylor.Englert@delaware.gov](mailto:Taylor.Englert@delaware.gov)

**\*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/april2024/proposed/27 DE Reg 753RFA 04-01-24.pdf>

**1130 Title V State Operating Permit Program  
(Break in Continuity of Sections)**

08/11/22

**6.0 Permit Contents**

6.1 Standard Permit Requirements. Each permit issued under this regulation shall include all applicable requirements that apply to the permitted source at the time of issuance. Each permit shall include the following elements:

**(Break in Continuity Within Section)**

6.1.3 Monitoring and Related Recordkeeping and Reporting Requirements.

**(Break in Continuity Within Section)**

6.1.3.3 With respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following:

- 6.1.3.3.1 A permit issued under these regulations shall require the permittee to submit a report of any required monitoring every six months. To the extent possible, the schedule for submission of such reports shall be timed to coincide with other periodic reports required by the permit, including the permittee's annual compliance certification.
- 6.1.3.3.2 Each report submitted under 6.1.3.3.1 of this regulation shall identify any deviations from permit requirements since the previous report, and any deviations from the monitoring, recordkeeping and reporting requirements under the permit.
- 6.1.3.3.3 In addition to semiannual monitoring reports, each permittee shall be required to submit supplemental reports as follows:
  - 6.1.3.3.3.1 ~~Any deviation resulting from emergency conditions as defined in 6.7 of this regulation shall be reported within two working days of the date on which the permittee first becomes aware of the deviation, if the permittee wishes to assert the affirmative defense authorized under 6.7 of this regulation; [Reserved]~~
  - 6.1.3.3.3.2 Any deviation that poses an imminent and substantial danger to public health, safety, or the environment shall be reported immediately upon discovery and after activating the appropriate site emergency plan;
  - 6.1.3.3.3.3 Any other deviations that are identified in the permit as requiring more frequent reporting than the permittee's semiannual report shall be reported on the schedule specified in the permit;
  - 6.1.3.3.3.4 All reports of deviations from permit conditions shall identify the probable cause of the deviations and any corrective actions or preventative measures taken.
  - 6.1.3.3.3.5 Nothing herein shall relieve the permittee from any reporting requirements under federal, state or local laws.

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

6.7 Emergencies [Reserved]

6.7.1 Definition

~~“Emergency” means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency.~~

6.7.2 ~~Effect of an emergency. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of 6.7.3 of this regulation are met.~~

6.7.3 ~~The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:~~

- 6.7.3.1 ~~An emergency occurred and that the permittee can identify the cause or causes of the emergency;~~
- 6.7.3.2 ~~The permitted facility was at the time being operated in a prudent and professional manner and in compliance with generally accepted industry operations and maintenance procedures;~~
- 6.7.3.3 ~~During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and~~
- 6.7.3.4 ~~The permittee submitted notice of the emergency to the Department within two working days of the time when emission limitations were exceeded due to the emergency. Such notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.~~

6.7.4 ~~In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.~~

# PROPOSED REGULATIONS

6.7.5 ~~The provision of 6.7 of this regulation is in addition to any emergency provision contained in any applicable requirement.~~

*(Break in Continuity of Sections)*

## APPENDIX A: INSIGNIFICANT ACTIVITIES

Any information called-for by the permit application in 5.4 of this regulation need not be submitted for the activities and emissions levels described in this appendix; however, the source must provide a list of any such activities that are excluded because of size, emissions rate, or production rate. An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement. The emissions from the activities described in this appendix shall be included when determining the applicability of any applicable requirement.

*(Break in Continuity Within Section)*

8.0 Internal combustion engines ~~and~~ in vehicles used for transport of passengers or freight, except as may be provided in subsequent regulations.

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

[https://regulations.delaware.gov/register/april2024/proposed/27 DE Reg 753 04-01-24.htm](https://regulations.delaware.gov/register/april2024/proposed/27%20DE%20Reg%20753%2004-01-24.htm)

## DEPARTMENT OF STATE

### OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER

Statutory Authority: 4 Delaware Code, Section 304 (4 Del.C. §304)

4 DE Admin. Code 601

### PUBLIC NOTICE

#### 601 (Formerly Rule 35.1) Gathering Licenses

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 4 Del.C. §304, the Delaware Alcoholic Beverage Control Commissioner proposes to update its rules related to gathering licenses issued by the Office of the Alcoholic Beverage Control Commissioner.

The Commissioner previously noticed and published proposed changes to 4 DE Admin Code 601 in the January 1, 2024 edition of the *Delaware Register of Regulations* and afforded a 30 day period for public comment. The Commissioner published a General Notice on February 1, 2024, to extend the public comment period an additional 30 days, until March 4, 2024, because of a nonfunctioning email address included in the notice.

Based upon the comments received during the public comment period, which has expired, the Commissioner determined that substantive changes to the regulation are needed and hereby notices and proposes additional changes for public comment. These additional changes relate primarily to how a nonprofit organization is defined; the new proposed changes track specific language used by the Internal Revenue Service. In addition, the proposed changes include a specific post-gathering event report, a report which requests 3 numbers related to the sales and net proceeds of alcohol, including total alcohol sales and/or portion of ticket sales related to alcohol; costs of the alcohol; and the net proceeds from the sale of alcohol at the event.

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

Doug Denison  
Deputy Commissioner  
Office of the Delaware Alcoholic Beverage Control Commissioner  
820 N. French St., 10th Floor

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Wilmington, DE 19801

Comments may also be directed via electronic mail to [oabccquestions@delaware.gov](mailto:oabccquestions@delaware.gov). Any written submission in response to this notice and relevant to the proposed regulations must be received by the Delaware Alcoholic Beverage Control Commissioner no later than 4:00 p.m. EST, May 2, 2024.

The action concerning determination of whether to adopt the proposed regulations will be based upon consideration of the written comments and any other written materials filed by the public.

## Background

The Delaware Alcoholic Beverage Control Commissioner ("Commissioner" or "Office") is authorized by the General Assembly of the State of Delaware, to establish, by rules and regulations, an effective control of the business of manufacture, sale, dispensation, distribution and importation of alcoholic liquors within and into the State of Delaware, including the time, place and manner in which alcoholic liquors shall be sold and dispensed, not inconsistent with Title 4 of the Delaware Code, known as the Delaware Liquor Control Act ("DLCA") or with any other law of the State. The Commissioner is further authorized to adopt and promulgate rules and regulations not inconsistent with Title 4 or of any other law of the State, and such rules and regulations shall have the force and effect of law; provided, however that no such rule or regulation shall extend, modify or conflict with any law of this State or the reasonable implications thereof; and provided further, however, that such rules and regulations, as established by the Commissioner, shall focus primarily on public safety and the best interests of the consumer and shall not unduly restrict competition within the alcoholic beverage industry.

## Summary of Proposal

4 DE Admin. Code 601 is updated to clarify requirements for a gathering license. Those include that the Internal Revenue Service must recognize the organization as a charitable organization; the floor plan must show the location of the gathering as stated in the rule; and an affiliated license, as described in 4 DE Admin. Code 601, is prohibited from receiving proceeds from a gathering where the nonprofit organization includes members of a licensed manufacturer of beer, wine, or spirits.

Further updates include a revised Section 2.0 that sets forth proposed defined terms in underline. The current Section 2.0 regarding gathering license requirements is struck-through and moved to a new Section 3.0 with proposed changes in underline.

Additional proposed changes include clarifying entities as nonprofit organizations and defining the meaning of social, economic, and civic groups.

**Statutory Authority** 4 Del.C. §304.

4 Del.C. §304 enables the Delaware Alcoholic Beverage Control Commissioner to adopt and promulgate rules and regulations not inconsistent with Title 4 of the Delaware Code and all such rules and regulations shall have the force and effect of law; provided, that no such rule or regulation shall extend, modify or conflict with any law of the State of Delaware or the reasonable implications thereof.

**\*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/april2024/proposed/27 DE Reg 756RFA 04-01-24.pdf>

## 601 (Formerly Rule 35.1) Gathering Licenses

### 1.0 Purpose and Scope

1.1 This ~~rule~~ regulation implements the definition of "gathering of persons" under the Delaware Liquor Control Act.

~~"Gathering of persons" or "gathering" means a banquet, picnic, bazaar, fair, or similar private gathering, or similar public gathering, where food or drink are sold, served, or dispensed by non-profit~~

# PROPOSED REGULATIONS

~~organizations such as churches, colleges, universities, volunteer fire companies, political parties, or other similar non-profit groups having a common civic, social, educational, or religious purpose, or where entrance tickets are sold or entrance fees are required by those non-profit organizations.~~

- 1.2 The purpose of a licensed gathering of persons is to raise funds or to further the stated mission and goals of the nonprofit organization.
- 1.3 To qualify for a license, the event to be licensed as a gathering of persons is one which is planned, coordinated, and hosted by or on behalf of the nonprofit organization and is advertised to the public as an event that will raise funds or otherwise further the stated mission and goals of the organization.
- 1.4 The holder of the gathering license is responsible for the sale and service of alcoholic liquors. The sale and service of alcoholic liquors includes the purchase, receipt, storage, and dispensing of alcoholic products. All proceeds from the sale or service of alcoholic liquors pursuant to a gathering license shall be retained by the holder of the gathering license and shall not be shared with other persons, businesses, or organizations.

## 2.0 **Gathering License Definitions**

- ~~2.1 The organization must be a not-for-profit organization.~~
- ~~2.2 The organization must submit proof of incorporation or file an alternative, for example, Articles of Association.~~
- ~~2.3 Form 990 must be filed with the Delaware Alcoholic Beverage Control Commissioner. If the organization is new, proof from the Department of Treasury that non-profit status has been requested must be filed with the application.~~
- ~~2.4 Religious organizations must file Form 1065.~~
- ~~2.5 Political organizations must be registered and acknowledged by the Department of Elections.~~
- ~~2.6 Application must be completed and submitted with proper fee.~~
- ~~2.7 Daily gathering applications must be completed and submitted ten (10) working days prior to the scheduled gathering.~~

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

**"Affiliated licensee"** means a licensed manufacturer of beer, wine, or spirits whose members, all or in part, are members of a nonprofit organization that is issued a gathering license.

**"Gathering of persons" or "gathering"** is defined in 4 **Del.C.** §101(22) and means a banquet, picnic, bazaar, fair, or similar private gathering, or similar public gathering, where food or drink are sold, served, or dispensed by nonprofit organizations such as churches, colleges, universities, volunteer fire companies, political parties, or other similar nonprofit groups having a common civic, social, educational, or religious purpose, or where entrance tickets are sold or entrance fees are required by those nonprofit organizations.

**"Social, civic and educational groups" or "groups"** as used in 4 **Del.C.** §101(22) and defined by the IRS, means nonprofit social welfare organizations and business leagues (operated exclusively to promote social welfare or common business interests in which no earnings inure to the benefit of a private individual or shareholder); veterans organizations; fraternal orders and societies; and nonprofit entities organized with members, for exempt purposes, supported by membership dues/assessments, with earnings that do not benefit a person having a personal or private interest in the organization's activities, and with organizational documents that do not contain any discriminatory provisions.

## 3.0 **Gathering License - Requirements**

- 3.1 A group as defined in this regulation shall submit an application in the form prescribed by the Delaware Alcoholic Beverage Control Commissioner and pay the appropriate fee.
- 3.2 The group must submit proof of incorporation or formation.
- 3.3 The group must submit a recent IRS Form 990 that has been filed by the nonprofit group and accepted by the IRS within the last 3 years. If the group has been organized in the prior calendar year, it must submit proof from the IRS that nonprofit status has been requested.

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- 3.4 Religious groups must file IRS Form 1065 or demonstrate a current affiliation with a church or diocese.
- 3.5 Political groups must submit proof of current registration with the Delaware Department of Elections or with the Federal Election Commission.
- 3.6 The group must submit a floor plan of the premises where the gathering will take place, to include all seating, alcohol service areas, alcohol storage, entertainment areas, food service and preparation areas, and all points of ingress and egress.
- 3.7 A daily gathering license application must be completed and submitted 10 working days prior to the first scheduled gathering listed on the application.
- 3.8 Within 60 days after a licensed gathering has taken place, the holder of the license shall submit a completed and signed post event report (a sample form can be obtained from the Office) which shall include: total alcohol sales and/or portion of ticket sales related to alcohol; cost of the alcohol; and the net proceeds from the sale of alcohol at the event. The holder of the license may submit all information by electronic means.
- 3.8.1 If a group fails to submit the information required by subsection 3.8 of this regulation, future gathering licenses may not be granted to the organization.
- 3.8.2 A group that has obtained a biennial gathering license may submit the report required by subsection 3.8 of this regulation on a quarterly basis, in lieu of 60 days after each event. Failure to submit the information required may result in cancellation of the biennial gathering license.
- 3.9 If a gathering license is issued to a nonprofit group with an affiliated licensee, the affiliated licensee shall not receive any alcohol proceeds from the gathering. For purposes of this regulation, "proceeds from the gathering" does not include the purchase of alcoholic beverages provided for the gathering.
- 3.10 The requirements of subsections 3.2, 3.3, 3.8 and 3.9 of this regulation shall not apply to a volunteer fire company, a religious organization, or a political organization.
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## OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER

Statutory Authority: 4 Delaware Code, Sections 304 and 721 (4 Del.C. §§304 and 721)

### PUBLIC NOTICE

#### 911 A Rule Permitting Limited Self-Delivery of Beer

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 4 Del.C. §304, the Delaware Alcoholic Beverage Control Commissioner proposes to establish a new rule related to permitting limited self-delivery of beer in the State.

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

Doug Denison  
Deputy Commissioner  
Office of the Delaware Alcoholic Beverage Control Commissioner  
820 N. French St., 10th Floor  
Wilmington, DE 19801

Comments may also be directed via electronic mail to [OABCCrulescomments@delaware.gov](mailto:OABCCrulescomments@delaware.gov). Any written submission in response to this notice and relevant to the proposed regulations must be received by the Delaware Alcoholic Beverage Control Commissioner no later than 4:00 p.m. EST, May 2, 2024.

The action concerning determination of whether to adopt the proposed regulations will be based upon consideration of the written comments and any other written materials filed by the public.

#### Background



The Delaware Alcoholic Beverage Control Commissioner ("Commissioner" or "Office") is authorized by the General Assembly of the State of Delaware, to establish, by rules and regulations, an effective control of the business of manufacture, sale, dispensation, distribution and importation of alcoholic liquors within and into the State of Delaware, including the time, place and manner in which alcoholic liquors shall be sold and dispensed, not inconsistent with Title 4 of the Delaware Code, known as the Delaware Liquor Control Act ("DLCA") or with any other law of the State. The Commissioner is further authorized to adopt and promulgate rules and regulations not inconsistent with Title 4 or of any other law of the State, and such rules and regulations shall have the force and effect of law; provided, however that no such rule or regulation shall extend, modify or conflict with any law of this State or the reasonable implications thereof; and provided further, however, that such rules and regulations, as established by the Commissioner, shall focus primarily on public safety and the best interests of the consumer and shall not unduly restrict competition within the alcoholic beverage industry.

### Summary of Proposal

4 DE Admin. Code 911 is a new proposed regulation that sets forth criteria and requirements to permit limited self-delivery of beer that may be authorized by the Commissioner in accordance with the Delaware Liquor Control Act. 4 Del.C. §721.

**Statutory Authority** 4 Del.C. §304, 4 Del.C. §721

4 Del.C. §304 enables the Delaware Alcoholic Beverage Control Commissioner to adopt and promulgate rules and regulations not inconsistent with Title 4 of the Delaware Code and all such rules and regulations shall have the force and effect of law; provided, that no such rule or regulation shall extend, modify or conflict with any law of the State of Delaware or the reasonable implications thereof.

4 Del.C. §721 enables the Delaware Alcoholic Beverage Control Commissioner to authorize any brewery to sell and to deliver beer to any person in this State who holds a license to receive and resell beer, if a duplicate bill of each sale is filed with or mailed to the Commissioner, provided that the Commissioner shall not authorize the resale and delivery of beer to licenses within this State by any brewery whose total domestic sales, including all affiliated licenses whether in or out of this State, exceeds 6 million barrels of beer in a single calendar year.

**\*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/april2024/proposed/27 DE Reg 759RFA 04-01-24.pdf>

### 911 A Rule Permitting Limited Self-Delivery of Beer

#### **1.0 Preamble**

Section 721 of Title 4 of the Delaware Code permits the Delaware Alcoholic Beverage Control Commissioner ("Commissioner" or "Office") to authorize "any brewery to sell and to deliver beer to any person in this State who holds a license to receive and resell beer" provided certain requirements are met. This regulation is promulgated to implement self-delivery of beer by those licensed as brewers. This regulation is consistent with the Commissioner's authority to regulate time, place, and manner in which beer is sold or dispensed, and provide guidance and regulations for self-delivery of beer.

#### **2.0 Purpose and Scope**

- 2.1 Liquor licenses issued pursuant to Title 4 of the Delaware Code, the Delaware Liquor Control Act, are approved based upon the documents submitted as part of the initial application. Authorization to conduct business beyond the premises so licensed must be presented to and approved by the Commissioner.
- 2.2 This regulation provides procedures, standards, and fees for self-delivery of beer by a licensed brewery, as defined herein.



### **3.0 Definitions**

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

**"Brewery"** as that term is used in 4 **Del.C.** §721 and as used in this regulation, means a brew pub or microbrewery licensed by the Commissioner pursuant to 4 **Del.C.** §§512B or 512C.

**"Self-delivery"** means:

- 1) Delivery by a brewery;
- 2) In a vehicle owned or leased by the brewery;
- 3) Of not more than 1,500 barrels annually of its own beer that it manufactures; and
- 4) To a premises licensed by the Commissioner as a retailer pursuant to 4 **Del.C.** §101(41) and on-premise licensees pursuant to 4 **Del.C.** §512.

### **4.0 Procedures**

4.1 A Delaware licensed brewery, producing no more than 5,000 barrels of beer a year across all suppliers or manufacturers that share common ownership and control as defined in 4 **Del.C.** §512G(b), may apply, upon forms provided by the Commissioner, for authorization to self-deliver its own beer produced at the licensee's approved premises as follows:

4.1.1 The brewery must submit an application for a warehouse, and provide such documentation as required by the Commissioner, including a lease, landlord approval, and a floor plan.

4.1.2 No more than 1,500 barrels of beer, or its equivalent, may be self-delivered annually by the brewery.

4.1.3 Only the brewery and its employees may deliver its manufactured beer and only in vehicles owned or leased by the brewery.

4.1.4 On a quarterly basis, a report documenting each sale shall be filed electronically with the Commissioner that includes the following:

4.1.4.1 The date and address of each licensee to whom a delivery was made during the prior quarter;

4.1.4.2 The quantity of products delivered and whether the product was provided by the bottle, can, half bottle, keg, half keg, quarter keg, or sixtel; and

4.1.4.3 The total gallons delivered during the quarter. The brewery shall track total gallons delivered through self-delivery so as not to exceed 1,500 barrels of beer delivered through self-delivery, per year.

4.1.5 Self-delivery over 1,500 barrels a year will result in forfeiture of the authorization to self-deliver.

4.2 If approved by the Commissioner, a brewery may use an additional facility to warehouse beer.

4.2.1 The brewery must submit an application for a warehouse, and provide such documentation as required by the Commissioner, including a lease, landlord approval, and a floor plan.

4.2.2 The filing fee for an application for a warehouse is \$25, and the inspection fee is \$100.

### **5.0 Additional Requirements**

5.1 Breweries authorized to self-deliver must do all of the following:

5.1.1 Report to the Division of Revenue, pursuant to 4 **Del.C.** §581(b), all sales of beer that were self-delivered to retailers.

5.1.2 Comply with 4 **DE Admin. Code** 904 by publishing a monthly price list for beer that will be available for sale through self-delivery. Publication may also occur on the Commissioner's webpage if *The Delaware Beverage Guide* is unable to accommodate price lists for self-delivery.

5.1.3 Comply with all state credit and transportation regulations and other business licensure requirements.

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# PROPOSED REGULATIONS

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- 5.1.4 Comply with the 18-hour product at-rest requirement pursuant to 4 DE Admin. Code 903, Section 6.0. A written request for variance to that at-rest requirement may be granted for good cause shown.
- 5.1.5 Place a placard on the vehicle transporting the beer, that includes the words "Delaware Alcoholic Beverage Control Commissioner - License Number ....." (Insert the brewery's license number) in letters at least two inches high, uncovered, and clearly visible.
- 5.2 No brewery shall make a delivery except to a Delaware licensed package store or a Delaware licensed on-premise retail licensee during the hours and dates the package store or on-premise licensee is open to receive such delivery.
- 5.3 No brewery shall contract with a third-party entity to deliver beer. No brewery shall permit anyone other than an employee of the brewery to deliver beer pursuant to this regulation.
- 5.4 Peddling beer is not permitted. Orders for all beer shall be received, in writing, from customers before the loaded vehicles leave the brewery's premises and a copy must be on the vehicle at all times during delivery. No beer in excess of that ordered shall be carried on the vehicles.
- 5.5 A brewery authorized to self-deliver shall not discriminate among retailers when filling orders. Quantity discounts and post-offs do not apply to self-delivery.
- 5.6 A requirement that a retailer purchase 1 product in order to purchase another is prohibited. This prohibition includes combination sales if 1 or more products may be purchased only in combination with other products and not individually.
- 5.7 No brewery shall engage in any trade practice which can reasonably be expected to injure any retailer through discriminatory practices, nor engage in any trade practices which can reasonably be expected to cause, encourage, or induce a consumer to purchase, receive, or consume beer in excessive amounts or at any unduly rapid rate.
- 5.8 Failure to comply with this regulation and any other provision of the Delaware Liquor Control Act or Commissioner's regulations may result in suspension or revocation of authorization for self-delivery.

## **6.0 Inventory and Recording Sales**

- 6.1 Pursuant to 4 Del.C. §304(a)(2) and (5) and 4 Del.C. §581(c), the Division of Alcohol and Tobacco Enforcement ("DATE") and the Division of Revenue may inspect the establishment of any licensed Delaware brewery and inventory any or all beer in the brewery's possession, as well as sale invoices or bills of sale for beer delivered, at any time they deem reasonable and necessary to carry out their statutory duties to verify the reporting and collection of taxes payable to the State of Delaware.
- 6.2 Every sale of beer through self-delivery shall be recorded by the brewery on a written invoice or bill of sale containing, at a minimum, the following:
  - 6.2.1 Name of the brewery;
  - 6.2.2 Name of the retailer;
  - 6.2.3 Date of sale;
  - 6.2.4 Quantity of beer sold;
  - 6.2.5 Price of beer sold;
  - 6.2.6 Brand/name of product sold;
  - 6.2.7 Size of container; and
  - 6.2.8 Date of delivery.
- 6.3 Upon the driver's return to the brewery's premises, the driver shall sign the copy of the invoice/bill of sale to indicate the beer was delivered to the destination listed.
- 6.4 This signed copy of the invoice/bill of sale shall be available for inspection by the Commissioner at all times.

## **7.0 Fees**

- 7.1 The filing fee to request limited self-delivery is \$25.

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- 7.2    When required by the Commissioner, the inspection fee is \$25.
- 7.3    The biennial fee for limited self-delivery is \$100.
- 7.4    The biennial fee for a warehouse is \$100.
-

## 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  
PROFESSIONAL STANDARDS BOARD**

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

## ORDER

**1510 Initial License****I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

Pursuant to 14 **Del.C.** §§1203, 1205(b), and 1210, the Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 **DE Admin. Code** 1510 Initial License. The regulation sets forth the requirements for issuance and retention of an educator's Initial License. The proposed amendments include adding the requirement that an applicant hold a bachelor's degree prior to commencing 91 days of substitute teaching to subsection 4.1.3.1.3; adding an additional requirement consisting of four different options to subsection 4.1.3.1.4; clarify Section 6.0; strike subsection 9.3 and subsections 15.1.1.1 through 15.1.1.7, which concern the Comprehensive Educator Induction Program.

Notice of the proposed regulation was published in the *Register of Regulations* on January 1, 2024. The Professional Standards Board did not receive any written submittals concerning the proposed regulation.

**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 1, 2024, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1510 Initial

License, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendments to the regulation are necessary to implement 14 **Del.C.** Ch. 12 and are designed to improve the quality of the Delaware educator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1510 Initial License.

#### IV. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1510 Initial License subject to the State Board of Education's approval. On February 15, 2024, the State Board of Education approved amending 14 **DE Admin. Code** 1510 Initial License. Therefore, pursuant to 14 **Del.C.** §§1203, 1205(b), and 1210, 14 **DE Admin. Code** 1510 Initial License, attached hereto as Exhibit A, is hereby amended.

#### V. TEXT AND CITATION

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

#### 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 15th day of February, 2024.

#### Department of Education

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

Approved this 15th day of February, 2024.

#### State Board of Education

/s/ Shawn Brittingham, President

/s/ Harvey Kenton, Jr.

/s/ Deborah Stevens, Vice President

/s/ Provey Powell, Jr.

/s/ Candice Fifer

/s/ Wali W. Rushdan, II

/s/ Meredith L. Griffin, Jr.

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

**\*Please note that no changes were made to the regulation as originally proposed and published in the January 2024 issue of the *Register* at page 483 (27 DE Reg. 483). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**<https://regulations.delaware.gov/register/april2024/final/27 DE Reg 764 04-01-24.htm>**

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**FINAL REGULATIONS**

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

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

**ORDER****4459 Lead-Based Paint Hazards****NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("DHSS"), Division of Public Health ("DPH") initiated proceedings to publish Regulation 4459 Lead-Based Paint Hazards. These proceedings were initiated pursuant to 29 **Del.C.** Ch. 101 and the authority as prescribed by 16 **Del.C.** §122(3)t.

DHSS initially published the proposed amendments to this regulation in the December 2023 issue of the *Delaware Register of Regulations* ("*Register*") (27 **DE Reg.** 407 (12/01/23)). Substantive changes were made to the regulation because of the public comment received (between December 1, 2023, and January 8, 2024). DHSS/DPH published the re-proposed regulation which included the additional revisions in the February 1, 2024, issue of the *Register* (27 **DE Reg.** 567). DHSS requested that written materials and suggestions from the public concerning the re-proposed regulation be delivered to DHSS by March 4, 2024, after which time DHSS would review information, factual evidence, and public comment to the said proposed regulations.

**SUMMARY OF EVIDENCE:**

No comments were received during the public comment period (of February 1, 2024, through March 4, 2024). Two minor changes are being made to the regulation as proposed, which include revisions to the definition of "Training Provider" and technical changes in subsection 3.2.1.2.

**IMPACT ON THE STATE'S GREENHOUSE GAS EMISSIONS REDUCTION TARGETS AND RESILIENCY TO CLIMATE CHANGE:**

The DPH Division Director has reviewed the proposed regulation as required by 29 *Del. C.* §10118(b)(3) and has 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.

**FINDINGS OF FACT:**

Minor changes were made to the regulation since publication as re-proposed. The Department finds that the re-proposed regulations, and additional technical changes, as set forth in the attached copy should be adopted in the best interest of the public of the State of Delaware.

**THEREFORE, IT IS ORDERED**, that re-proposed Regulation 4459 Lead-Based Paint Hazards is adopted and shall become effective April 11, 2024 (ten days), after publication of the final regulation in the *Delaware Register of Regulations*.

3/13/2024 | 8:47 AM EDT

Date

Josette D. Manning, Esq.  
DHSS Cabinet Secretary

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

**2.0 Definitions**

**(Break in Continuity Within Section)**

"Training provider" means a firm that has been approved by the Delaware Department of **[Education Health and Social Services]** to provide training in Delaware and accredited by the Secretary to

conduct accredited lead-based paint activities training programs to individuals engaged in lead-based paint activities.

*(Break in Continuity Within Section)*

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

*(Break in Continuity Within Section)*

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

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

3.2.1.1 The training provider's business name, address, and telephone number.

3.2.1.2 Written evidence that the ~~applicant~~ **applicant's instructor** has been approved by the Delaware Department of Education as a training provider **[if the training is part of any public education curriculum]**.

**\*Please note that no additional changes were made to the regulation as originally proposed and published in the February 2024 issue of the *Register* at page 567 (27 DE Reg. 567). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:**

**<https://regulations.delaware.gov/register/april2024/final/27 DE Reg 766 04-01-24.htm>**

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903 (7 Del.C. §903)  
7 DE Admin. Code 3505

Secretary's Order No: 2024-F-0007

**RE: Approving Final Amendments to 7 DE Admin. Code 3505 - *Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements***

**Date of Issuance: March 05, 2024**

**Effective Date: April 11, 2024**

### **3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements.**

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

#### **Background, Procedural History and Findings of Fact**

This Order relates to 7 DE Admin. Code 3505 - *Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements* ("Regulation"). The Department proposes revisions to the Regulation that will enable the Department to modify the anchor gill net season to better synchronize the season with the availability and market for striped bass, as recommended by the Advisory Council on Tidal Finfisheries ("Council").

The Department has the authority, under to 7 Del. C. §903, to implement management measures to enhance

the conservation and management of coastal finfisheries. Striped bass have been coming into Delaware Bay and River earlier in the year as the waters warm up, and the market for striped bass has been increasing earlier in the season. The striped bass gill net season is open from February 15 through May 31. There are two main types of gillnetting techniques, drift gillnetting and anchor gillnetting. Currently, the drift gill net season is open for the duration of the striped bass gillnet season (February 15-May 31) and the anchor gill net season is only open from March 1 through May 10.

In accordance with 7 *Del. C.* §923, the Department limits the anchor gill net season. The anchor netting technique is more efficient than the drift netting technique however, it is also more destructive. While anchor gill netting accounts for 90% of striped bass gill net landings, the discard mortality rate associated with the anchor gill netting technique has a higher mortality rate of 41% compared to 8% for drift netting. Additionally, anchor gillnetting has also been linked to the mortality of other species including the Endangered Species Act-listed Atlantic Sturgeon and waterbirds, which have been discovered deceased in anchor gillnets.

On September 19, 2023, the Council unanimously approved a motion to recommend a modification to the anchor gill net season by adding two weeks in February and to eliminate two weeks between the end of April and beginning of May from the anchor gill netting season. This recommendation stems from the early arrival of striped bass into Delaware Bay and River as temperatures rise, and the increased market demand for striped bass earlier in the season. With the consideration of maintaining a 10-week duration and aligning the season with the availability and market demand for striped bass during the spring season, the Department proposed Amendments to modify the anchor gill netting season to begin on February 15<sup>th</sup> and conclude on April 26<sup>th</sup>.

To that, as set forth in 29 *Del.C.* §10119, the Department implemented Secretary Order # 2023-F-0031 ("EO") on December 1, 2023. The EO adopted amendments to the Regulations, effective February 15, 2024, and revised the 2024 anchor gill net season from the current dates of March 1 through May 10 to February 15 through April 26. The emergency regulations, as contained in the EO, were intended as interim measures, necessary to avoid the risk of harm to public health, safety, and welfare, pending the formal adoption of regulations pursuant to the *Administrative Procedures Act*.

Pursuant to 29 *Del C.* Ch. 101 and 7 *Del. C.* §903, the Department published its proposed regulation Amendments in the January 1, 2024, Delaware Register of Regulations. Subsequent to publishing the proposed Amendments, the Council met on January 17, 2024, to further discuss the concerns raised by the late-season netters regarding the reduction of the anchor gill net season between the end of April and beginning of May. The Department proposed a compromise to adjust the dates of the season to include a couple of days into the month of May without extending its duration.

The Department *revised* proposed Amendments to commence the anchor gillnet season on February 19 after 4 pm, allowing anglers to deploy their anchor gill nets the night before the commencement of anchor gillnet season on February 20. This season would then extend through May 2. This slight adjustment maintains the 10-week duration for anchor gillnetting, while considering late-season netters, optimizing the spring anchor gill net season, and the market demand for striped bass.

The Department has the statutory basis and legal authority to act with regard to the formal promulgation of these *revised* proposed Amendments, pursuant to 7 *Del. C.* §903. As previously noted, the Department published its initial proposed regulation Amendments in the January 1, 2024, *Delaware Register of Regulations*. Thereafter, the public hearing regarding this matter was held on January 30, 2024. There were ten (10) members of the public in attendance. The Department presented the *revised* proposed Amendments at its public hearing that was held on January 30, 2024. The revisions, as set forth in the *revised* proposed Amendments, were properly vetted by the Department at the time of the virtual hearing and do not constitute a significant alteration to what was initially proposed. Therefore, no further public notification is required by the Department.

Pursuant to 29 *Del.C.* §10118(a), the hearing record ("Record") remained open for receipt of written comment for 15 days following the public hearing. The Record formally closed for comment in this matter at close of business



on February 14, 2024, with ten (10) comments received by the Department for the formal promulgation.

It should be noted that all notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

Subsequent to the close of the Record, and at the request of presiding Hearing Officer Theresa Smith, the Department's Division of Fish and Wildlife staff prepared a Technical Response Memorandum ("TRM"). The TRM responds to the comments received by the Department in this matter and provides a thorough discussion in response to the suggestions and questions provided by the public.

Following receipt of the Department's TRM as noted above, the Hearing Officer prepared her Hearing Officer's Report dated February 15, 2024 ("Report"), which expressly incorporated both the Department's proposed Amendments and the TRM into the Record generated in this matter. The Report documents the proper completion of the required regulatory amendment process, establishes the Record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix "A."

## Reasons and Conclusions

Based on the Record developed by the Department's experts in the Division of Fish and Wildlife, and established by the Hearing Officer's Report, I find that the *revised* proposed regulatory Amendments to 7 DE Admin. 3505 - *Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements*, are well supported. I further find that the Department's experts fully developed the record to support adoption of these *revised* Amendments. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the *revised* proposed Amendments be promulgated as final.

The following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to 7 *Del. C.* §903;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Chapter 60, to issue an Order adopting these *revised proposed* Amendments as final;
3. The Department provided adequate public notice of the initial proposed Amendments and subsequently the *revised proposed* Amendments, all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on January 30, 2024, and during the 15 days subsequent to the hearing (through February 14, 2024), before making any final decision;
4. Promulgation of the *revised* proposed Amendments to 7 DE Admin. 3505 - *Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements* will enable the Department to modify the anchor gill net season to better synchronize the season with the availability and market for Striped Bass;
5. The Department has reviewed the *revised* proposed Amendments in light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and has selected Exemption "B1," as this regulation is not substantially likely to impose additional cost or burdens upon individuals and/or small businesses;
6. The Department has reviewed this *revised* proposed regulatory promulgation in the light of 7 *Del.C.* §10003 and 29 *Del.C.* §10118(b)(3), and has determined that conducting such an assessment regarding the impact of this regulation on the achievement of the State of Delaware's greenhouse gas emissions reduction targets is not practical;
7. The Department's proposed regulatory Amendments, as initially published in the January 1, 2024, *Delaware Register of Regulations*, and subsequently revised, as set forth in Appendix "A" hereto, are adequately supported,

are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*;

8. The Department shall submit the *revised* proposed Amendments as final regulatory amendments to the *Delaware Register of Regulations* for publication on April 1, 2024, and provide such other notice as the law and regulation require, and the Department determines is appropriate; and

9. The Department's emergency regulations implemented by Emergency Order # 2023-F-0031 will expire on April 11, 2024, when the final regulations become effective.

Lisa Borin Ogden  
for Shawn M. Garvin  
Secretary

### 3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements.

#### 3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements.

(Penalty Section 7 **Del.C.** §936(b)(2))

- 1.0 It is unlawful for any commercial food fisherman using a gill net to take and reduce to possession any striped bass at any time except when said commercial food fisherman is authorized by the Department to participate in a commercial gill net fishery for striped bass established herein. A commercial food fisherman may use a gill net to take and reduce to possession striped bass during the period beginning at 12:01 A.M. on February 15 and ending at 4:00 P.M. on May 31 next ensuing. It is unlawful to use any gill net having a stretched-mesh size greater than four (4) inches to take striped bass during the period ~~February 15 until and including the last day in February~~ beginning at 12:01 A.M. on **April 27** February 15 and ending at 4:00 PM on February 19 and beginning at 12:01 A.M. on May 2] and ending at 4:00 P.M. on May 31 unless the net is drifted. A commercial food fisherman may use a gill net to take and reduce to possession striped bass during the period beginning at 12:01 A.M. on November 15 and ending at 4:00 P.M. on December 31 next ensuing provided at least two (2) percent of the commercial allocation of striped bass for the gill net fishery, as determined by the Department, was not landed in the February - May gill net fishery. In order for a commercial food fisherman to be authorized by the Department to participate in a commercial gill net fishery, said commercial food fisherman shall have a valid food fishing equipment permit for a gill net and shall register in writing with the Department to participate in said fishery by February 1 for the February 15 - May 31 gill net fishery and by November 1 for the December gill net fishery.
- 2.0 It is unlawful for any commercial food fisherman using a hook and line to take and reduce to possession any striped bass at any time except when said commercial food fisherman is authorized by the Department to participate in a commercial hook and line fishery for striped bass established herein. Except as otherwise provided, a commercial food fisherman may use a hook and line to take and reduce to possession striped bass during the period beginning at 12:01 A.M. on April 1 and ending at 4:00 P.M. on December 31 next ensuing. In order for a commercial food fisherman to be authorized to participate in the commercial hook and line fishery, said commercial food fisherman shall register in writing with the Department to participate in said fishery by February 1.
- 3.0 The striped bass gill net fishery in February - May, the striped bass gill net fishery in November - December and the striped bass hook and line fishery in April - December shall be considered separate striped bass fisheries. Each participant in a striped bass fishery shall be assigned an equal share of the total pounds of striped bass allotted by the Department to that fishery. A share shall be determined by dividing the number of pre-registered participants in that fishery into the total pounds of striped bass allotted to that fishery by the Department. The total pounds of the State's ASMFC commercial striped bass quota will be allotted to each fishery by the Department as follows: 95% for the February 15 - May 31 gill net fishery, 5% for the April - December hook and line fishery and, provided that in excess of two (2)% of the February 15 - May 31 gill net fishery allocation was not landed, said remainder for the

- November - December gill net fishery. Any overage of the State's commercial quota will be subtracted from the next year's commercial quota proportionally to the appropriate fishery.
- 4.0 It is unlawful for any commercial food fisherman to land, during a striped bass fishing season, more than the total pounds assigned by the Department to said individual commercial food fisherman.
- 5.0 It is unlawful for any commercial food fisherman to possess any landed striped bass that does not have locked into place through the mouth and gill (operculum) opening a striped bass harvest tag issued to said commercial fisherman by the Department.
- 6.0 The Department may issue tags to commercial food fishermen who register in writing with the Department to participate in a striped bass fishery. Each participant shall initially be issued a quantity of striped bass harvest tags that is to be determined by the Department by dividing said participant's assigned share in pounds by the estimated weight of a striped bass expected to be landed. If a commercial food fisherman needs additional tags to fulfill his or her assigned share, the Department shall issue additional tags after verifying the balance of the share from reports submitted by an official weigh station to the Department.
- 7.0 It is lawful for a commercial food fisherman who is authorized to be issued striped bass harvest tags by the Department to transfer said tags to another commercial food fisherman, provided said transfer is made prior to said tags being issued by the Department.
- 8.0 It is unlawful for any commercial food fisherman to apply a tag to a striped bass unless said tag had been issued or legally transferred to said commercial food fisherman by the Department.
- 9.0 It is unlawful to apply any striped bass tag issued by the Department to a striped bass if said tag had previously been applied to another striped bass.
- 10.0 It is unlawful for any commercial food fisherman to sell, barter or trade any striped bass, to attempt to sell, barter or trade any striped bass or to transport, to have transported or to attempt to have transported any striped bass out of the State unless said striped bass has been weighed and tagged at an official weigh station.
- 11.0 The Department may appoint individuals and their agents as official weigh stations to weigh and tag all striped bass landed in a commercial striped bass fishery. Official weigh stations, if requested, shall be compensated by the Department for each striped bass weighed and tagged. An official weigh station shall enter into an agreement with the Department to maintain records and report on a regular basis each commercial food fisherman's daily landings of striped bass weighed and tagged at said station. The Department shall provide official weigh stations with tags to be applied to each striped bass weighed.
- 12.0 Each commercial food fisherman participating in a striped bass fishery shall file a complete and accurate report with the Department on forms provided by the Department on all striped bass landed during said fishery. Each report shall be filed with the Department within 30 days after the end date of each fishery. All unused tags issued or legally transferred to a commercial food fisherman shall be returned to the Department with said report. Failure to file a complete and accurate report or failure to return all unused tags may disqualify the commercial food fishermen from future striped bass fisheries.
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**DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Sections 901 (c & d) and 903(e)(2)a.1 (7 Del.C. §§901(c&d) & 903(e)(2)a.1)  
7 DE Admin. Code 3511

Secretary's Order No.: 2024-F-0006

**RE: Approving Final Regulation, pursuant to 7 Del. C. §903(e)(2)a.1, to Amend 7 DE Admin. Code 3511  
*Summer Flounder Size Limits; Possession Limits; Season***

**Date of Issuance: February 28, 2024**

**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>

**3511 Summer Flounder Size Limits; Possession Limits; Season**

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 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, 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 3511 *Summer Flounder Size Limits; Possession Limits; Season* as part of an effort to reduce Summer Flounder mortality in the recreational fishery by adopting specified management measures approved by the Atlantic States Marine Fisheries Commission's ("ASMFC") Summer Flounder, Scup, and Black Sea Bass Board ("Board") at its February 14, 2024, meeting. Specifically, this amendment sets the recreational open season as January 1 through May 31 with a 16" minimum size and four fish daily possession limit, and June 1 through December 31 with a 17.5" minimum size and four fish daily possession limit. This order is necessary to keep Delaware compliant with the ASMFC Addendum XXXIV to the *Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan: Harvest Control Rule for Recreational Management of Summer Flounder, Scup, Black Sea Bass, and Bluefish*.

The Board was required to take action to constrain the 2024 and 2025 recreational Summer Flounder harvest because the harvest is otherwise anticipated to exceed the Recreational Harvest Limit ("RHL") in both years. Using

the percent reduction method under the Harvest Control Rule, the Board is requiring all regions in the Summer Flounder management unit to reduce recreational harvest by 28% for 2024 and 2025 recreational Summer Flounder. Measures will be restricted to achieve the full 28% reduction in 2024 and then will remain unchanged in 2025 unless new information suggests a major change in the expected impacts of those measures on the stock or the fishery. The Board has required all regions in the management unit to develop management measures that are expected to meet the required reduction in their region based on projections generated by the Recreational Demand Model and thus constrain harvest to the RHL for the entire management unit. The Delmarva Summer Flounder Region, to which Delaware belongs, proposed and had approved by the Board the previously stated measure that reduces harvest by 28%.

The Department has the statutory basis and legal authority to act with regard to promulgation of the proposed amendments to 7 DE Admin. Code 3511 *Summer Flounder Size Limits; Possession Limits; Season* pursuant to 7 Del. C. §§901 (c & d) and 903(e)(2)a.1. This specific management measure is required by the ASMFC Summer Flounder, Scup, and Black Sea Bass Board action taken on February 14, 2024.

## ORDER

In accordance with 7 Del. C. §903(e)(2)a.1, it is hereby ordered, this 28th day of February, 2024 that the above referenced amendments to 7 DE Admin. Code 3511 *Summer Flounder Size Limits; Possession Limits; Season*, a copy of which is hereby attached, are necessitated to ensure Delaware's compliance with the ASMFC Addendum XXXIV 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.

Lisa Borin Ogden  
For Shawn M. Garvin  
Secretary

### 3511 Summer Flounder Size Limits; Possession Limits; Season

#### 3511 Summer Flounder Size Limits; Possession Limits; Season

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 It shall be unlawful for any recreational fisherman to have in possession more than four (4) summer flounder at or between the place where said summer flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.
- 2.0 It shall be unlawful for any person, other than qualified persons as set forth in section 4.0 of this regulation, to possess any summer flounder that measure less than sixteen inches between the tip of the snout and the furthest tip of the tail from January 1 through May 31 and less than seventeen and a half inches from June 1 through December 31.
- 3.0 It shall be unlawful for any person, to have in possession any part of a summer flounder that measures less than sixteen inches from January 1 through May 31 and less than seventeen and a half inches from June 1 through December 31 between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed.
- 4.0 Notwithstanding the size limits and possession limits in this regulation, a person may possess a summer flounder that measures no less than fourteen inches between the tip of the snout and the furthest tip of the tail and a quantity of summer flounder in excess of the possession limit set forth in this regulation, provided said person has one of the following:
  - 4.1 A valid bill-of-sale or receipt indicating the date said summer flounder were received, the amount of said summer flounder received and the name, address and signature of the person who had landed said summer flounder;

- 4.2 A receipt from a licensed or permitted fish dealer who obtained said summer flounder; or
- 4.3 A bill of lading while transporting fresh or frozen summer flounder.
- 4.4 A valid commercial food fishing license and a food fishing equipment permit for gill nets.
- 5.0 It shall be unlawful for any commercial finfisherman to sell, trade and or barter or attempt to sell, trade and or barter any summer flounder or part thereof that is landed in this State by said commercial fisherman after a date when the de minimis amount of commercial landings of summer flounder is determined to have been landed in this State by the Department. The de minimis amount of summer flounder shall be 0.1% of the coast wide commercial quota as set forth in the Summer Flounder Fishery Management Plan approved by the Atlantic States Marine Fisheries Commission.
- 6.0 It shall be unlawful for any vessel to land more than 200 pounds of summer flounder in any one day in this State.
- 7.0 It shall be unlawful for any person, who has been issued a commercial food fishing license and fishes for summer flounder with any food fishing equipment other than a gill net, to have in possession more than four summer flounder at or between the place where said summer flounder were caught and said person's personal abode or temporary or transient place of lodging.

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**DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Sections 901 (c & d) and 903(e)(2)a.1 (7 **Del.C.**  
§§901(c&d) & 903(e)(2)a.1)  
7 **DE Admin. Code** 3526

**Secretary's Order No.: 2024-F-0005**

**RE: Approving Final Regulation, pursuant to 7 Del. C. §903(e)(2)a.1, to Amend  
7 DE Admin. Code 3526 Scup Size Limit**

**Date of Issuance: February 28, 2024**

**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>

**3526 Scup Size Limit**

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 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, 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 3526 *Scup Size Limit* as part of an effort to reduce Scup mortality in the recreational fishery by adopting specified management measures approved by the Atlantic States Marine Fisheries Commission's ("ASMFC") Summer Flounder, Scup, and Black Sea Bass Board ("Board") at its February 14, 2024, meeting. Specifically, this amendment reduces the daily possession limit for Scup from 40 to 30. This order is necessary to keep Delaware compliant with the ASMFC Addendum XXXIV to the *Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan: Harvest Control Rule for Recreational Management of Summer Flounder, Scup, Black Sea Bass, and Bluefish*.

The Board was required to take action to constrain the 2024 and 2025 recreational Scup harvest because the harvest is that ("RHL") in both years. Using the percent reduction method under the Harvest Control Rule, the Board is requiring all regions in the Scup management unit to reduce recreational harvest by 10% for 2024 and 2025. Measures will be restricted to achieve the full 10% reduction in 2024 and then will remain unchanged in 2025 unless new information suggests a major change in the expected impacts of those measures on the stock or the fishery. The Board has required all regions in the management unit to develop management measures that are expected to meet the required reduction in their region based on projections generated by the Recreational Demand Model. The Southern Scup Region, to which Delaware belongs, proposed and had approved by the Board the previously stated measure that reduces harvest by 10%.

The Department has the statutory basis and legal authority to act with regard to promulgation of the proposed amendments to 7 DE Admin. Code 3526 *Scup Size Limit* pursuant to 7 *Del. C.* §§901 (c & d) and 903(e)(2)a.1. This specific management measure is required by the ASMFC Summer Flounder, Scup, and Black Sea Bass Board action taken on February 14, 2024.

### **ORDER**

In accordance with 7 *Del. C.* §903(e)(2)a.1, it is hereby ordered, this 28th day of February, 2024 that the above referenced amendments to 7 DE Admin. Code 3526 *Scup Size Limit*, a copy of which is hereby attached, are necessitated to ensure Delaware's compliance with the ASMFC Addendum XXXIV 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.

Lisa Borin Ogden  
For Shawn M. Garvin  
Secretary

### **Scup**

#### **3526 Scup Size Limit.**

(Penalty Section 7 **Del.C.** §936(b)(2))

- 1.0 It shall be unlawful for any recreational fisherman to have in possession any scup, *Stenotomus chrysops*, that measures less than nine inches, total length.
- 2.0 It shall be unlawful for any person who has been issued a commercial food fishing license by the Department to possess any scup that measures less than nine inches, total length.
- 3.0 It shall be unlawful for any commercial finfisherman to sell, trade or barter or attempt to sell, trade or barter any scup or part thereof that is landed in this State by said commercial finfisherman after a date

when the de minimis amount of commercial landings of scup is determined to have been landed in this State by the Department. The de minimis amount of scup shall be 0.1% of the coastwide commercial quota as set forth in the Scup Fishery Management Plan approved by the Atlantic State Marine Fisheries Commission.

- 4.0 It shall be unlawful for any recreational fisherman to have in possession more than ~~40~~ 30 scup at or between the place where said scup were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

**DEPARTMENT OF STATE**  
**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

**ORDER**

**3900 Board of Social Work Examiners**

After due notice in the *Delaware Register of Regulations* and two Delaware newspapers, a public hearing was held on January 22, 2024 at a scheduled meeting of the Delaware Board of Social Work Examiners ("Board") to receive comments regarding proposed amendments to the Board's rules and regulations. The proposed amendments change the requirements for direct supervision to specify that supervision may be through 100% live video conferencing at the discretion of the supervisor. The Code of Ethics is also revised to expand the prohibition against discrimination to include gender identity and gender expression and to state that all licensees must comply with the Code of Ethics adopted by the National Association of Social Workers. Telehealth requirements are revised to exempt individuals practicing through a Delaware interstate telehealth registration from the prerequisite that the individual hold a Delaware license. Language pertaining to licensure by grandfathering is stricken because the grandfathering window has closed. Finally, revisions have been made to ensure compliance with style requirements.

The proposed changes to the rules and regulations were published in the *Delaware Register of Regulations*, Volume 27, Issue 7, on January 1, 2024. Notice of the January 22, 2024 hearing was published in the *News Journal* (Exhibit 1) and the *Delaware State News*. Exhibit 2. Pursuant to 29 **Del.C.** § 10118(a), the date to receive final written comments was February 6, 2024. The Board deliberated on the proposed revisions at its regularly scheduled meeting on March 18, 2024.

**Summary of the Evidence and Information Submitted**

The following exhibits were made a part of the record:

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

There was no public comment presented in the form of testimony at the January 22, 2024 hearing. Further, no written comment was submitted either before the hearing or during the 15 day period following the hearing.

**Findings of Fact and Conclusions**

Pursuant to 24 **Del.C.** § 3906(a)(1), the Board has the statutory authority to promulgate rules and 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 rules and regulations. There was no verbal testimony or written comment



submitted. In these circumstances, the Board finds no reason to amend the rules and regulations as proposed.

## Decision and Effective Date

The Board 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. The Board further finds that the rules and regulations shall be adopted as final in the form proposed. These changes will become effective ten days following publication of this Final Order in the *Delaware Register of Regulations*.

## Text and Citation

The exact text of the rules and regulations, as amended, is attached to this order as Exhibit A.

**IT IS SO ORDERED** this 18th day of March 2024 by the Delaware Board of Social Work Examiners.

### DELAWARE BOARD OF SOCIAL WORK EXAMINERS

/s/ Jamie Brown, LCSW

/s/ Joseph Anastasio, LCSW

/s/ Fran Franklin, Ph.D., LCSW

/s/ Kim Epolito

/s/ Janet Urdahl, LCSW

Dajoun Sewell (ABSENT)

/s/ Victor Kyler

**\*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 2024 issue of the *Register* at page 502 (27 DE Reg. 502). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**<https://regulations.delaware.gov/register/april2024/final/27 DE Reg 776 04-01-24.htm>**

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## DEPARTMENT OF TRANSPORTATION

### DIVISION OF TRANSPORTATION SOLUTIONS

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

## ORDER

### 1207 Electronic Speed Monitoring System

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

The Department, through its Division of Transportation Solutions is adopting the regulation to administer the ESMS program, which is established in support of DelDOT's Highway Safety Improvement Program and, in particular, its Strategic Highway Safety Plan, which has identified speeding as an emphasis area to target the overall program goal of reducing fatalities and serious injuries on all public roads.

## Findings of Fact and Conclusions of Law

1. The public was given notice and the opportunity to provide comments in writing concerning the proposed regulation. This proposed regulation was originally published in the December 2023 *Register* and then re-proposed and replaced in the February 2024 *Register*. The Department is now finalizing that which was proposed in the February 2024 *Register*.

2. The proposed regulations are useful and proper, and the Department believes that the adoption of these regulations is appropriate.
3. Per Section 10118 (b)(3) of Title 29 regarding the State's greenhouse gas emissions reduction targets and resiliency to climate change, assessment is not practical for this regulation.

**Decision and Effective Date**

Based on the provision of Delaware law and the record of this docket, I hereby adopt the Electronic Speed Monitoring System as set forth in the version attached, to be effective April 11, 2024.

It is ordered on this 14 day of March, 2024.

Nicole Majeski, Secretary  
Delaware Department of Transportation

**\*Please note that no changes were made to the regulation as originally proposed and published in the February 2024 issue of the *Register* at page 592 (27 DE Reg. 592). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/april2024/final/27 DE Reg 777 04-01-24.htm>

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## DEPARTMENT OF INSURANCE OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 3366 and 3570A (18 Del.C. §§ 3366 and 3570A)

### NOTICE

#### **Autism Spectrum Disorders Coverage**

The purpose of this notice is to comply with 18 **Del.C.** §§3366(b) (Health Insurance Contracts - Autism spectrum disorders coverage) and 3570A(b) (Group and Blanket Health Insurance - Autism spectrum disorders coverage), which require that:

After December 31, 2012, the Insurance Commissioner shall, on or before April 1 of each calendar year, publish in the *Delaware Register of Regulations* an adjustment to the maximum benefit [for coverage for applied behavior analysis services, which is] equal to the change in the United States Department of Labor Consumer Price Index for all Urban Consumers (CPI-U) in the preceding year and the published adjusted maximum benefit shall be applicable to all health insurance policies issued or renewed thereafter.

The General Assembly established the maximum benefit on August 13, 2012 at \$36,000 per twelve-month period per person (See SB No. 22/SA Nos 1&3, 146th Gen. Assem. (2011-2012)), and specified that the benefit "shall not be subject to any limits on the number of visits an individual may make to an autism services provider, or that a provider may make to an individual, regardless of the locations in which services are provided."

Using the CPI-U Historical Tables published by the U.S. Bureau of Labor Statistics at [https://www.bls.gov/regions/mid-atlantic/data/consumerpriceindexhistorical\\_us\\_table.htm](https://www.bls.gov/regions/mid-atlantic/data/consumerpriceindexhistorical_us_table.htm), the maximum benefit for coverage for applied behavior analysis services per person for 2024 is \$37,582.78. The maximum per person 2024 benefit shall go into effect on April 1, 2024 and shall remain in effect until March 31, 2025.

Questions concerning this notice should be directed to:

Delaware Department of Insurance  
ATTN: Consumers Division - Autism spectrum disorders coverage  
1351 West North St., Ste. 101  
Dover, DE 19904

[compliance@delaware.gov](mailto:compliance@delaware.gov) (please put "Autism spectrum disorders coverage" in the subject line of the email).

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# GENERAL NOTICES

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF AIR QUALITY

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

Secretary's Order No.: 2024-A-0011

**RE: Approving Final Revision to Delaware's State Implementation Plan: *Second Limited Maintenance Plan Under the 2006 24-hour Fine Particulate Matter National Ambient Air Quality Standard***

**Date of Issuance: March 12, 2024**

**Effective Date of the Amendment: March 12, 2024**

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

#### **Background, Procedural History and Findings of Fact**

This Order relates to the Department's proposed revision to Delaware's State Implementation Plan ("SIP") addressing the *Second Limited Maintenance Plan ("LMP") Under the 2006 24-hour Fine Particulate Matter ("PM<sub>2.5</sub>") National Ambient Air Quality Standard ("NAAQS")*. Delaware is required by Section 110 of the federal *Clean Air Act ("CAA")* to submit to U.S. Environmental Protection Agency ("EPA") a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS established by the EPA.

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

The EPA establishes the PM<sub>2.5</sub> NAAQS to safeguard human health, welfare, and the environment against criteria pollutants. Particulate Matter consists of solid particles and liquid droplets found in the atmosphere. Fine particles, known as PM<sub>2.5</sub>, possess the ability to infiltrate deep into the lungs and degrade environmental health by reducing visibility. The maintenance plan aims to maintain air quality below the NAAQS and includes provisions for contingency measures in the event of PM<sub>2.5</sub> NAAQS exceedance.

On December 14, 2009, EPA designated the Philadelphia-Wilmington, PA-NJ-DE ("Philadelphia NAA") as nonattainment for the 2006 24-hour PM<sub>2.5</sub> NAAQS. Subsequently, years later in 2014, the Philadelphia NAA was classified as "Moderate" non-attainment. The Philadelphia Area includes New Castle County in Delaware; Burlington, Camden, and Gloucester Counties in New Jersey; and Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties in Pennsylvania.

The EPA requires states with nonattainment areas that are redesignated to attainment to establish a maintenance plan outlining procedures in the event an area experiences an exceedance of the 2006 24-hour PM<sub>2.5</sub> NAAQS threshold of 35 micrograms per cubic meter of air ( $\mu\text{g}/\text{m}^3$ ). Moreover, the plan must include control measures to uphold maintenance and contingency provisions to assure that the State will promptly correct any violation of the standard occurring after the area's redesignation as attainment. Additionally, the plan must implement these measures to maintain attainment for 10 years.

In 2012, Delaware submitted the first 10-year maintenance plan and redesignation request, through 2025, in

adherence to Section 175A of the CAA. This plan formally requested that EPA redesignate the moderate nonattainment area to attainment for the 2006 24-hr PM<sub>2.5</sub> NAAQS. As a result, the EPA approved Delaware's 10-year Maintenance Plan on August 5, 2014, and effective September 4, 2014, the area was redesignated as attainment for the PM<sub>2.5</sub> NAAQS under the final rule (79 FR 45350).

As outlined in Section 175A of the CAA and 42 U.S.C. §7505(b) states must submit revisions to the first 10-year maintenance plan eight years after the EPA approved the area's original redesignation (September 4, 2014). The second maintenance plan constitutes a SIP revision and must provide for maintenance of the relevant NAAQS in the area for an additional 10 years following the first 10-year period, including contingency measures to ensure prompt correction of any violation of the NAAQS. Additionally, Section 175A of the CAA further states that the plan shall contain additional measures, if any, deemed necessary to ensure such maintenance. Mobile vehicle emission budgets for transportation conformity purposes are also established within the second maintenance plan.

While Section 175A of the CAA mandates Delaware to submit a second maintenance plan by September 4, 2022, the EPA's Region III Office of Air Program Planning deferred the submission of the revised SIP, in order to create specific Limited Maintenance Program guidance for PM<sub>2.5</sub>.

On October 27, 2022, the EPA released *Guidance on the Limited Maintenance Plan Option for Moderate PM<sub>2.5</sub> Nonattainment Areas and PM<sub>2.5</sub> Maintenance Areas (PM<sub>2.5</sub> LMP Guidance)*. The EPA developed this guidance for areas that have been meeting the PM<sub>2.5</sub> NAAQS for five years or longer, have a 'moderate' designation, have already been redesignated to attainment, and are in the process submitting a second maintenance plan under the CAA Section 175A. The PM<sub>2.5</sub> LMP Guidance applies the EPA's 2001 *Limited Maintenance Plan Option for Moderate PM<sub>10</sub> Nonattainment Areas Guidance (PM<sub>10</sub> LMP Guidance)*. The PM<sub>10</sub> LMP Guidance gave States with low design values and limited growth in on-road motor vehicle PM<sub>10</sub> emissions, the option of submitting a Limited Maintenance Plan.

This guidance allows Delaware to adhere to an LMP under two conditions: (1) if the annual average design values ("ADV") of PM<sub>2.5</sub> are below the identified threshold level or below the critical design value ("CDV") for New Castle County and 2) future growth in the area does not exceed the motor vehicle regional emissions analysis test requirements. An LMP requires states to submit a plan based on an analysis of current and historical air quality data.

The Department conducted analysis of Delaware's PM<sub>2.5</sub> 24-hr NAAQS 3-year interval average within the past five years, specifically monitoring New Castle County from 2014-2020. The analysis determined the ADV for PM<sub>2.5</sub> in New Castle County measured 19.00 µg/m<sup>3</sup>. This design value is less than the CDV, which amounts to 30.3 µg/m<sup>3</sup> for Delaware. Therefore, New Castle County meets the first criterion of having low design values and qualifies to submit an LMP.

Furthermore, the Department demonstrated that the Motor Vehicle Analysis is less than the CDV for Delaware (30.3 µg/m<sup>3</sup>). Utilizing the 2017 Emissions Inventory data and the projected increase in vehicle miles traveled (VMT) over the 10-year maintenance period between 2025-2035 (0.065) and the New Castle County's ADV of 19.00 µg/m<sup>3</sup>, the Department calculated the motor vehicle analysis for New Castle County is 19.43 µg/m<sup>3</sup>. This analysis concludes Delaware meets the second criterion necessary for submitting an LMP.

In accordance with EPA's PM<sub>2.5</sub> LMP Guidance, additional guidance received from EPA's Region 3 Office of Air Program Planning, and the requirements of Section 175A of the CAA, the Department is proposing revisions to the SIP, to satisfy the requirements of the second 10-year *Particulate Matter Limited Maintenance Plan*. The second PM<sub>2.5</sub> LMP ensures that Delaware will continue to maintain the NAAQS through 2035 and addresses the following elements:

- Emission Inventory - 2008 Attainment Year Inventory to identify the level of emissions sufficient to achieve the NAAQS and 2017 emissions inventory to show emissions reductions.

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# GENERAL NOTICES

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- Monitoring Network - description of PM<sub>2.5</sub> monitoring network.
- Control Measures - controls needed to attain the NAAQS.
- Contingency Plan - specific control measures that could be implemented if the area fails to meet the 2006 24-hr PM<sub>2.5</sub> NAAQS.
- Maintenance Demonstration - demonstrates that the area has continued to meet the NAAQS.

The Department has the statutory basis and legal authority to act with regard to the proposed SIP revision pursuant to 7 *Del.C.* Chapter 60. The Department published the General Notice of this proposed SIP revision, and of the January 23, 2024, public hearing to be held in this matter, in the January 1, 2024, *Delaware Register of Regulations*. The Record remained open for comment following the public hearing through February 7, 2024. No public comment was received by the Department during any phase of this hearing matter. All proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Theresa Smith, prepared a Hearing Officer's Report dated February 8, 2024 ("Report"). The Report documents the proper completion of the required SIP revision process, establishes the Record, and recommends the approval of the proposed SIP revision into Delaware's SIP document. The Department will meet the attainment plan requirements associated with the PM<sub>2.5</sub> NAAQS, as set forth in Section 175A of the CAA and 42 U.S.C. §7505(b) and provide EPA with revisions to Delaware's SIP - *Second Limited Maintenance Plan Under the 2006 24-hour Fine Particulate Matter National Ambient Air Quality Standard*, as attached to the Report as Appendix "A."

## Reasons and Conclusions

Based on the Record developed by the Department's experts and established by the Hearing Officer's Report, I find that the Department's proposed revision to Delaware's SIP - *Second Limited Maintenance Plan Under the 2006 24-hour Fine Particulate Matter National Ambient Air Quality Standard*, meets the attainment plan requirements associated with the PM<sub>2.5</sub> NAAQS, as set forth in Section 175A of the CAA and 42 U.S.C. §7505(b). I further find that the Department's experts in the Division of Air Quality fully developed the Record to support adoption of the proposed SIP revisions as final. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the same be promulgated as final.

The following reasons and conclusions are hereby entered:

1. The Department has the statutory basis and legal authority to act with regard to this proposed SIP revision, pursuant to 7 *Del.C.* Ch. 60;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Ch. 60, to issue an Order adopting this proposed SIP revision as final;
3. The Department provided adequate public notice of this proposed SIP modifications, and all proceedings associated with the same, in a manner required by the law and regulations. The Department provided the public with an adequate opportunity to comment on the proposed SIP revisions, and held the Record open for receipt of public comment subsequent to the date of the hearing (through February 7, 2024), consistent with Delaware law, in order to consider the same before making any final decision;
4. The Department's Hearing Officer's Report, including its established Record and the recommended proposed SIP revisions as set forth in Appendix "A," is hereby adopted to provide additional reasons and findings for this Order;
5. Promulgation of the proposed SIP revisions will enable the Department to meet the attainment plan requirements associated with the PM<sub>2.5</sub> NAAQS, as set forth in Section 175A of the CAA and 42 U.S.C. §7505(b) and provide EPA with revisions to Delaware's SIP - *Second Limited Maintenance Plan Under the*

*2006 24-hour Fine Particulate Matter National Ambient Air Quality Standard;*

6. The Department's proposed SIP revision, as published in the January 1, 2024 *Delaware Register of Regulations* is set forth in Appendix "A" as noted above, and is adequately supported, is not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it is approved as a final revision to Delaware's SIP document, which shall become effective immediately upon the signing of this Order;

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

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

Shawn M. Garvin  
Secretary

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

<http://regulations.delaware.gov/register/april2024/general/Appendix A - Proposed Daily 2006 PM25 Limited Maintenance Plan 12-13-2023.pdf>

<http://regulations.delaware.gov/register/april2024/general/Attachment to Appendix A- Proposed Daily 2006 PM25 Limited Maintenance Plan 12-13-2023.pdf>

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## 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 - Keenwick West Subdivision**

March 4, 2024

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

Ms. Smallwood,

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

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

§4505. Traffic control devices.

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## GENERAL NOTICES

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

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

"No Trucks Over 2 Axles Except Local Services" on all local streets in the Keenwick West subdivision

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 8, 2024**, commencing at **1:30 p.m.** The public hearing will be conducted remotely. The draft docket decisions and draft resolutions that will be subjects of the public hearing, along with details about the remote platform and how to attend, will be posted on the Commission's website, [www.drbc.gov](http://www.drbc.gov), at least ten (10) days prior to the meeting date.

The Commission's quarterly business meeting will be held on **Wednesday, June 5, 2024**, commencing at **10:30 a.m.** at the Tusten Theatre, 210 Bridge Street, Narrowsburg, NY 12764. An agenda will be posted on the Commission's website, [www.drbc.gov](http://www.drbc.gov), at least ten (10) days prior to the meeting date.

For additional information, including links to live streams of these events, please visit the DRBC website at [www.drbc.gov](http://www.drbc.gov) or contact Patricia Hausler at [patricia.hausler@drbc.gov](mailto:patricia.hausler@drbc.gov).

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

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**DELAWARE STATE FIRE PREVENTION COMMISSION**  
**PUBLIC NOTICE**  
**710 Ambulance Service Regulations**

The Delaware State Fire Prevention Commission, pursuant to 16 **Del.C.** § 6604(1), proposes to revise regulation 710. The proposed regulations change the age requirement for EMT students in subsection 15.4.3. This amendment will be in addition to amendments recently proposed in February 2024.

The Board will accept written comments, which should be sent to Sherry Lambertson, Executive Specialist for the Delaware Fire Prevention Commission, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, DE 19904. Written comments may also be sent by email to the following email address: [fire.commission@delaware.gov](mailto:fire.commission@delaware.gov). The Public Comment period will end on Friday, May 3, 2024.

The proposed additions to the rule are reflected in underline. Deletions are reflected in strike through.

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**DEPARTMENT OF AGRICULTURE**  
**HARNESS RACING COMMISSION**  
**PUBLIC NOTICE**  
**501 Harness Racing Rules and Regulations**Summary

The Harness Racing Commission (the "Commission") proposes to amend its Regulation in accordance with 3 **Del.C.** §10005. The proposed regulations amend Rules 3.3, 5.3.2.1, 5.3.5, 7.4.1.6, 8.3.5.9.6, and 8.5.1 to change Racing Office operating procedures, impose accountability on substitute trainers for horse conditions on the day of a race, and change horse qualifying eligibility to adhere to the practice used by the Commission. Other sections of the Regulation issued by the Commission are not affected by the aforementioned proposals.

Comments

A copy of the proposed regulations is being published in the April 1, 2024 edition of the Delaware Register of Regulations. A copy is also on file in the office of the Harness Racing Commission 2320 South Dupont Highway, Dover, Delaware 19901 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](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 Commission at the above address as to whether these proposed regulations should be adopted, rejected or modified. Pursuant to 29 *Del.C.* § 10118(a), public comments must be received on or before May 1, 2024. Written materials submitted will be available for inspection at the above address.

Adoption of Proposed Regulation

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

Effective Date of Amendments to Regulations

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

Delaware Harness Racing Commission

Mark A. Davis, Executive Director

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**DELAWARE STANDARDBRED BREEDERS' FUND**  
**PUBLIC NOTICE**  
**502 Standardbred Breeders' Fund Regulations**

Summary

The State of Delaware, Department of Agriculture's Standardbred Breeders' Fund ("the Fund") hereby gives notice of its intention to amend its Regulation in accordance with 29 **Del.C.** §4815(b)(4)b.2. The proposed regulation amends Rules 10.2.2 and 10.2.3 by eliminating the restriction on Delaware stallions from being able to breed during racing season, and instead, permits stallions to compete and breed simultaneously. This proposal is an attempt to allow greater flexibility to small breeders. Other sections of the Regulation issued by the Commission are not affected by the aforementioned proposals.

Comments

A copy of the proposed regulations is being published in the April 1, 2024 edition of the Delaware Register of Regulations. A copy is also on file in the office of the Standardbred Breeders' Fund, 2320 South Dupont Highway, Dover, Delaware 19901 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](https://regulations.delaware.gov/register/current_issue.shtml).

The Fund solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty days (30) after these proposed amended regulations are promulgated in the *Delaware Register of Regulations*. Any such submissions should be mailed or hand-delivered to Ms. Judy Davis-Wilson, Administrator, Delaware Standardbred Breeders' Fund Program whose address is State of Delaware, Department of Agriculture, 2320 South duPont Highway, Dover, Delaware 19901 by May 1, 2024.

Adoption of Proposed Regulation

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

Effective Date of Amendments to Regulations

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

Delaware Standardbred Breeders Fund  
 Judy Davis-Wilson, Executive Administrator

**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/>

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**DEPARTMENT OF FINANCE**  
**OFFICE OF THE STATE LOTTERY**  
**PUBLIC NOTICE****203 Video Lottery and Table Game Regulations****A. Type of Regulatory Action Required**

Amendment to Existing Regulations

**B. Synopsis of Subject Matter of the Regulation**

Pursuant to 29 **Del.C.** §4805, the Delaware State Lottery proposes to amend 10 **DE Admin. Code** 203 Video Lottery and Table Game Regulations. The Delaware State Lottery will seek public comments on the issue of whether certain amendments to its current regulation should be adopted.

The proposed amendments are to subsections 4.18, 4.19, 14.14.1, 14.14.2, 14.14.3 in 10 **DE Admin. Code** 203.

The amendment to these subsections will simplify current regulations that unnecessarily assign different term lengths to initial gaming licenses versus renewal gaming licenses.

Persons wishing to present their views regarding this matter may do so by submitting written comments by the close of business on or before May 1, 2024 at the offices of the Delaware State Lottery at 1575 McKee Road, Suite 102, Dover, DE 19904. A copy of these regulations is available from the above address or may be viewed at the Delaware State Lottery office at the same address.

**C. Summary of Proposal**

The first proposed amendment is to subsection 4.18 and makes all Gaming Vendor licenses valid for 3 years.

The second proposed amendment is to subsection 4.19 and makes all Non-Gaming Vendor licenses valid for 4 years.

The third proposed amendment is to subsection 14.14.1 and makes all Gaming Room Service licenses valid for 5 years.

The fourth proposed amendment is to subsection 14.14.2 and makes all Gaming Service licenses valid for 4 years.

The fifth proposed amendment is to subsection 14.14.3 and makes all Key licenses valid for 3 years.

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DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL  
CONTROL

## DIVISION OF AIR QUALITY

## PUBLIC NOTICE

## 1130 Title V State Operating Permit Program

## 1. TITLE OF THE REGULATIONS:

7 **DE Admin. Code** 1130 "Title V State Operating Permit Program"

## 2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The Department of Natural Resources and Environmental Control (DNREC) is proposing to amend 7 **DE Admin. Code** 1130, Section 6.0 "Permit Contents", subsections 6.7 and 6.1.3.3.3.1 to remove emergency affirmative defense provisions and references. 7 **DE Admin. Code** 1130 is based on Title 40 of the Code of Federal Regulations (CFR) Part 70, which outlines requirements for state operating permit programs. Subsection 6.7 of 1130 includes guidance on claiming affirmative defenses for emission exceedances for emergencies.

On July 21, 2023, the Environmental Protection Agency (EPA) issued a final rule (88 FR 47029) which removed all emergency affirmative defense provisions for state and federal operating permit programs in 40 CFR Part 70.6(g) and 71.6(g). Therefore, the Division is proposing to remove the emergency affirmative defense provisions and references from 7 **DE Admin. Code** 1130, to maintain consistency with the current federal requirements.

Additional amendments correct a typographical error (7 **DE Admin. Code** 1130, Section 8.0 of Appendix A "Insignificant Activities"). This correction is not substantive and does not change the intent or purpose of the regulation.

## 3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

## 4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Del.C.** Ch. 60, Section 6010 (a) and (c).

## 5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None.

## 6. NOTICE OF PUBLIC COMMENT:

A virtual public hearing (Docket # 2023-R-A-0015) will be held on Thursday, April 25, 2024, beginning at 6 p.m. The web link to the virtual hearing can be accessed through the DNREC Public Hearings site at <https://de.gov/dnrechearings>. If prompted for a password, please use: 098243. To access the audio-only portion of the virtual hearing, dial 1-646-931-3860 and enter the Meeting ID 889 9258 3729. Closed captioning in over 20 languages, including English and Spanish, is available to attendees via the Zoom platform utilized for all DNREC Public Hearings.

Those wishing to offer verbal comments during DNREC public hearings must pre-register no later than noon on the date of the virtual hearing at <https://de.gov/dnreccomments> or by telephone at 302-739-9001.

The proposed amendments may be inspected online starting April 1, 2024 at [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml), or in-person, by appointment only, by contacting Taylor Englert by phone at 302-323-4542 or by email at [Taylor.Englert@delaware.gov](mailto:Taylor.Englert@delaware.gov).

The Department will accept public comment through the close of business on Friday, May 10, 2024. Comments will be accepted in written form via email to [DNRECHearingComments@delaware.gov](mailto:DNRECHearingComments@delaware.gov), or by using the online form at <https://de.gov/dnreccomments>, or by U.S. mail to the following address:

Theresa Smith, Hearing Officer  
DNREC - Office of the Secretary  
89 Kings Highway, Dover, DE 19901

7. PREPARED BY:  
Taylor Englert  
Division of Air Quality-DNREC  
715 Grantham Ln, New Castle, DE 19720  
Phone: (302)323-4542; email: [Taylor.Englert@delaware.gov](mailto:Taylor.Englert@delaware.gov)
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**DEPARTMENT OF STATE**  
**OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER**  
**PUBLIC NOTICE**  
**601 (Formerly Rule 35.1) Gathering Licenses**

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 4 **Del.C.** §304, the Delaware Alcoholic Beverage Control Commissioner proposes to update its rules related to gathering licenses issued by the Office of the Alcoholic Beverage Control Commissioner.

The Commissioner previously noticed and published proposed changes to 4 **DE Admin Code** 601 in the January 1, 2024 edition of the *Delaware Register of Regulations* and afforded a 30 day period for public comment. The Commissioner published a General Notice on February 1, 2024, to extend the public comment period an additional 30 days, until March 4, 2024, because of a nonfunctioning email address included in the notice.

Based upon the comments received during the public comment period, which has expired, the Commissioner determined that substantive changes to the regulation are needed and hereby notices and proposes additional changes for public comment. These additional changes relate primarily to how a nonprofit organization is defined; the new proposed changes track specific language used by the Internal Revenue Service. In addition, the proposed changes include a specific post-gathering event report, a report which requests 3 numbers related to the sales and net proceeds of alcohol, including total alcohol sales and/or portion of ticket sales related to alcohol; costs of the alcohol; and the net proceeds from the sale of alcohol at the event.

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

Doug Denison  
Deputy Commissioner  
Office of the Delaware Alcoholic Beverage Control Commissioner  
820 N. French St., 10th Floor  
Wilmington, DE 19801

Comments may also be directed via electronic mail to [oabccquestions@delaware.gov](mailto:oabccquestions@delaware.gov). Any written submission in response to this notice and relevant to the proposed regulations must be received by the Delaware Alcoholic Beverage Control Commissioner no later than 4:00 p.m. EST, May 2, 2024.

The action concerning determination of whether to adopt the proposed regulations will be based upon consideration of the written comments and any other written materials filed by the public.

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**OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER**  
**PUBLIC NOTICE**  
**911 A Rule Permitting Limited Self-Delivery of Beer**

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 4 **Del.C.** §304, the Delaware Alcoholic Beverage Control Commissioner proposes to establish a new rule related to permitting limited self-delivery of beer in the State.

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

Doug Denison  
Deputy Commissioner  
Office of the Delaware Alcoholic Beverage Control Commissioner  
820 N. French St., 10th Floor  
Wilmington, DE 19801

Comments may also be directed via electronic mail to [OABCCrulescomments@delaware.gov](mailto:OABCCrulescomments@delaware.gov). Any written submission in response to this notice and relevant to the proposed regulations must be received by the Delaware Alcoholic Beverage Control Commissioner no later than 4:00 p.m. EST, May 2, 2024.

The action concerning determination of whether to adopt the proposed regulations will be based upon consideration of the written comments and any other written materials filed by the public.

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