
Delaware Register of Regulations

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

*Cover Photo
Dolores Michels*

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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

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DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF WASTE AND HAZARDOUS SUBSTANCES**

Statutory Authority: 7 Delaware Code, Chapters 60 and 74 and Section 6010(a) (7 **Del.C.** Chs. 60 & 74 & §6010(a))
7 **DE Admin. Code** 1351

ERRATA**1351 Underground Storage Tank Systems**

* **Please Note:** The Department of Natural Resources and Environmental Control regulation, 7 **DE Admin. Code** 1351 Underground Storage Tank Systems, was published as proposed in the *Delaware Register of Regulations*, 27 **DE Reg.** 87 (08/01/23). Section 2.0 Definitions - "Tank" was inadvertently published incorrectly.

Section 2.0 Definitions - "Tank" was published as:

"**Tank**" means that portion of an Underground Storage Tank System that consists of the stationary structure constructed of Compatible materials designed to contain an accumulation of a single Regulated ~~Substances~~ Substance and does not include any Connected Piping or Ancillary Equipment."

Section 2.0 Definitions - "Tank" should have read:

"**Tank**" means that portion of an Underground Storage Tank System that consists of the stationary structure constructed of Compatible materials designed to contain an accumulation of a single Regulated ~~Substances~~ Substance and does not include any Connected Piping or Ancillary Equipment."

This regulation is corrected and being published as a final regulation in the January 2024 *Register*.

Symbol Key

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

Emergency Regulations

Under 29 **Del.C.** §10119 an agency may promulgate a regulatory change as an Emergency under the following conditions:

§ 10119. Emergency regulations.

If an agency determines that an imminent peril to the public health, safety or welfare requires the adoption, amendment or repeal of a regulation with less than the notice required by § 10115, the following rules shall apply:

(1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable;

(2) The order adopting, amending or repealing a regulation shall state, in writing, the reasons for the agency's determination that such emergency action is necessary;

(3) The order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days;

(4) When such an order is issued without any of the public procedures otherwise required or authorized by this chapter, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and

(5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the *Register of Regulations*. (60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 71 Del. Laws, c. 48, § 10.)

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

Statutory Authority: 7 Delaware Code, Section 903(h) and 29 Delaware Code, Section 10119 (7 **Del.C.** §903(h) & 29 **Del.C.** §10119)
7 DE Admin. Code 3505

ORDER No: 2023-F-0031

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

Pursuant to 7 *Del.C.* §903(h) and 29 *Del.C.* §10119, the Department of Natural Resources and Environmental Control ("Department") is adopting amendments to Tidal Finfish Regulation 7 DE Admin. Code 3505: *Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements* ("Regulation"). The Department is authorized under 29 *Del.C.* §10119 to adopt emergency regulations when an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 *Del.C.* §10115. Moreover, 7 *Del.C.* §903(h) authorizes the Department to adopt emergency regulations when such regulations are necessary to deal with an actual or imminent public health threat or danger to a fishing resource or habitat involving finfish.

REASON FOR THE EMERGENCY ORDER

In response to the evolving seasonal distribution of migratory striped bass and market conditions, Delaware's commercial gill net fisherman requested a modification to the dates of Delaware's spring anchor gill net season for 2024. The contingent of the coastal migratory striped bass population that spawns in the Delaware River has been entering Delaware Bay earlier in the year compared to when the current Regulation was established in the 1990s.

Consequently, they become available to anchor gill netters sooner. For the past three years, the compensation offered to gill netters for early-season striped bass has been substantial. Therefore, the gill netters aim to capitalize on these conditions by focusing on catching striped bass in February rather than delaying until March. Delaware's Advisory Council on Tidal Finfisheries approved a motion by unanimous consent to recommend that the Department undertake this management measure. The Department is implementing this management measure, as recommended by Delaware's Advisory Council on Tidal Finfisheries, through this Emergency Order until this revision to the Regulation can be completed in accordance with 29 *Del.C.* Chapter 101.

This Emergency Order revises the dates for the 2024 anchor gill net season from March 1 through May 10 to February 15 through April 26. This measure is compliant with the Atlantic States Marine Fisheries Commission's Amendment 7 to the *Interstate Fishery Management Plan for Atlantic Striped Bass* and it will result in no change to Delaware's commercial striped bass quota. The Department finds it necessary to adopt these measures pursuant to 7 *Del.C.* §903(h) and implement the revisions prior to the commencement of the 2024 anchor gill new season. Furthermore, under the procedures set forth in 29 *Del.C.* §10119, I find it necessary to enact these management measure to ensure the welfare of the commercial striped bass fishery.

EFFECTIVE DATE OF ORDER

This Emergency Order shall take effect February 15, 2024, and shall remain in effect for 120 days. At the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 *Del.C.* §10119(3).

PETITION FOR RECOMMENDATIONS

The Department will receive, consider, and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Fisheries Section, Division of Fish & Wildlife, 89 Kings Highway, Dover, DE 19901.

ORDER

It is hereby ordered, this 1st day of December, 2023 that the above-referenced amendments to 7 DE Admin. Code 3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements, copies of which are hereby attached, are adopted pursuant to 7 *Del.C.* §903(h) according to the procedures of 29 *Del.C.* §10119 and supported by the evidence contained herein.

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 AM on April 27 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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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.

DELAWARE STATE FIRE PREVENTION COMMISSION

Statutory Authority: 16 Delaware Code, Section 6604(1) (16 **Del.C.** §6604(1))
1 **DE Admin. Code** 709

PUBLIC NOTICE**709 Fire Service Standards**

The Delaware State Fire Prevention Commission, pursuant to 16 **Del.C.** § 6604(1), proposes to revise regulation 709, by updating language and labels. The proposed regulations update language related to NFPA standards, requirements for new Fire/EMS stations, training requirements, and handling of fire fighter injury investigations.

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. The Public Comment period will end on Friday, February 2, 2024.

***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/january2024/proposed/27 DE Reg 470RFA 01-01-24.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/january2024/proposed/27 DE Reg 470 01-01-24.htm>

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

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

PUBLIC NOTICE

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

608 Unsafe School Choice Option Policy

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

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

The Department considered GACEC's written submittal. As a result of GACEC's written submittal, the Department revised proposed subsections 3.2 and 5.1. The Department did not make any further changes as a result of GACEC's written submittal. The revisions to proposed subsections 3.2 and 5.1 are substantive and, pursuant to 29 **Del.C.** §10118(c), the Department is republishing the proposed regulation with the revisions.

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 February 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 State's unsafe school choice policy 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 ensure all students receive an equitable education by ensuring a safe school option.

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

safe school option.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation concerns the State's unsafe school choice policy 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 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 because the reporting requirement already exists.

7. Will the 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.

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

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

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

<https://regulations.delaware.gov/register/january2024/proposed/27 DE Reg 471RFA 01-01-24.pdf>

608 Unsafe School Choice Option Policy

1.0 Purpose

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

2.0 Definitions

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

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

"Department" means the Delaware Department of Education.

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

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

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

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

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

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

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

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

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

~~"Unsafe Incidents"~~ means any of the following:

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

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

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

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

3.0 Identification of Persistently Dangerous Schools

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

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

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

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

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

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

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

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

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

PROPOSED REGULATIONS

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

4.0 Students Attending Schools Labeled as Persistently Dangerous

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

5.0 Students Who are Victims of a Violent Felony

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

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 922

PUBLIC NOTICE

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

922 Children with Disabilities Subpart A, Purposes and Definitions

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), the Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 922 Children with Disabilities Subpart A, Purposes and Definitions. This regulation is being amended to add definitions that help clarify changes made to 14 DE Admin. Code 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies, as well as 14 DE Admin. Code 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs. Other grammatical changes were made to comply with the *Delaware Administrative Code Drafting and Style Manual*. This regulation will be effective July 1, 2024.

The Department will hold public hearings, which are available in person or virtually, on the proposed regulation changes as follows:

Wednesday, January 17, 2024 from 5:00 p.m. - 5:30 p.m. - Delaware Department of Education, 2nd Floor, Cabinet Room, 401 Federal Street, Dover, DE 19901. Virtual meeting details can be found here (<https://publicmeetings.delaware.gov/#/meeting/77022>).

Please register in advance: <https://de-doe.webex.com/weblink/register/r639b03aa022d11f47e7d5db223b6451e>

Monday, February 19, 2024 from 12:00 p.m. - 12:30 p.m. - Delaware Department of Education, 2nd Floor, Cabinet Room, 401 Federal Street, Dover, DE 19901. Virtual meeting details can be found here (<https://publicmeetings.delaware.gov/#/meeting/77023>).

Please register in advance: <https://de-doe.webex.com/weblink/register/rbe0845ce0bbc91bf7932a12839bf1578>

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 March 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. NOTE: IDEA regulations are out for comment for 60 days.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation will help improve student achievement as measured against state achievement standards as they protect students with disabilities by providing appropriate definition and purpose of services.

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 will help ensure all students' health and safety are adequately protected, especially those students with disabilities.

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/january2024/proposed/27 DE Reg 474RFA 01-01-24.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/january2024/proposed/27 DE Reg 474 01-01-24.htm>

OFFICE OF THE SECRETARY

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

PUBLIC NOTICE

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

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

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), the Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 923 Children with Disabilities Subpart B General Duties and Eligibility of Agencies. This regulation is being amended to update Section 16.0 Placements so that it aligns with 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs. Other grammatical changes were made to comply with the *Delaware Administrative Code Drafting and Style Manual*. This regulation will be effective July 1, 2024.

The Department will hold public hearings, which are available in person or virtually, on the proposed regulation changes as follows:

Wednesday, January 17, 2024 from 5:00 p.m. - 5:30 p.m. - Delaware Department of Education, 2nd Floor, Cabinet Room, 401 Federal Street, Dover, DE 19901. Virtual meeting details can be found here (<https://publicmeetings.delaware.gov/#/meeting/77022>).

Please register in advance: <https://de-doe.webex.com/weblink/register/r639b03aa022d11f47e7d5db223b6451e>

Monday, February 19, 2024 from 12:00 p.m. - 12:30 p.m. - Delaware Department of Education, 2nd Floor, Cabinet Room, 401 Federal Street, Dover, DE 19901. Virtual meeting details can be found here (<https://publicmeetings.delaware.gov/#/meeting/77023>).

Please register in advance: <https://de-doe.webex.com/weblink/register/rbe0845ce0bbc91bf7932a12839bf1578>

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 March 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. NOTE: IDEA regulations are out for comment for 60 days.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation will help improve student achievement as measured against state achievement standards especially those students with disabilities.

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 will help ensure all students' health and safety are adequately protected especially those students with disabilities.

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/january2024/proposed/27 DE Reg 476RFA 01-01-24.pdf](https://regulations.delaware.gov/register/january2024/proposed/27%20DE%20Reg%20476RFA%2001-01-24.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/january2024/proposed/27 DE Reg 476 01-01-24.htm](https://regulations.delaware.gov/register/january2024/proposed/27%20DE%20Reg%20476%2001-01-24.htm)

OFFICE OF THE SECRETARY

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

PUBLIC NOTICE

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

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

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), the Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 925 Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs. This regulation is being amended to ensure alignment with current practice. The following sections have been revised: Additional Requirements for Evaluations and Re-Evaluations, Determination of Eligibility, Individualized Education Program (IEP), IEP Team, When IEPs Shall Be In Effect,

Development, and Review of IEP, Educational Placement in the Least Restrictive Environment, and High School Graduation. Other grammatical changes were made to comply with the *Delaware Administrative Code Drafting and Style Manual*. This regulation will be effective July 1, 2024.

The Department will hold public hearings, which are available in person or virtually, on the proposed regulation changes as follows:

Wednesday, January 17, 2024 from 5:00 p.m. - 5:30 p.m. - Delaware Department of Education, 2nd Floor, Cabinet Room, 401 Federal Street, Dover, DE 19901. Virtual meeting details can be found here (<https://publicmeetings.delaware.gov/#/meeting/77022>).

Please register in advance: <https://de-doe.webex.com/weblink/register/r639b03aa022d11f47e7d5db223b6451e>

Monday, February 19, 2024 from 12:00 p.m. - 12:30 p.m. - Delaware Department of Education, 2nd Floor, Cabinet Room, 401 Federal Street, Dover, DE 19901. Virtual meeting details can be found here (<https://publicmeetings.delaware.gov/#/meeting/77023>).

Please register in advance: <https://de-doe.webex.com/weblink/register/rbe0845ce0bbc91bf7932a12839bf1578>

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 March 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. NOTE: IDEA regulations are out for comment for 60 days.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation will help improve student achievement as measured against state achievement standards especially students with disabilities.

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 will help ensure all students' health and safety are adequately protected especially students with disabilities.

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/january2024/proposed/27 DE Reg 477RFA 01-01-24.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/january2024/proposed/27 DE Reg 477 01-01-24.htm>

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 1040

PUBLIC NOTICE

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

1040 Out-of-Season and Summer 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"), developed amendments to 14 DE Admin. Code 1040 Out-of-Season and Summer Athletic Activities and Contact. The regulation concerns the requirements for activities and contact outside of the regular season and during the summer at the middle and high school levels. The proposed amendment is to add an exception for team camps during the summer to subsection 8.3.2.8. The proposed amendment was reviewed by the Public Integrity Commission on November 21, 2023 and the Commission did not see an issue with the change.

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 February 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 concerns the requirements for athletic activities and contact out-of-season and in the summer 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 requirements for athletic activities and contact out-of-season and in the summer 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 concerns the requirements for athletic activities and contact out-of-season and in the summer, 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 the requirements for athletic activities and contact out-of-season and in the summer 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/january2024/proposed/27 DE Reg 479RFA 01-01-24.pdf>

1040 Out-of-Season and Summer Athletic Activities and Contact (Break in Continuity of Sections)

8.0 Commercial Camps and Clinics

(Break in Continuity Within Section)

8.3 Coaches who provide instruction at a commercial camp or clinic shall meet the requirements in subsections 8.3.1 through 8.3.4.

8.3.1 A coach may have instructional contact with student athletes who are not returning members of the coach's school team at a commercial camp or clinic Out-of-Season and in the Summer.

8.3.2 A coach may have instructional contact with returning members of the coach's school team at a commercial camp or clinic Out-of-Season and in the Summer provided that the requirements in subsections 8.3.2.1 through 8.3.2.13 are met.

(Break in Continuity Within Section)

8.3.2.8 If the number of returning student athletes exceeds the maximum number permitted under subsection 8.3.2.7, the coach shall not have any instructional contact with any returning student athletes at the camp or clinic. Rotating players from the same school team is not permitted. During the Summer, subsections 8.3.2.7 and 8.3.2.8 do not apply to team camps provided that the school team's attendance is funded through fundraisers and all other requirements of subsection 8.3.2 are met. For the purpose of this regulation, a team camp is a sports training camp hosted by a college or university as a fundraiser for 1 day, overnight, or up to 4 days that a school team attends in an effort to strengthen the team's bond and to help the team learn to work together as 1 unit.

***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/january2024/proposed/27 DE Reg 479 01-01-24.htm>

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), 1210(c)(1), and 1212(a) (14 Del.C. §§1203, 1205(b), 1210(c)(1), & 1212(a))
14 DE Admin. Code 1503

PUBLIC NOTICE

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

1503 Comprehensive Educator Induction Programs

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§1203, 1205(b), 1210(c), and 1212, the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1503 Comprehensive Educator Induction Programs. The regulation concerns mentoring requirements for licensed educators in Delaware public schools. The proposed amendments include adding "Administrator," "Induction Coach," "Induction Coordinator," "LEA Induction Team," "Lead Induction Coach," "Professional Learning," "Site Induction Team," and "Teacher" as defined terms and revising and striking existing defined terms in Section 2.0; revising Section 3.0, which concerns the requirements for comprehensive educator induction programs for teachers; revising Sections 4.0, 5.0, and 6.0, which concern the requirements for the comprehensive educator induction programs for teachers; adding Section 7.0, which concerns the comprehensive educator induction programs for specialists; adding Sections 8.0 and 9.0, which concern the requirements for the comprehensive educator induction programs for specialists; revising Section 10.0, which concerns comprehensive educator induction programs for administrators; revising Sections 11.0, 12.0, and 13.0, which concern the requirements for the comprehensive educator induction programs for administrators; adding Section 14.0, which provides the duties and responsibilities of Induction Coordinators, Lead Induction Coaches, and Induction Coaches; revising Section 15.0, which concerns the duties and responsibilities of Administrator Mentors; and revising Section 16.0, which concerns salary supplement payments. The proposed effective date of the amended regulation is July 1, 2024.

The proposed regulation was published on September 1, 2023. The Board received one written submittal from Stephanie Ingram, President of the Delaware State Education Association ("DSEA"), who commented that DSEA opposed the proposed regulation and asked the Board to consider revising the regulation to eliminate unnecessary activities, streamline the program, and ensure that program requirements align with and take into consideration other activities educators are already required to complete. The Board withdrew the proposed regulation for further work to be done on drafting amendments. The proposed regulation was reviewed by the Department and additional substantive amendments were developed. In addition to the amendments that were published on September 1, 2023, the Board is proposing to add a definition of ARTC Program to Section 2.0; add the option of an employing authority's alternative evaluation system to subsection 4.2.3; specify that professional learning experiences may be used in lieu of ARTC Program requirements to subsection 4.3.3, specify that activities required for participation in an ARTC Program may be used to fulfill the requirements of subsection 5.1 to subsection 5.1.2; add specialists to Section 9.0; and specify that activities required for participation in an ARTC Program may be used to meet the requirements of Section 9.0 to subsection 9.3.3.

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 February 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 requirements for comprehensive educator induction programs are designed to improve the quality of the educator workforce, which will help to improve student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The requirements for comprehensive educator induction programs are designed to improve the quality of the educator workforce, which will help to ensure students in Delaware public schools receive an equitable education.

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

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

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

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 Department collects data from schools to evaluate comprehensive educator induction programs and reports such data to the Board upon the Board's request (Section 17.0).

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

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

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

10. What is the cost to the state and to the local school boards of compliance with the amended regulation? There are no additional expected costs to the state and to the local school boards of complying with 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/january2024/proposed/27 DE Reg 481RFA 01-01-24.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/january2024/proposed/27 DE Reg 481 01-01-24.htm>

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

PUBLIC NOTICE**Educational Impact Analysis Pursuant to 14 Del. C. §122(d)****1510 Initial License****A. TYPE OF REGULATORY ACTION REQUESTED**

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

Pursuant to 14 Del.C. §§1203, 1205(b), and 1210, the Professional Standards Board ("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.

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 February 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 requirements in Sections 4.0, 5.0, 6.0, and 12.0 are designed to improve the quality of the educator workforce, which will help to improve student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The requirements in Sections 4.0, 5.0, 6.0, and 12.0 are designed to improve the quality of the educator workforce, which will help to ensure students in Delaware public schools receive an equitable education.

3. Will the amended regulation help to ensure all students' health and safety are adequately protected? The amended regulation addresses the issuance and retention of an Initial License and is not designed to help ensure students' health and safety is protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses the issuance and retention of an Initial License and is not designed to help ensure students' legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation does not change the authority and flexibility of decision makers at the local board and school level. By statute (14 Del.C. § 1224), a school district or charter school may request that the Secretary of Education review the credentials of an applicant who does not meet the requirements for the Initial License but whose effectiveness is documented by the district or school. The amended regulation does not change a school district or charter school's ability to submit such a request. Section 8.0 is consistent with 14 Del.C. § 1224.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels. The application requirements in Section 7.0 apply to individual applicants. In addition, the requirements in Section 17.0 apply to individual applicants and Educators.

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

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

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

10. What is the cost to the state and to the local school boards of compliance with the amended regulation? There is no expected cost to the state or to the local school boards of complying with 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/january2024/proposed/27 DE Reg 483RFA 01-01-24.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/january2024/proposed/27 DE Reg 483 01-01-24.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

The Delaware State Lottery will seek public comments on the issue of whether certain amendments to its current rules should be adopted.

The proposed amendments are to subsections 4.6.1, 4.6.2, 4.7.1, 4.7.2, 4.13, 14.5.2, 14.5.3, and 14.6 in 10 DE Admin. Code 203.

The amendment to these subsections will give the Lottery authority to proceed with clearer requirements for the licensing of Gaming and Non-Gaming Vendors, as well as for rehires and transfers of licensed employees.

Persons wishing to present their views regarding this matter may do so by submitting written comments by the close of business on or before February 1, 2024, at the offices of the Delaware State Lottery, Attn: Jayne Gooden, 1575 McKee Road, Suite 102, Dover, DE 19904.

C. Summary of Proposal

The proposed amendments to subsections 4.6.1, 4.6.2, 4.7.1, and 4.7.2 clarify the requirements of Non-Gaming Vendor License applicants regarding thresholds pertaining to amount vendors will be paid and by how many

casinos. The proposed amendment to subsection 4.13 alleviates confusion about which key people are required to be licensed in association with the vendor license application. The proposed amendments to Section 14.0 clarify fingerprinting and background requirements of licensees who would like to return to or transfer to a licensed position.

***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/january2024/proposed/27 DE Reg 484RFA 01-01-24.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/january2024/proposed/27 DE Reg 484 01-01-24.htm>

OFFICE OF THE STATE LOTTERY

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

PUBLIC NOTICE

205 Delaware Charitable Video Lottery Regulations

A. Type of Regulatory Action Required

Amendment to Existing Regulations

B. Synopsis of Subject Matter of the Regulation

The Delaware State Lottery will seek public comments on the issue of whether certain amendments to its current rules should be adopted.

The proposed amendment is to subsection 5.1.30.1 in 10 DE Admin. Code 205.

The amendment to subsection 5.1.30.1 would remove the annual requirement for Charitable Gaming Organizations (CGOs) to submit an affidavit of membership if that CGO does not wish to exceed the minimum number of allowable video lottery machines.

Persons wishing to present their views regarding this matter may do so by submitting written comments by the close of business on or before February 1, 2024, at the offices of the Delaware State Lottery, Attn: Jayne Gooden, 1575 McKee Road, Suite 102, Dover, DE 19904.

C. Summary of Proposal

The amendment to these subsections will save the Charitable Gaming Organizations (CGO) and the Delaware Lottery a great deal of effort by removing the requirement of submitting an annual affidavit when the CGO is not seeking to operate more than the allowable ten (10) video lottery machines. The CGOs are operated almost entirely by volunteers; the affidavit is unnecessary in almost all cases and represents extra effort on the part of the volunteers. It also eliminates the effort required by the Lottery to assist this group in what is sometimes a confusing process for them.

***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/january2024/proposed/27 DE Reg 485RFA 01-01-24.pdf>

PROPOSED REGULATIONS

205 Delaware Charitable Video Lottery Regulations (Break in Continuity of Sections)

5.0 Agents: Duties

5.1 The following ongoing duties are required of all licensed agents:

(Break in Continuity Within Section)

5.1.30 Annually submit to the agency the following items by the due dates set forth below:

- 5.1.30.1 By February 28 of each year, a membership affidavit form, which the agency will provide to the charitable video lottery agent, that lists the total number of the agent's active members. This affidavit is required only for those charitable video lottery agents that wish to operate more than the minimum 10 charitable video lottery machines. The agent must ensure that the membership affidavit form has been notarized by a notary public;
- 5.1.30.2 By March 31 of each year, a charitable donations report form, which the agency will provide to the charitable video lottery agent, that lists the agent's charitable donations for the preceding calendar year; and
- 5.1.30.3 Between December 1 and December 31 of each year, a written confirmation that the charitable video lottery agent has registered with the U.S. Department of Justice, which confirmation may be forwarded to the agency by electronic mail.

***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/january2024/proposed/27 DE Reg 485 01-01-24.htm>

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. §512)
16 DE Admin. Code 14000, 25000

PUBLIC NOTICE

Continuous Coverage for Children Enrolled in Medicaid

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of 31 Del.C. §512, Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DHSS/DMMA) is proposing to amend the Division of Social Services Manual (DSSM) 14800, 14810, 14810.1, 14810.2, 14820, 14820.1, 25100.1, and Title XIX Medicaid State Plan Continuous Eligibility for Children Reviewable Unit, specifically, to provide continuous eligibility to children Enrolled in Medicaid for a full 12-month period regardless of changes in circumstances with limited exceptions.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs, or other written materials concerning the proposed new regulations must submit same to, Planning and Policy Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to DHSS_DMMA_Publiccomment@Delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on January 31, 2024. Please identify in the subject line: Continuous Coverage for Children Enrolled in Medicaid

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

SUMMARY OF PROPOSAL

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

Statutory Authority

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

Background

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

Summary of Proposal

Purpose

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

Summary of Proposed Changes

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

Public Notice

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

Centers for Medicare and Medicaid Services Review and Approval

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

Provider Manuals and Communications Update

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

Fiscal Impact

	Federal Fiscal Year 2024	Federal Fiscal Year 2025
General (State) funds	\$4,469,369.70	\$5,854,145.87

PROPOSED REGULATIONS

Federal funds	\$6,623,630.30	\$8,936,520.80
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***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/january2024/proposed/27 DE Reg 486RFA 01-01-24.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/january2024/proposed/27 DE Reg 486 01-01-24.htm>

DEPARTMENT OF INSURANCE

OFFICE OF THE COMMISSIONER

Statutory Authority: 18 Delaware Code, Sections 311 and 3915 (18 Del.C. §§311 & 3915)

PUBLIC NOTICE

611 Automobile Insurance Premium Refunds

A. Type of Regulatory Action Required

Proposal of a new regulation.

B. Synopsis of Subject Matter of the Regulation

The Department is proposing new Regulation 611 to require carriers to refund any unearned automobile insurance premium on a cancelled policy within 30 days of the date when the refund becomes due.

C. Notice and Public Comment

The Department does not plan to hold a public hearing on proposed new Regulation 611. The proposed new regulation appears below and may also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed new regulation. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, the 2nd day of February 2024. Any such requests should be directed to:

Alisa Pritchard, Regulatory Specialist
 Delaware Department of Insurance
 1351 West North St., Ste. 101
 Dover, DE 19904
 (302) 674-7379
 Email: DOI-Legal@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/january2024/proposed/27 DE Reg 488RFA 01-01-24.pdf>

611 Automobile Insurance Premium Refunds

1.0 Scope and Authority

- 1.1 This regulation is adopted by the Commissioner pursuant to the authority granted by 18 Del.C. §§311 and 3915 and promulgated in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Ch. 101.
- 1.2 This regulation applies to all automobile insurance policies.

2.0 Definitions

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

"Commissioner" means the Insurance Commissioner of Delaware.

"Insurance premium" means the amount of money paid by an insured for an insurance policy.

3.0 Issuance of Premium Refund Upon Policy Cancellation

- 3.1 When an automobile insurance policy is cancelled, the insurer shall, within 30 days of the date the insured has provided the evidence required by 18 Del.C. §3915, refund to the insured any premium unearned on the policy.
- 3.2 Insurance premium refunds shall be paid in the same manner in which the premium was paid, unless another manner of refund is agreed to by the insured.

4.0 Violations; Penalties

Failure to comply with this regulation will subject the violator to the provisions of 18 Del.C. §§329 and 520, which address penalties for non-compliance of any regulation of the Commissioner.

5.0 Severability

If any section or portion of a section of this regulation or its applicability to any person or circumstance is held invalid by a court, the remainder of this regulation or the applicability of the provision to other persons or circumstances shall not be affected.

6.0 Effective Date

This regulation shall become effective 10 days after the date of publication of the notice of adoption in the Register of Regulations.

OFFICE OF THE COMMISSIONER

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

PUBLIC NOTICE

1004 Term and Universal Life Insurance Reserve Financing

A. Type of Regulatory Action Required

Proposed New Regulation.

B. Synopsis of Subject Matter of Regulation

The Department of Insurance hereby gives notice of proposed new Regulation 1004 relating to Term and Universal Life Reserve Financing. The proposed new Regulation implements the National Association of Insurance Commissioners Model Regulation #787, which establishes uniform, national standards governing reserve financing arrangements pertaining to life insurance policies with secondary guarantees and ensures that funds consisting of primary security and other security are held in the forms and amounts required. The Delaware Code authority for the new regulation is 18 Del.C. §§311 and 915.

C. Notice and Public Comment

The proposed regulation appears below and may also be viewed on the Department of Insurance website at

<http://insurance.delaware.gov/information/proposedregs/>. The Department will not be holding a public hearing on the proposed regulation.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed regulation. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EDT, the 2nd day of February 2024 and should be directed to:

Alisa Pritchard, Regulatory Specialist
 Delaware Department of Insurance
 1351 West North Street, Suite 101
 Dover, DE 19904
 (302) 674-7379
 Email: DOI-Legal@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/january2024/proposed/27 DE Reg 489RFA 01-01-24.pdf](https://regulations.delaware.gov/register/january2024/proposed/27%20DE%20Reg%20489RFA%2001-01-24.pdf)

1004 Term and Universal Life Insurance Reserve Financing

1.0 Purpose

- 1.1 The purpose and intent of this regulation is to establish uniform standards governing reserve financing arrangements pertaining to life insurance policies containing guaranteed nonlevel gross premiums, guaranteed nonlevel benefits and universal life insurance policies with secondary guarantees; and to ensure that, with respect to each such financing arrangement, funds consisting of primary security and other security, as defined in Section 5.0 of this regulation, are held by or on behalf of ceding insurers in the forms and amounts required in this regulation.
- 1.2 In general, reinsurance ceded for reserve financing purposes has one or more of the following characteristics: some or all of the assets used to secure the reinsurance treaty or to capitalize the reinsurer:
- 1.2.1 Are issued by the ceding insurer or its affiliates; or
- 1.2.2 Are not unconditionally available to satisfy the general account obligations of the ceding insurer; or
- 1.2.3 Create a reimbursement, indemnification or other similar obligation on the part of the ceding insurer or any if its affiliates other than a payment obligation under a derivative contract acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty.

2.0 Authority

This regulation is promulgated pursuant to authority granted by 18 Del.C. §§311 and 915 and 29 Del.C. Ch. 101.

3.0 Applicability

This regulation shall apply to reinsurance treaties that cede liabilities pertaining to covered policies, as that term is defined in Section 5.0 of this regulation, issued by any life insurance company domiciled in this state. This regulation and 18 DE Admin. Code 1003 shall both apply to such reinsurance treaties; provided, that in the event of a direct conflict between the provisions of this regulation and 18 DE Admin. Code 1003, the provisions of this regulation shall apply, but only to the extent of the conflict.

4.0 Exemptions from this regulation

- 4.1 This regulation does not apply to any of the following situations for Reinsurance of:

- 4.1.1 Policies that satisfy the criteria for exemption set forth in 18 DE Admin. Code 1212, subsection 6.6 or 18 DE Admin. Code 1212, subsection 6.7 and which are issued before the effective date of this regulation;
- 4.1.2 Portions of policies that satisfy the criteria for exemption set forth in 18 DE Admin. Code 1212, subsection 6.5 and which are issued before the effective date of this regulation;
- 4.1.3 Any universal life policy that meets all of the following requirements:
 - 4.1.3.1 Secondary guarantee period, if any, is 5 years or less;
 - 4.1.3.2 Specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on the Commissioner Standard Ordinary (CSO) valuation tables and valuation interest rate applicable to the issue year of the policy; and
 - 4.1.3.3 The initial surrender charge is not less than 100% of the first year annualized specified premium for the secondary guarantee period;
- 4.1.4 Credit life insurance;
- 4.1.5 Any variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts; or
- 4.1.6 Any group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of 1 year.
- 4.2 Reinsurance ceded to an assuming insurer that meets the applicable requirements of 18 Del.C. § 911(4);
- 4.3 Reinsurance ceded to an assuming insurer that meets the applicable requirements of 18 Del.C. §§ 911(1), 911(2) or 911(3), and that, in addition:
 - 4.3.1 Prepares statutory financial statements in compliance with the NAIC Accounting Practices and Procedures Manual, without any departures from NAIC statutory accounting practices and procedures pertaining to the admissibility or valuation of assets or liabilities that increase the assuming insurer's reported surplus and are material enough that they need to be disclosed in the financial statement of the assuming insurer pursuant to Statement of Statutory Accounting Principles No. 1 ("SSAP 1"); and
 - 4.3.2 Is not in a Company Action Level Event, Regulatory Action Level Event, Authorized Control Level Event, or Mandatory Control Level Event as those terms are defined in 18 Del.C. Ch. 58 when its risk-based capital (RBC) is calculated in accordance with the life RBC report including overview and instructions for companies, as the same may be amended by the NAIC from time to time, without deviation;
- 4.4 Reinsurance ceded to an assuming insurer that meets the applicable requirements of 18 Del.C. §§ 911(1), 911(2), or 911(3), and that, in addition:
 - 4.4.1 Is not an affiliate, as that term is defined in 18 Del.C. § 5001(1) of:
 - 4.4.1.1 The insurer ceding the business to the assuming insurer; or
 - 4.4.1.2 Any insurer that directly or indirectly ceded the business to that ceding insurer;
 - 4.4.2 Prepares statutory financial statements in compliance with the NAIC Accounting Practices and Procedures Manual;
 - 4.4.3 Is both:
 - 4.4.3.1 Licensed or accredited in at least 10 states including its state of domicile; and
 - 4.4.3.2 Not licensed in any state as a captive, special purpose vehicle, special purpose financial captive, special purpose life reinsurance company, limited purpose subsidiary, or any other similar licensing regime; and
 - 4.4.4 Is not, or would not be, below 500% of the Authorized Control Level RBC as that term is defined in 18 Del.C. Ch. 58 when its RBC is calculated in accordance with the life RBC report including overview and instructions for companies, as the same may be amended by the NAIC from time to time, without deviation, and without recognition of any departures from NAIC statutory accounting

PROPOSED REGULATIONS

practices and procedures pertaining to the admission or valuation of assets or liabilities that increase the assuming insurer's reported surplus;

4.5 Reinsurance ceded to an assuming insurer that:

4.5.1 Meets the conditions set forth in 18 Del.C. §911(6); or

4.5.2 Is certified in this state as set forth in 18 Del.C. §911(5); or

4.5.3 Maintains at least \$250 million in capital and surplus when determined in accordance with NAIC Accounting Practices and Procedures Manual, including all amendments thereto adopted by the NAIC, excluding the impact of any permitted or prescribed practices; and is

4.5.3.1 Licensed in at least 26 states; or

4.5.3.2 Licensed in at least 10 states, and licensed or accredited in a total of at least 35 states.

4.6 Reinsurance not otherwise exempt under subsections 4.1 through 4.5 of this regulation if the Commissioner, after consulting with the NAIC Financial Analysis Working Group (FAWG) or other group of regulators designated by the NAIC, as applicable, determines under all the facts and circumstances that all of the following apply:

4.6.1 The risks are clearly outside of the intent and purpose of this regulation as described in Section 1.0 of this regulation;

4.6.2 The risks are included within the scope of this regulation only as a technicality; and

4.6.3 The application of this regulation to those risks is not necessary to provide appropriate protection to policyholders. The Commissioner shall publicly disclose any decision made pursuant to this subsection 4.6 to exempt a reinsurance treaty from this regulation, as well as the general basis for the decision including a summary description of the treaty.

5.0 Definitions

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

"Actuarial method" means the methodology used to determine the required level of primary security, as described in Section 6.0 of this regulation.

"Commissioner" means the Commissioner of the Delaware Department of Insurance.

"Covered policies" means type-1 covered policies and type-2 covered policies.

"Grandfathered policies" means policies of the types that otherwise meet the definitions of "type-1 covered policies" and "type-2 covered policies" but were:

- Issued prior to January 1, 2015; and
- Ceded, as of December 31, 2014, as part of a reinsurance treaty that would not have met one of the exemptions set forth in Section 4.0 of this regulation had that section then been in effect.

"NAIC" means the National Association of Insurance Commissioners.

"Net premium reserve" means the reserve amount determined according to the requirements in VM-20, section 3, of the valuation manual.

"Non-covered policies" means any policy that does not meet the definition of covered policies, including grandfathered policies.

"Other security" means any security acceptable to the Commissioner other than security meeting the definition of primary security.

"Primary security" means any of the following forms of security:

- Cash meeting the requirements of 18 Del.C. § 912(1);
- Securities listed by the Securities Valuation Office meeting the requirements of 18 Del.C. § 912(2), but excluding any synthetic letter of credit, contingent note, credit-linked note or other similar security that operates in a manner similar to a letter of credit, and excluding any securities issued by the ceding insurer or any of its affiliates;
- For security held in connection with funds withheld and modified coinsurance reinsurance treaties:
 - Commercial loans in good standing of CM3 quality and higher;
 - Policy loans; and

- Derivatives acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty.

"Required level of primary security" means the dollar amount determined by applying the actuarial method to the risks ceded with respect to covered policies, but not more than the total reserve ceded.

"Type-1 covered policies" means, subject to the exemptions described in Section 4.0 of this regulation, and other than grandfathered policies, life insurance policies with guaranteed nonlevel gross premiums and/or guaranteed nonlevel benefits except for flexible premium universal life insurance policies.

"Type-2 covered policies" means, subject to the exemptions described in Section 4.0 of this regulation, and other than grandfathered policies, flexible premium universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a second guarantee period.

"Valuation manual" means the valuation manual adopted by the NAIC as described in 18 **Del.C.** §1121(b)(1), with all amendments adopted by the NAIC that are effective for the financial statement date on which credit for reinsurance is claimed.

"VM-20" means "Requirements for Principle-Based Reserves for life products," including all relevant definitions, from the valuation manual.

6.0 The actuarial method

6.1 The Actuarial Method. The actuarial method to establish the required level of primary security for each reinsurance treaty subject to this regulation shall be VM-20, applied on a treaty-by-treaty basis, including all relevant definitions, from the valuation manual as then in effect, applied as follows:

6.1.1 For type-1 covered policies, the actuarial method is the greater of the deterministic reserve or the net premium reserve (NPR) regardless of whether the criteria for exemption testing can be met. However, if such covered policies do not meet the requirements of the stochastic reserve exclusion test in the valuation manual, then the actuarial method is the greatest of the deterministic reserve, the stochastic reserve, or the NPR. In addition, if such covered policies are reinsured in a reinsurance treaty that also contains type-2 covered policies, the ceding insurer may elect to instead use subsection 6.2 of this regulation as the actuarial method for the entire reinsurance agreement. Whether subsection 6.1 or 6.2 of this regulation is used, the actuarial method must comply with any requirements or restrictions that the valuation manual imposes when aggregating these policy types for purposes of principle-based reserve calculations.

6.1.2 For type-2 covered policies, the actuarial method is the greatest of the deterministic reserve, the stochastic reserve, or the NPR regardless of whether the criteria for exemption testing can be met.

6.1.3 Except as provided in subsection 6.1.4 of this regulation, the actuarial method is to be applied on a gross basis to all risks with respect to the covered policies as originally issued or assumed by the ceding insurer.

6.1.4 If the reinsurance treaty cedes less than 100% of the risk with respect to the covered policies then the required level of primary security may be reduced as follows:

6.1.4.1 If a reinsurance treaty cedes only a quota share of some or all of the risks pertaining to the covered policies, the required level of primary security, as well as any adjustment under subsection 6.1.4.3 of this regulation, may be reduced to a pro rata portion in accordance with the percentage of the risk ceded;

6.1.4.2 If the reinsurance treaty in a non-exempt arrangement cedes only the risks pertaining to a secondary guarantee, the required level of primary security may be reduced by an amount determined by applying the actuarial method on a gross basis to all risks, other than risks related to the secondary guarantee, pertaining to the covered policies, except that for covered policies for which the ceding insurer did not elect to apply the provisions of VM-20 to establish statutory reserves, the required level of primary security may be reduced by the statutory reserve retained by the ceding insurer on those covered policies, where the retained reserve of those covered policies should be reflective of any reduction pursuant

PROPOSED REGULATIONS

- to the cession of mortality risk on a yearly renewable term basis in an exempt arrangement;
- 6.1.4.3 If a portion of the covered policy risk is ceded to another reinsurer on a yearly renewable term basis in an exempt arrangement, the required level of primary security may be reduced by the amount resulting by applying the actuarial method including the reinsurance section of VM-20 to the portion of the covered policy risks ceded in the exempt arrangement, except that for covered policies issued prior to January 1, 2017, this adjustment is not to exceed $[cx / (2 * \text{number of reinsurance premiums per year})]$ where cx is calculated using the same mortality table used in calculating the NPR; and
- 6.1.4.4 For any other treaty ceding a portion of risk to a different reinsurer, including but not limited to stop loss, excess of loss and other non-proportional reinsurance treaties, there will be no reduction in the required level of primary security;
- 6.1.4.5 It is possible for any combination of subsections 6.1.4.1, 6.1.4.2, 6.1.4.3, and 6.1.4.4 of this regulation to apply. Such adjustments to required level of primary security will be done in the sequence that accurately reflects the portion of the risk ceded via the treaty. The ceding insurer should document the rationale and steps taken to accomplish the adjustments to the required level of primary security due to the cession of less than 100% of the risk. The adjustments for other reinsurance will be made only with respect to reinsurance treaties entered into directly by the ceding insurer. The ceding insurer will make no adjustment as a result of a retrocession treaty entered into by the assuming insurers;
- 6.1.5 In no event will the required level of primary security resulting from application of the actuarial method exceed the amount of statutory reserves ceded;
- 6.1.6 If the ceding insurer cedes risks with respect to covered policies, including any riders, in more than one reinsurance treaty subject to this regulation, in no event will the aggregate required level of primary security for those reinsurance treaties be less than the required level of primary security calculated using the actuarial method as if all risks ceded in those treaties were ceded in a single treaty subject to this regulation;
- 6.1.7 If a reinsurance treaty subject to this regulation cedes risk on both covered and non-covered policies, credit for the ceded reserves shall be determined as follows:
- 6.1.7.1 The actuarial method shall be used to determine the required level of primary security for the covered policies, and Section 7.0 of this regulation shall be used to determine the reinsurance credit for the covered policy reserves; and
- 6.1.7.2 Credit for the non-covered policy reserves shall be granted only to the extent that security, in addition to the security held to satisfy the requirements of subsection 6.1.7.1 of this regulation, is held by or on behalf of the ceding insurer in accordance with 18 Del.C. §§911 and 912. Any primary security used to meet the requirements of this subparagraph may not be used to satisfy the required level of primary security for the covered policies.
- 6.2 Valuation used for purposes of calculations. For the purposes of both calculating the required level of primary security pursuant to the actuarial method and determining the amount of primary security and other security, as applicable, held by or on behalf of the ceding insurer, the following shall apply:
- 6.2.1 For assets, including any such assets held in trust, that would be admitted under the NAIC Accounting Practices and Procedures Manual if they were held by the ceding insurer, the valuations are to be determined according to statutory accounting procedures as if such assets were held in the ceding insurer's general account and without taking into consideration the effect of any prescribed or permitted practices; and
- 6.2.2 For all other assets, the valuations are to be those that were assigned to the assets for the purpose of determining the amount of reserve credit taken. In addition, the asset spread tables and asset default cost tables required by VM-20 shall be included in the Actuarial method if adopted by the NAIC's Life Actuarial (A) Task Force no later than the December 31st on or immediately preceding the valuation date for which the required level of primary security is being

calculated. The tables of asset spreads and asset default costs shall be incorporated into the actuarial method in the manner specified in VM-20.

7.0 Requirements applicable to covered policies to obtain credit for reinsurance; opportunity for remediation

- 7.1 Subject to the exemptions described in Section 4.0 of this regulation and the provisions of subsection 7.2 of this regulation, credit for reinsurance shall be allowed with respect to ceded liabilities pertaining to covered policies pursuant to 18 Del.C. §§911 or 912 if, and only if, in addition to all other requirements imposed by law or regulation, the following requirements are met on a treaty-by-treaty basis:
- 7.1.1 The ceding insurer's statutory policy reserves with respect to the covered policies are established in full and in accordance with the applicable requirements of 18 Del.C. §1112 and related regulations and actuarial guidelines, and credit claimed for any reinsurance treaty subject to this regulation does not exceed the proportionate share of those reserves ceded under the contract;
 - 7.1.2 The ceding insurer determines the required level of primary security with respect to each reinsurance treaty subject to this regulation and provides support for its calculation as determined to be acceptable to the Commissioner;
 - 7.1.3 Funds consisting of primary security, in an amount at least equal to the required level of primary security, are held by or on behalf of the ceding insurer, as security under the reinsurance treaty within the meaning of 18 Del.C. §912, on a funds withheld, trust, or modified coinsurance basis;
 - 7.1.4 Funds consisting of other security, in an amount at least equal to any portion of the statutory reserves as to which primary security is not held pursuant to subsection 7.1.3 of this regulation, are held by or on behalf of the ceding insurer as security under the reinsurance treaty within the meaning of 18 Del.C. §912;
 - 7.1.5 Any trust used to satisfy the requirements of this Section 7.0 shall comply with all of the conditions and qualifications of 18 DE Admin. Code 1003, Section 12.0, except that:
 - 7.1.5.1 Funds consisting of primary security or other security held in trust, shall for the purposes identified in subsection 6.2 of this regulation, be valued according to the valuation rules set forth in subsection 6.2 of this regulation, as applicable;
 - 7.1.5.2 There are no affiliate investment limitations with respect to any security held in such trust if such security is not needed to satisfy the requirements of subsection 7.1.3 of this regulation;
 - 7.1.5.3 The reinsurance treaty must prohibit withdrawals or substitutions of trust assets that would leave the fair market value of the primary security within the trust (when aggregated with primary security outside the trust that is held by or on behalf of the ceding insurer in the manner required by subsection 7.1.3 of this regulation, 102% of the level required by subsection 7.1.3 of this regulation at the time of the withdrawal or substitution; and
 - 7.1.5.4 The determination of reserve credit under 18 DE Admin. Code 1003, subsection 12.5 shall be determined according to the valuation rules set forth in subsection 6.2 of this regulation, as applicable; and
 - 7.1.6 The reinsurance treaty has been approved by the Commissioner.
- 7.2 Requirements at inception date and on an on-going basis; remediation.
- 7.2.1 The requirements of subsection 7.1 of this regulation must be satisfied as of the date that risks under covered policies are ceded if such date is on or after the effective date of this regulation and on an ongoing basis thereafter. Under no circumstances shall a ceding insurer take or consent to any action or series of actions that would result in a deficiency under subsections 7.1.3 or 7.1.4 of this regulation with respect to any reinsurance treaty under which covered policies have been ceded, and in the event that a ceding insurer becomes aware at any time that such a deficiency exists, it shall use its best efforts to arrange for the deficiency to be eliminated as expeditiously as possible.

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7.2.2 Prior to the due date of each quarterly or annual statement, each life insurance company that has ceded reinsurance within the scope of Section 3.0 of this regulation shall perform an analysis, on a treaty-by-treaty basis, to determine, as to each reinsurance treaty under which covered policies have been ceded, whether as of the end of the immediately preceding calendar quarter (the valuation date) the requirements of subsections 7.1.3 and 7.1.4 of this regulation were satisfied. The ceding insurer shall establish a liability equal to the excess of the credit for reinsurance taken over the amount of primary security actually held pursuant to subsection 7.1.3 of this regulation, unless either:

7.2.2.1 The requirements of subsections 7.1.3 and 7.1.4 of this regulation were fully satisfied as of the valuation date as to such reinsurance treaty; or

7.2.2.2 Any deficiency has been eliminated before the due date of the quarterly or annual statement to which the valuation date relates through the addition of primary security and/or other security, as the case may be, in such amount and in such form as would have caused the requirements of subsections 7.1.3 and 7.1.4 of this regulation to be fully satisfied as of the valuation date.

7.3 Nothing in subsection 7.2.2 of this regulation shall be construed to allow a ceding company to maintain any deficiency under subsection 7.1.3 or 7.1.4 of this regulation for any period of time longer than is reasonably necessary to eliminate it.

8.0 Severability

If any provision of this regulation is held invalid, the remainder shall not be affected.

9.0 Prohibition against avoidance

No insurer that has covered policies as to which this regulation applies shall take any action or series of actions, or enter into any transaction or arrangement or series of transactions or arrangements if the purpose of such action, transaction or arrangement or series thereof is to avoid the requirements of this regulation, or to circumvent the purpose and intent of this regulation.

10.0 Effective Date

This regulation shall be effective 10 days after the date of the publication of the order adopting this regulation as a final regulation and shall pertain to all covered policies in force as of and after that date.

DEPARTMENT OF LABOR

DIVISION OF PAID LEAVE

Statutory Authority: 19 Delaware Code, Section 105 (19 Del.C. §105)
19 DE Admin. Code 1401

PUBLIC NOTICE

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

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 19 Del.C. §105, the Delaware Department of Labor ("Department") proposes to introduce supplemental regulations addressing coordination of benefits and notice requirements to its existing regulation, Division of Paid Leave. Additional definitional verbiage and grammatical edits are administrative in nature and serve in part to clarify the intent of the Division as enacted through these regulations.

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

following address:

Christopher Counihan
Division Director, Division of Paid Leave
Delaware Department of Labor
4425 North Market Street, 4th Floor
Wilmington, DE 19802

Comments may also be directed via electronic mail to PFML@Delaware.gov. Any written submission in response to this notice and relevant to the proposed regulations must be received by the above contact at the Delaware Department of Labor no later than 4:00 p.m. EST, on February 1, 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.

Statutory Authority 19 Del.C. §105.

19 Del.C. §105 enables the Delaware Department of Labor to adopt and promulgate rules and regulations consistent with Title 19 of the Delaware Code; 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:**

(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/january2024/proposed/27 DE Reg 496RFA 01-01-24.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/january2024/proposed/27 DE Reg 496 01-01-24.htm>

**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

PUBLIC NOTICE

**SAN# 2023-11
DOCKET # 2023-R-F-0021**

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

1. TITLE OF THE REGULATIONS:

Amend 7 DE Admin. Code 3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements.

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

This action is being proposed to modify the spring anchor gill net season by adding two weeks in February and eliminating two weeks in April and May to better synchronize the spring anchor gill net season with the availability of and market for Striped Bass. This action was recommended in a unanimous motion by the Advisory Council on Tidal Finfisheries at its September 19, 2023 meeting.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

N/A

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Del. C.** § 903

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

N/A

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 7 **DE Admin. Code** 3505 will be open January 1, 2024. The virtual public hearing will be held on Tuesday, January 30, 2024, beginning at 6:00 p.m. The web link to the virtual hearing can be accessed through the DNREC Public Hearings site at <https://dnrec.alpha.delaware.gov/public-hearings/>. If prompted, use Meeting ID: 836 4525 0188 Passcode: 607330. To access the audio-only portion of the virtual hearing, dial (305) 224-1968 and enter the Meeting ID and Passcode noted above. Closed captioning is available in over 20 languages, including English and Spanish, to attendees via the Zoom platform utilized for all DNREC Public Hearings.

Those wishing to offer verbal comments during DNREC virtual public hearings must pre-register no later than noon on the date of the virtual hearing. The designated page for this Pre-Registration process can be found here: <https://dnrec.alpha.delaware.gov/public-hearings/comments/registration/>

The proposed amendments may be inspected online starting January 1, 2024 at https://regulations.delaware.gov/services/current_issue.shtml, or in-person, by appointment only, by contacting John Clark by phone at 302-739-9914 or by email at John.Clark@delaware.gov.

Public comments will be received until close of business Wednesday, February 14, 2024. Comments will be accepted in written form via email to 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:

John H. Clark
Email: John.Clark@delaware.gov
Phone: (302)739-9914

***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/january2024/proposed/27 DE Reg 497RFA 01-01-24.pdf](https://regulations.delaware.gov/register/january2024/proposed/27%20DE%20Reg%20497RFA%2001-01-24.pdf)

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 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.

PROPOSED REGULATIONS

- 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.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
Board of Pharmacy

Statutory Authority: 24 Delaware Code, Section 2506(a)(1) (24 **Del.C.** §2506(a)(1))
24 **DE Admin. Code** 2500

PUBLIC NOTICE

2500 Board of Pharmacy

Pursuant to 24 **Del.C.** §2506(a)(1), the Delaware Board of Pharmacy ("Board") has proposed revisions to its Rules and Regulations. Subsections 5.1.5.1 and 5.1.5.2 have been amended to add an effective date of 6 months after the effective date of the regulation. Subsection 5.1.5.2 has been revised to state that the required written agreement must be between the dispensing pharmacy and the ordering physician or facility. Currently, subsection 5.1.5.2 states that the agreement must be between the pharmacist and physician or facility.

A public hearing will be held on February 21, 2024 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Pharmacy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address or at sarah.siok@delaware.gov.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be **March 7, 2024**. The Board will deliberate on all of the public comments at its regularly scheduled meeting.

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

<https://regulations.delaware.gov/register/january2024/proposed/27 DE Reg 500RFA 01-01-24.pdf>

2500 Board of Pharmacy
(Break in Continuity of Sections)

5.0 Dispensing

- 5.1 The practice of dispensing shall include, but not be limited to the following acts which shall be performed only by a pharmacist, or a pharmacy intern or student participating in an approved College of Pharmacy coordinated, practical experience program under the direct supervision of a pharmacist.

(Break in Continuity Within Section)

- 5.1.5 Before dispensing or delivering a new medication to a patient or his or her agent, a pharmacist or pharmacy intern or student participating in an approved College of Pharmacy coordinated practical experience program and working under the direct supervision of the pharmacist, shall conduct a prospective drug review. A prospective drug review may be conducted before refilling a prescription to the extent deemed appropriate. A prospective drug review shall include screening for potential drug therapy problems due to therapeutic duplication, drug-drug interactions, including serious interactions with over-the-counter drugs, drug-disease contraindications, if disease is known, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse or misuse based on available information received by the pharmacist.
- 5.1.5.1 A Effective 6 months after the effective date of this regulation, a pharmacy, a pharmacist, or a pharmacy intern or student participating in an approved College of Pharmacy coordinated, practical experience program under the direct supervision of a pharmacist, shall not deliver, or cause to be delivered, dispensed drugs to a patient's residence where such drugs are intended to be subsequently transported by the patient or patient's agent to a hospital, medical clinic, prescriber's office, or pharmacy for administration and that require special storage, reconstitution or compounding prior to administration. An exception to this subsection may be made for patients with inherited bleeding disorders who may require therapy to prevent or treat bleeding episodes.
- 5.1.5.2 A Effective 6 months after the effective date of this regulation, a patient-specific compounded preparation may not be delivered by a pharmacy to the office of a practitioner or an infusion center for administration unless there is a written contract or agreement between the dispensing pharmacist pharmacy and the ordering physician or facility determining that this delivery arrangement is in the best interest of that specific patient. The written contract or agreement must describe the procedures for such a delivery system and the responsibilities of each party.

***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/january2024/proposed/27 DE Reg 500 01-01-24.htm>

DIVISION OF PROFESSIONAL REGULATION**BOARD OF FUNERAL SERVICES**

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

PUBLIC NOTICE**3100 Board of Funeral Services**

Pursuant to 24 **Del.C.** §3105(a)(1), the Delaware Board of Funeral Services ("Board") has proposed revisions to its Rules and Regulations. The proposed amendments would clarify subsections that relate to the Board's inspection program created pursuant to 24 **Del.C.** §3105(a)(15) and provide discretion for the Board to allow additional extensions for the time allowed to complete internships. The other proposed amendments reflect technical and style changes consistent with the *Delaware Administrative Code Drafting and Style Manual*.

The Board will hold a public hearing on the proposed regulation changes on January 23, 2024, at 10:00 a.m. in the second-floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Funeral Services, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address or at Michelle.Loper@delaware.gov.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be February 7, 2024. The

Board will deliberate on all public comments at its next regularly scheduled meeting.

***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/january2024/proposed/27 DE Reg 501RFA 01-01-24.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/january2024/proposed/27 DE Reg 501 01-01-24.htm>

DIVISION OF PROFESSIONAL REGULATION

BOARD OF SOCIAL WORK EXAMINERS

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

PUBLIC NOTICE

3900 Board of Social Work Examiners

Pursuant to 24 Del.C. §3906(a)(1), the Delaware Board of Social Work Examiners ("Board") has proposed revisions to its rules and regulations. In particular, 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.

A public hearing will be held on January 22, 2024 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Social Work Examiners, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address or at jessica.lobaccaro@delaware.gov.

In accordance with 29 Del.C. §10118(a), the final date to receive written comments will be February 6, 2024. The Board will deliberate on all of the public comments at its regularly scheduled meeting.

***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/january2024/proposed/27 DE Reg 502RFA 01-01-24.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/january2024/proposed/27 DE Reg 502 01-01-24.htm>

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

Rule 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.

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. 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, January 31, 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.

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/january2024/proposed/27 DE Reg 503RFA 01-01-24.pdf>

600 Licenses for Gatherings

Rule 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 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 an eligible 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 an eligible 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 An organization recognized by the Internal Revenue Service or IRS as a tax-exempt club organized for pleasure or recreation, and substantially all of the activities of which are for such purposes, may not be granted a gathering license.
- 1.5 An organization that does not qualify as a tax-exempt, tax-deductible, charitable organization by the IRS may not be granted a gathering license.
- 1.6 The holder of the gathering license is responsible for the sale and service of alcoholic liquors. 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 non-profit organization that is issued a gathering license.

"Eligible organization" or **"organization"** means for purposes of this rule an entity recognized by the Internal Revenue Service or IRS as a tax-exempt organization, or a political or religious organization.

"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 non-profit 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.

3.0 Gathering License - Requirements

3.1 An organization as defined in this rule shall submit an application in the form prescribed by the Delaware Alcoholic Beverage Control Commissioner and pay the appropriate fee.

3.2 The organization must submit proof of incorporation or formation.

3.3 The organization must submit a recent IRS Form 990 that has been filed by the non-profit organization and accepted by the IRS within the last 3 years. If the organization has been organized in the prior calendar year, the organization must submit proof from the IRS that non-profit status has been requested.

3.4 Religious organizations must file IRS Form 1065 or demonstrate a current affiliation with a church or diocese.

3.5 Political organizations must submit proof of current registration with the Delaware Department of Elections.

3.6 The organization 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 to the Office of the Alcohol Beverage Control Commissioner receipts, invoices, reports, statements, or other records documenting the purchase or donation of the alcoholic liquors served at the gathering and demonstrating that any and all proceeds from the sale or service of alcoholic liquors at the gathering were provided to the non-profit organization that obtained the gathering license. The Commissioner may furnish a form for this purpose.

3.8.1 If an organization fails to submit the information required by subsection 3.8, future gathering licenses may not be granted to the organization.

3.8.2 An organization that has obtained a biennial gathering license may submit the receipts, invoices, or other records required by subsection 3.8 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 non-profit organization with an affiliated licensee, the affiliated licensee shall not receive any proceeds from the gathering. For purposes of this rule, "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 shall not apply to a volunteer fire company, a religious organization, or a political organization.

PROPOSED REGULATIONS

OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER

Statutory Authority: 4 Delaware Code, Section 304 (4 Del.C. §304)
4 DE Admin. Code 701, 702

PUBLIC NOTICE

Rule 701 (Formerly Rule 51) A Rule Requiring the Biennial Renewal of Wholesale, Retail, and Annual Gathering Licenses

Rule 702 (formerly Rule 51.1) A Rule Requiring the Biennial Renewal of Supplier's 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 biennial renewal of liquor licenses for wholesale, retail, gatherings, and suppliers.

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. 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, January 31, 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 701 and 702 are updated to shorten the license renewal notice timeline. The effective dates for renewed licenses will not change. Licensees will receive notice from the Commissioner's Office when the license renewal is due and licensees will have 30 days in which to pay the fee for renewal. The rules were originally written when renewal payments were made in person or by mail. The Commissioner's Office has moved to an online renewal process, streamlining the renewals, and making it easier for licensees to renew their licenses. The

months of advance notice before the deadline to renew is no longer necessary. Further, existing licensees have commented frequently that there is too much time between notice and the payment due date, causing many licensees to miss the deadline to pay the license renewal fees. Due to the increase in administrative costs and time to identify and track late renewal fees, the updates include a late penalty that may be applied to those who do not renew licenses by the deadline.

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/january2024/proposed/27 DE Reg 506RFA 01-01-24.pdf>

700 Renewal and Alterations of Licenses

701 (Formerly Rule 51) A Rule Requiring the Biennial Renewal of Wholesale, Retail, and Annual Gathering Licenses

1.0 Wholesaler Licenses (Even-Numbered Years)

All wholesalers ~~must apply for the renewal of their license in the form approved by the Commissioner on or before January 4~~ The Commissioner shall provide notice of license renewal to all wholesalers by February 15 of each even-numbered year, and payment of the renewal fee from the licensee is due within 30 days. All licenses issued by the Commissioner to wholesalers shall be for a ~~two-year~~ 2-year period beginning April 1 of each even-numbered year and ending March 31 of the following even-numbered year.

2.0 Biennial Gathering Licenses (Even-Numbered Years)

All applications for the ~~The Commissioner shall provide notice of license renewal of to all biennial gathering licenses must by October 1 of each even-numbered year. All renewal applications and payments must include a current Form 990 of the applicant and be submitted in the form required by the Commissioner on or before October~~ November 1 of each even-numbered year. All biennial gathering licenses issued by the Commissioner shall be for a two-year 2-year period beginning January 1 of each odd-numbered even-numbered year and ending December 31 of the following even-numbered year.

3.0 Retail Licenses - Sussex County (Even-Numbered Years)

All ~~The Commissioner shall provide notice of license renewal to all retail licensees in Sussex County must apply for the renewal of their license in the form required by the Commissioner on or before July 4~~ by August 15 of each even-numbered year, and payment of the renewal fee from the licensee is due within 30 days. All licenses issued by the Commissioner to locations in Sussex County shall be for a period of ~~two~~ 2 years beginning October 1 of each even-numbered year and ending September 30 of the following even-numbered year.

4.0 Retail Licenses - City of Wilmington (Even-Numbered Years)

All ~~The Commissioner shall provide notice of license renewal to all retail licensees in the City of Wilmington must apply for the renewal of their license in the form required by the Commissioner on or before April 4~~ by May 15 of each even-numbered year, and payment of the renewal fee from the licensee is due within 30 days. All licenses issued by the Commissioner to locations in the City of Wilmington shall be for a period of ~~two~~ 2 years beginning July 1 of each even-numbered year and ending June 30 of the following even-numbered year.

5.0 Retail Licenses - Kent County (Odd-Numbered Years)

~~All~~ The Commissioner shall provide notice of license renewal to all retail licensees in Kent County ~~must apply for the renewal of their license in the form required by the Commissioner on or before July 1 by August 15 of each odd-numbered year, and payment of the renewal fee from the licensee is due within 30 days.~~ All licenses issued by the Commissioner to locations in Kent County shall be for a period of ~~two~~ 2 years beginning October 1 of each odd-numbered year and ending September 30 of the following odd-numbered year.

6.0 Retail Licenses - New Castle County (Odd-Numbered Years, A to K)

~~Retail~~ The Commissioner shall provide notice of license renewal to all retail licensees in New Castle County outside of the City of Wilmington whose name (corporate, partnership, or proprietary name, and not trade name) starts with an alphabetical letter of "A" to "K" ~~must apply for the renewal of their license in the form required by the Commissioner on or before January 1 by February 15 of each odd-numbered year, and payment of the renewal fee from the licensee is due within 30 days.~~ All licenses issued by the Commissioner to locations in New Castle County (A to K) shall be for a period of ~~two~~ 2 years beginning April 1 of each odd-numbered year and ending March 31 of the following odd-numbered year.

7.0 Retail Licenses - New Castle County (Odd-Numbered Years, L to Z)

~~Retail~~ The Commissioner shall provide notice of license renewal to all retail licensees in New Castle County outside of the City of Wilmington whose name (corporate, partnership, or proprietary name, and not trade name) starts with an alphabetical letter of "L" to "Z" ~~must apply for the renewal of their license in the form required by the Commissioner on or before April 1 by May 15 of each odd-numbered year, and payment of the renewal fee from the licensee is due within 30 days.~~ All licenses issued by the Commissioner to locations in New Castle County (L to Z) shall be for a period of ~~two~~ 2 years beginning July 1 of each odd-numbered year and ending June 30 of the following odd-numbered year.

8.0 Late Renewal Penalties for Failure to File Applications as Required

- 8.1 Any application and payment for license renewal received by the Commissioner 1 to 5 business days past the deadline noted in this regulation may result in a \$25 late penalty fee; 6 to 10 business days past the deadline may result in a \$50 late penalty fee.
- 8.2 Any late penalty fees will be assessed with the renewal fee and must be paid before the renewal license shall issue.

~~8.0~~ 9.0 Penalty Fines for Failure to File Applications as Required

~~8.4~~ 9.1 Fine Fines.

- 8.1.1 Any licensee who ~~does not timely fails to~~ file the application for renewal as required by this ~~Rule, or does not file the application for renewal in the form (including the fee) required by the Commissioner, or both,~~ regulation (including the fee) for more than 10 business days after the deadlines noted in this regulation, shall pay a fine as outlined in Rule 4 DE Admin. Code 804 implementing the voluntary fine assessment plan:

8.1.1.1 9.1.1 First violation, \$250 fine and administrative costs.

8.1.1.2 9.1.2 Second violation, \$500 fine and administrative costs.

8.1.1.3 9.1.3 Any application for renewal received after ~~three~~ (3) 3 calendar months from the time required in this rule, or any licensee who has committed a third or subsequent offense under this rule, shall be cited for a violation of this ~~rule~~ regulation and the matter shall be heard by the Commissioner.

~~8.2~~ 9.2 Collection of Fine and Right to Hearing

~~8.2.1~~ 9.2.1 The fine shall be collected as outlined in Rule 4 DE Admin. Code 804, Section 3.0 Procedure.

9.2.2 If a licensee chooses a hearing before the Commissioner, then Rule 4 DE Admin. Code 804, Section 4.0 Penalties and Administrative Costs, will be implemented.

~~8.3~~ 9.3 Non-Renewal of License until Fine is Paid Paid.

~~8.3.4~~ When a fine is validly imposed under this ~~Rule~~ regulation, the license shall not be renewed until the fine is paid in full.

~~8.4~~ 9.4 Meaning of "Timely Filing" Filing".

~~8.4.4~~ In order for any application to be timely filed under this rule, it must be received by the Commissioner or clearly marked with a post office cancellation on or before the deadline required by this ~~Rule~~ regulation.

~~9.0~~ 10.0 **This ~~Rule~~ Regulation Does Not Affect Revocations, Cancellations, Suspensions or Fines**

10.1 Nothing in this ~~Rule~~ regulation shall affect or limit the authority of the Commissioner to revoke, cancel or suspend a license, to impose a fine or to issue a license for a period of time less than ~~two~~ 2 years.

10.2 ~~Further, nothing~~ Nothing in this ~~Rule~~ regulation shall prohibit a licensee from surrendering the license or allowing it to expire.

702 (Formerly Rule 51.1) A Rule Requiring the Biennial Renewal of Supplier's Licenses

1.0 Background

All suppliers are required by the Delaware Liquor Control Act to be licensed by the Delaware Alcoholic Beverage Control Commissioner. All new licensees, including those who have allowed their license to lapse, are required to pay an application processing fee pursuant to 4 **Del.C.** §554(x); however, any supplier applicant seeking a license to import ~~two hundred (200)~~ 200 cases or less per year shall not require a hearing and not be required to pay the application processing fee. Should the holder of a license to import ~~two hundred (200)~~ 200 cases or less per year apply for a license to import over ~~two hundred (200)~~ 200 cases, ~~he/she~~ the license holder will be required to pay the full ~~\$1,000.00~~ \$1,000 application processing fee.

2.0 Purpose

~~2.1~~ The purpose of this ~~rule~~ regulation is to establish a procedure for the renewal of suppliers that are licensed under ~~Chapter 5, §501(a), which states:~~ 4 Del.C. §501(a).

~~2.1.1~~ ~~Before any person sells any alcoholic liquor intended for importation into this state, the person shall procure from the Commissioner a supplier's license in the form prescribed by the Commissioner and shall pay a biennial fee in the amount of \$100.00 to be permitted to sell not more than two hundred (200) cases of alcoholic liquor for importation into the state during the calendar year or a biennial fee in the amount of \$1,000.00 to be permitted to sell more than two hundred (200) cases of alcoholic liquor for importation into this state during the calendar year.~~

3.0 Procedure

~~3.1~~ ~~All~~ The Commissioner shall provide notice of license renewal to all suppliers whose name (corporate, partnership, or proprietary name, and not trade name) starts with an alphabetical letter of "A" to "K" ~~must apply for the renewal of their license in the form required by the Commissioner on or before October 1 by November 15 of each odd numbered year, and payment of the renewal fee from the licensee is due within 30 days.~~ All licenses issued by the Commissioner to Suppliers (A to K) shall be for a period of ~~two~~ 2 years beginning January 1 of each even-numbered year and ending December 31 of the following odd-numbered year.

~~3.2~~ ~~All~~ The Commissioner shall provide notice of license renewal to all suppliers whose name (corporate, partnership, or proprietary name, and not trade name) starts with an alphabetical letter of "L" to "Z" ~~must apply for the renewal of their license in the form required by the Commissioner on or before October 1 by November 15 of each even numbered year, and payment of the renewal fee from the licensee is due within 30 days.~~ All licenses issued by the Commissioner to Suppliers (L to Z) shall be for a period of ~~two~~ 2 years beginning January 1 of each odd-numbered year and ending December 31 of the following even-numbered year.

PROPOSED REGULATIONS

- 3.3 If the supplier fails to comply with subsection 3.2 ~~above of this regulation~~, but renews its license prior to December 31, it will be subject to a \$100 late renewal penalty as outlined in Section 4.0 of this rule penalty.
- 3.4 If a supplier whose name begins with the letter A to K fails to submit a renewal application, along with the fee, by December 31 of odd numbered years, the license will expire, and the supplier will be prohibited by law from shipping alcoholic liquor into the state as of January 1.
- 3.5 If a supplier whose name begins with the letter L to Z fails to submit a renewal application, along with the fee, by December 31 of even numbered years, the license will expire, and the supplier will be prohibited by law from shipping alcoholic liquor into the state as of January 1.
- 3.6 If alcoholic liquor is shipped into the state by an unlicensed supplier, all alcoholic liquor may be seized under the provisions of 4 **Del.C.** Ch. 11.
- 3.7 Suppliers who allow their license to expire shall be required to file a complete application, including the ~~\$1,000.00~~ \$1,000 processing fee, before being issued a new license unless they apply for a license to ship ~~two hundred (200)~~ 200 cases or less per year.

4.0 ~~Penalty for Failure to File Applications as Required~~

- 4.1 ~~Fine:~~
- 4.1.1 Any supplier who does not timely file an application by December 31 for renewal as required by subsections 3.1 or 3.2, or does not file the application for renewal in the form required by the Commissioner including the fee, or both, shall pay a fine as outlined in ~~Rule 4 DE Admin. Code~~ **Rule 4 DE Admin. Code** 804 implementing the voluntary fine assessment plan.
- 4.1.1.1 ~~4.1.1~~ 4.1.1 First Violation: ~~\$250.00~~ \$250 fine and administrative costs.
- 4.1.1.2 ~~4.1.2~~ 4.1.2 Second Violation: ~~\$500.00~~ \$500 fine and administrative costs.
- 4.1.1.3 ~~4.1.3~~ 4.1.3 Any application for renewal of a licensee who has committed a third or subsequent offense under this rule shall be cited for a violation of this rule and the matter shall be heard by the Commissioner.
- 4.2 ~~Collection of Fine and Right to Hearing:~~ Hearing.
- 4.2.1 The fine shall be collected as outlined in ~~Rule 4 DE Admin. Code~~ **Rule 4 DE Admin. Code** 804, Section 3.0, Procedure. If a licensee chooses a hearing before the Commissioner, then ~~Rule 4 DE Admin. Code~~ **Rule 4 DE Admin. Code** 804, Section 4.0, Penalties and Administrative Costs, will be implemented.
- 4.3 ~~Non-Renewal of License Until Fine is Paid:~~ Paid.
- 4.3.1 When a fine is validly imposed under this rule, the license shall not be renewed until the fine is paid in full.
- 4.4 ~~Meaning of "Timely Filing"~~ Filing.
- 4.4.1 In order for an application to be timely filed under this rule, it must be received by the Commissioner, or clearly marked with a post office cancellation, on or before the deadline required by this rule.
- 4.5 Nothing in this rule shall affect or limit the authority of the Commissioner to revoke, cancel, or suspend a license, to impose a fine, or to issue a license for a period of time less than ~~one~~ 1 year. Further, nothing in this rule shall prohibit a licensee from surrendering the license or allowing it to expire.

OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER
Statutory Authority: 4 Delaware Code, Section 304 (4 **Del.C.** §304)
4 **DE Admin. Code** 1008

PUBLIC NOTICE

Rule 1008 (Formerly Rule 19.1) Bottle Clubs - Licensing and Operation

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 updates to 4 **DE Admin. Code** 1008, governing the standards of a restaurant and bottle club, specifically concerning the ability for bottle club licensees to provide bartending service, and to align the dining/bar seat ratio with licensed restaurants.

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., 3rd Floor
Wilmington, DE 19801

Comments may also be directed via electronic mail to 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 p.m. on January 31, 2024.

The action concerning determination of whether to adopt the proposed regulation 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 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 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.

Further, the Commissioner shall determine and publish standards for the manner in which bottle club licensees are permitted to allow the consumption of alcoholic liquors therein. A "bottle club" license authorized by Section 515A, Title 4 of the Delaware Code shall be granted to persons doing business in an establishment meeting the standards of a restaurant as defined by Title 4, and to persons renting premises to customers for holding weddings or other social functions where adequate food is provided, as determined by the Commissioner, either by the customer or a licensed caterer.

Summary of Proposal

The Delaware Alcoholic Beverage Control Commissioner proposes to update 4 **DE Admin. Code** 1008 to conform with the General Assembly's statutory changes to 4 **Del.C.** §515A, and to permit licensed bottle club

owners to choose whether to provide bartender services and serve alcoholic liquors provided for a social gathering by a customer renting the premises that chooses not to use a licensed caterer for the social gathering.

In 2021, the General Assembly amended the bottle club license statute by adding subsection 515A(c)(2), which permits a person renting a premises to customers to hold weddings and other social gatherings to be licensed as a bottle club, so long as adequate food is provided for the gatherings. The Commissioner's current rules on bottle clubs do not address social gatherings where alcoholic liquors are permissible and prevent bottle club licensees from providing bartender service or serving alcoholic liquors when the customer renting the premises chooses to provide the alcohol, rather than use a Delaware licensed caterer. The Commissioner determines that this provision of 4 **DE Admin. Code** 1008 requires updating to better address the change to the statute.

Further, the Commissioner proposes to update the ratio of dining to bar seating in order to align bottle club licensees that operate as restaurants with Delaware restaurant licensees.

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. The Commissioner shall also determine and publish standards for the manner in which the dining room or dining rooms of a restaurant shall be equipped in order to be allowed to exercise the privilege of the sale of alcoholic liquors therein.

***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/january2024/proposed/27 DE Reg 511RFA 01-01-24.pdf>

1000 General Establishments and Clubs

Rule 1008 (Formerly Rule 19.1) Bottle Clubs - Licensing and Operation

1.0 Purpose and Scope

This ~~Rule~~ regulation implements the 1982 and 1989 ~~Amendments~~ amendments to the Delaware Liquor Control Act extending the jurisdiction of the Commissioner to ~~so-called "bottle clubs."~~ bottle clubs. 4 **Del.C.** ~~§515, 515Aa, 902(7) and 554(aa)~~ §§515, 515A(a), 902(7), and 554(aa), 60 Del. Laws, Ch. 232 (April 30, 1982), 67 Del. Laws, Ch. 122 (July 14, 1989). It applies to all businesses operated for profit where patrons carry onto the premises alcoholic liquors to be consumed thereon and removed by patrons upon their departure.

2.0 Definitions

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

"Bottle Club club" means an establishment operated for profit or pecuniary gain where persons enter upon the premises for the purposes of consuming alcoholic liquors which are brought onto the premises by customers of the establishment and are consumed therein and removed by such persons upon their departure. A bottle club also includes the premises rented to customers for holding weddings or other social gatherings, pursuant to 4 Del.C. §515A(c)(2).

"Consume" in any tense, means the act of drinking or eating alcoholic beverages and includes possession of an alcoholic beverage with the present ability to drink or eat it.

"Operated for profit or pecuniary gain" means a business owned by a sole proprietor, partnership, corporation or other business association where such owner is not exempt from federal or state taxes on income on the profits (or losses) from such business, or the profits (or losses) from such business are for the benefit of an individual partnership, corporation or other business association which is not exempt from federal or state taxes on income. An organization qualified to receive a gathering license

under 4 Del.C. §514, shall be deemed to be not for profit or pecuniary gain unless the profits or losses from such enterprise are otherwise subject to federal or state tax on income.

"Restaurant" means any establishment which is regularly used and kept open principally for the purpose of serving complete meals to persons for consideration, and which has seating at tables for 12 or more persons, and suitable kitchen facilities connected therewith for cooking an assortment of foods under the charge of a chef or cook. The service of only such food and victuals as sandwiches or salads shall not be deemed to be the service of "meals" [~~4 Del.C. §101(35)~~] (4 Del.C. §101(40)). In addition, a ~~"restaurant"~~ restaurant shall have a valid and current restaurant retailer license required by 30 **Del.C.** §2906.

3.0 General Policy

No establishment shall be operated for profit or pecuniary gain as a ~~"bottle club"~~ bottle club unless licensed by the Commissioner. Licensed ~~"bottle clubs"~~ bottle clubs shall, within the limits of their license, be held to the same standards of performance and financial responsibility as other types of license holders.

4.0 Standards of Operation for ~~"Bottle Club"~~ Bottle Club

4.1 Hours of Operation

4.1.1 An establishment operated as a ~~"bottle club"~~ bottle club shall not permit the consumption of alcoholic beverages on its premises after ~~2:00~~ 2 a.m. or before ~~9:00~~ 9 a.m. on any day.

4.1.2 The presence of alcoholic liquors on the premises of a ~~"bottle club"~~ bottle club between the hours of ~~2:00~~ 2 a.m. and ~~9:00~~ 9 a.m. shall be prima facie evidence of a violation.

4.2 Service of General Public.

4.2.1 A ~~"bottle club"~~ bottle club may require membership upon payment of a reasonable fee, but approval of such membership shall not be unreasonably denied.

4.2.2 A club shall not charge an admission charge or fee, but may charge a cover or minimum during hours when live entertainment is actually being presented.

4.3 Service of Food

4.3.1 A reasonable selection of food shall be available from a written menu or menu board at all hours when alcoholic beverages are being consumed. The selection of foods shall include a choice of sandwiches, entrees, and non-alcoholic beverages.

4.3.2 If alcoholic liquors will be provided by the customer and not a licensed off-site caterer, a bottle club licensed pursuant to 4 Del.C. §515A(c)(2) shall submit for Commissioner approval at least 20 days prior to a wedding or other social gathering:

4.3.2.1 A signed contract with the customer renting the premises that shows the date and time of the event and the anticipated number of invited guests;

4.3.2.2 A signed contract with the entity providing adequate food for the social gathering, as determined by the Commissioner; and

4.3.2.3 A list of the alcoholic liquors to be provided by the customer that will be served during the gathering.

4.4 Service of Persons Under 21

4.4.1 ~~Minors~~ Persons under 21 years of age may be admitted to the premises of a ~~"bottle club."~~ bottle club.

4.4.2 ~~Minors~~ Persons under 21 years of age may not consume alcoholic beverages at any time, ~~whether or not the bottle club licensee has provided bartending services pursuant to 4 DE Admin. Code 1008, subsection 4.5.2 of this regulation.~~

4.4.3 It shall be a rebuttable presumption that ~~minors~~ persons under 21 years of age found on the premises or departing therefrom who are found to have consumed alcoholic ~~liquors~~ liquors, or are in possession of alcoholic liquors, consumed or possessed such alcoholic liquors on the licensed bottle club premises in violation of the Delaware Liquor Control Act.

4.5 Service of Alcoholic Liquors.

PROPOSED REGULATIONS

- 4.5.1 A ~~"bottle club"~~ bottle club may serve food, non-alcoholic beverages, mixers and ice and may charge for such service. ~~"Bottle clubs" may not mix or provide bartender service to patrons, nor may a "bottle club" chill or keep alcoholic liquors for customers. A "bottle club" shall not serve alcoholic liquors.~~
- 4.5.2 A bottle club renting its premises for weddings or other social gatherings pursuant to 4 Del.C. §515A(c)(2) may provide bartending services and serve alcoholic liquors provided by the customer and may charge for such services.
- 4.5.2.1 Bartending services must be included in the materials submitted to the Commissioner for review and approval pursuant to 4 DE Admin. Code 1008, subsection 4.3.2 of this regulation.
- 4.5.2.2 The servers provided by the bottle club shall be certified as responsible alcoholic beverage servers pursuant to the Delaware Liquor Control Act. Only certified servers may provide bartending services which may also include bar area set-up and breakdown.
- 4.5.3 A bottle club may not keep alcoholic liquors for customers after the conclusion of the customer's use of the premises. Any alcoholic liquors remaining on the premises 2 hours after the conclusion of the event, or 1 hour after the customer has left the premises, shall be considered abandoned property and the bottle club licensee shall dispose of the alcoholic liquors immediately.
- 4.5.4 A bottle club licensee may permit a customer renting the premises pursuant to a contract approved by the Commissioner to bring alcoholic liquors onto the premises up to 36 hours prior to the event, provided the alcoholic liquors are stored in locked storage to which the customer and the licensee possess the only keys. The licensee's contract with the customer may designate a specific person, other than the customer, for this task. The licensee shall confirm the alcoholic liquors brought onto the premises are consistent with the list provided to the Commissioner pursuant to 4 DE Admin. Code 1008, subsection 4.3.2.3 of this regulation, and any quantity or type not approved by the Commissioner must be removed from the premises.
- 4.5.5 Only the customer renting the bottle club licensed premises, or the customer's designee identified in the contract with the licensee, may enter and leave the premises with alcoholic liquors. Guests of the customer renting the premises may not enter or leave the premises with alcoholic liquors.
- 4.6 Presence of Intoxicated Persons on Premises Premises.
- 4.6.1 A ~~"bottle club"~~ bottle club shall not permit an intoxicated person to remain on its premises.
- 4.7 Design and Layout Layout.
- 4.7.1 In a ~~"bottle club"~~ bottle club there shall be seating at tables for not less than 12 persons. Seats at a bar shall not exceed ~~25%~~ 1/3 of the dining seats of the establishment.
-

Symbol Key

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

Final Regulations

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

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

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(a) (14 Del.C. §122(a))
14 DE Admin. Code 415

REGULATORY IMPLEMENTING ORDER

415 Voluntary School Assessments

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del. C. §122(a), the Secretary of Education intends to amend 14 DE Admin. Code 415 Voluntary School Assessments. This amendment is needed to include the collection of Voluntary School Assessments (VSA) in Sussex County as authorized by Senate Bill 186 of the 152nd General Assembly. Additional amendments to alter the style or form of the regulation are also included.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on November 1, 2023. The Department of Education did not receive any written comments concerning the proposed amendments.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 415 Voluntary School Assessments to include the collection of Voluntary School Assessments (VSA) in Sussex County as authorized by Senate Bill 186 of the 152nd General Assembly. Additional amendments to alter the style or form of the regulation are also included.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 415

Voluntary School Assessments. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 415 Voluntary School Assessments attached hereto as *Exhibit "A"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 415 Voluntary School Assessments hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 415 Voluntary School Assessments amended hereby shall be in the form attached hereto as *Exhibit "A,"* and said regulation shall be cited as 14 **DE Admin. Code** 415 Voluntary School Assessments in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on December 12, 2023. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 12th day of December 2023.

Department of Education

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

Approved this 12th day of December 2023.

***Please note that no changes were made to the regulation as originally proposed and published in the November 2023 issue of the Register at page 292 (27 DE Reg. 292). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/january2024/final/27 DE Reg 515 01-01-24.htm>

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(a) and (b)(6) (14 **Del.C.** §122(a) & (b)(6))
14 **DE Admin. Code** 501

REGULATORY IMPLEMENTING ORDER

501 State Content Standards

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §122(a) and (b)(6), the Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 501 State Content Standards. This regulation is being amended to add language related to the new Media Literacy Content Standards and Driver Education Content Standards.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on November 1, 2023. The Department of Education did not receive any written comments concerning the proposed amendments.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 501 State Content Standards. This regulation is being amended to add language related to the new Media Literacy Content Standards and Driver Education Content Standards.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 501 State Content Standards. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 501 State Content Standards attached hereto as *Exhibit "A"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 501 State Content Standards hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 501 State Content Standards amended hereby shall be in the form attached hereto as *Exhibit "A"*, and said regulation shall be cited as 14 **DE Admin. Code** 501 State Content Standards in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on December 14, 2023. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 14th day of December, 2023.

Department of Education

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

Approved this 14th day of December 2023

State Board of Education

/s/ Shawn Brittingham, President

/s/ Wali W. Rushdan, II

/s/ Deborah Stevens, Vice President

/s/ Candice Fifer

Rev. Provey Powell, Jr. (Absent)

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

***Please note that no changes were made to the regulation as originally proposed and published in the November 2023 issue of the *Register* at page 294 (27 DE Reg. 294). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/january2024/final/27 DE Reg 516 01-01-24.htm>

FINAL REGULATIONS

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(6) (14 **Del.C.** §122(b)(6))
14 **DE Admin. Code** 502

REGULATORY IMPLEMENTING ORDER

502 Alignment of Local School District Curricula to the State Content Standards

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §122(b)(6), the Secretary of Education intends to amend 14 **DE Admin. Code** 502 Alignment of Local School District Curricula to the State Content Standards. This regulation needs to be amended to align with modifications in State Content Standards and Department of Education reporting expectations of school districts and to clarify the title of the regulation.

Notice of the proposed regulation was published in the *Delaware Register of Regulations* on November 1, 2023. The Department of Education did not receive any written comments concerning the proposed amendments.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 502 Alignment of Local School District Curricula to the State Content Standards to align the regulation with modifications in State Content Standards and Department of Education reporting expectations of school districts and to clarify the title of the regulation.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 502 Alignment of Local School District Curricula to the State Content Standards. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 502 Alignment of Local School District Curricula to the State Content Standards attached hereto as *Exhibit "A"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 502 Alignment of Local School District Curricula to the State Content Standards hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 502 Alignment of Local School District Curricula to the State Content Standards amended hereby shall be in the form attached hereto as *Exhibit "A,"* and said regulation shall be cited as 14 **DE Admin. Code** 502 Alignment of Local School District Curricula to the State Content Standards in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on December 12, 2023. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 12th day of December 2023.

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

Approved this 12th day of December 2023.

*Please note that no changes were made to the regulation as originally proposed and published in the November 2023 issue of the *Register* at page 296 (27 DE Reg. 296). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

<https://regulations.delaware.gov/register/january2024/final/27 DE Reg 518 01-01-24.htm>

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(18) (14 Del.C. §122(b)(18))
14 DE Admin. Code 503

REGULATORY IMPLEMENTING ORDER

503 Instructional Program Requirements

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §122(a) and (b)(6), the Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 503 Instructional Program Requirements. This regulation is being amended to update references to grade-level and course-level expectations to ensure alignment with current practice, to remove reference to "local" school districts, to add Health Education instructional program requirements, and to amend grammar and punctuation to comply with the *Delaware Administrative Code Drafting and Style Manual*.

Notice of the proposed regulation was published in the *Register of Regulations* on November 1, 2023. The Department received five written comments, all generally supportive of the regulation amendments. However, one comment concerned the following:

Issue: The exemption for the James H. Groves High School programs from the program requirements. Specifically, education of students at James H. Groves High School should not involve any lesser program requirements.

Response: The James H. Groves High School is composed of adult learners not enrolled in the K12 system who wish to attain their high school diploma. These students can reside in the community or under Department of Correction supervision. The James H. Groves High School follows the Department of Education requirements for graduation with substitutions due to the populations of students attending the program. On average, over the past four years, 60% of all Groves learners were 19 to 60+ years of age. In the Prison Education Program, an average 85% of Groves learners were between 19 and 60+ years of age. An additional elective credit was substituted for the physical education credit due to the appropriateness of physical fitness activities for the wide range of age groups.

Health education instruction is available to all James H. Groves High School students in the community and prison education programs and is a required course to graduate.

Visual arts courses are available as electives to James H. Groves High School students in the community and prison education programs.

II. FINDINGS OF FACT

The Department further finds that the proposed amendments to the regulation are necessary to update references to grade-level and course-level expectations to ensure alignment with current practice, to remove reference to "local" school districts, to add Health Education instructional program requirements, and to amend grammar and punctuation to comply with the *Delaware Administrative Code Drafting and Style Manual*.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 503 Instructional Program Requirements. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 503 Instructional Program Requirements attached hereto as Exhibit A, is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 503 Instructional Program Requirements hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 503 Instructional Program Requirements amended hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 503 Instructional Program Requirements in the *Administrative Code of Regulations* for the Department.

V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten days from the date this Order is published in the *Register of Regulations*. Pursuant to 14 **Del.C.** §122(e), 14 **DE Admin. Code** 503 Instructional Program Requirements shall be in effect for a period of five years from the effective date of this Order unless it is amended or repealed sooner.

IT IS SO ORDERED the 14th day of December, 2023.

Department of Education

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

Approved this 14th day of December, 2023.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Wali W. Rushdan, II

/s/ Deborah Stevens, Vice President

/s/ Candice Fifer

Rev. Provey Powell, Jr. (Absent)

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

***Please note that no changes were made to the regulation as originally proposed and published in the November 2023 issue of the *Register* at page 299 (27 DE Reg. 299). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/january2024/final/27 DE Reg 519 01-01-24.htm>

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(18) (14 **Del.C.** §122(b)(18))

14 **DE Admin. Code** 910

ORDER

910 Delaware Requirements for Issuance of the Secondary Credential

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §122(b)(18), the Delaware Department of Education ("Department") developed amendments to 14 **DE Admin. Code** 910 Delaware Requirements for Issuance of the Secondary Credential. The regulation provides the requirements for a Secondary Credential. This regulation is being amended pursuant to 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years. The amendments include corrections to grammar and style in order to comply with the *Delaware Administrative Code Drafting and Style Manual*.

Notice of the proposed regulation was published in the *Register of Regulations* on October 1, 2023. The

Department did not receive any written submittals concerning the proposed regulation.

II. FINDINGS OF FACT

The Department further finds that the proposed amendments to the regulation are necessary for the operation of adult education. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 910 Delaware Requirements for Issuance of the Secondary Credential.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 910 Delaware Requirements for Issuance of the Secondary Credential subject to the State Board of Education's approval. On November 16, 2023, the State Board of Education approved amending 14 **DE Admin. Code** 910 Delaware Requirements for Issuance of the Secondary Credential. Therefore, pursuant to 14 **Del.C.** §122(b)(18), 14 **DE Admin. Code** 910 Delaware Requirements for Issuance of the Secondary Credential, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 910 Delaware Requirements for Issuance of the Secondary Credential amended hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 910 Delaware Requirements for Issuance of the Secondary Credential in the *Administrative Code of Regulations* for the Department.

V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten days from the date this Order is published in the *Register of Regulations*. Pursuant to 14 **Del.C.** §122(e), 14 **DE Admin. Code** 910 Delaware Requirements for Issuance of the Secondary Credential shall be in effect for a period of five years from the effective date of this Order unless it is amended or repealed sooner.

IT IS SO ORDERED the 16th day of November, 2023.

Department of Education

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

Approved this 16th day of November, 2023.

State Board of Education:

/s/ Shawn Brittingham, President

/s/ Wali W. Rushdan, II

/s/ Deborah Stevens, Vice President

/s/ Candice Fifer

/s/ Rev. Provey Powell, Jr.

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

***Please note that no changes were made to the regulation as originally proposed and published in the October 2023 issue of the *Register* at page 223 (27 DE Reg. 223). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/january2024/final/27 DE Reg 520 01-01-24.htm>

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(a) (14 Del.C. §122(a))
14 DE Admin. Code 1001

ORDER

1001 Participation in Extra Curricular Activities

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Department of Education ("Department") proposed to repeal 14 DE Admin. Code 1001 Participation in Extra Curricular Activities. The regulation directed school districts and charter schools to establish their own academic eligibility criteria for participation in extracurricular activities except for interscholastic athletics. Academic eligibility criteria for middle and high school students' participation in extracurricular activities is established by the Delaware Interscholastic Athletic Association (DIAA) Board and Delaware public schools, including school districts and charter schools, are required to comply with such requirements pursuant to 14 Del.C. § 304(3)).

Notice of the proposed repeal of the regulation was published in the *Register of Regulations* on November 1, 2023. The Department received written submittals from Ann C. Fisher, Chairperson of the Governor's Advisory Council for Exceptional Citizens ("GACEC"), and Benjamin Shrader, Chairperson of the State Council for Persons with Disabilities ("SCPD"). GACEC commented that "[w]hen school systems have an eligibility requirement for a nonacademic program that is not strictly related to an ability to participate in the program, even with reasonable accommodations, it may rise to discrimination if the requirement tends to screen out students with disabilities." SCPD commented that "Delaware's DIAA must offer an equal opportunity to students with disabilities to participate in sports, which may include the requirement to provide reasonable accommodations such as changes to policies" and "students with IEPs must be afforded an equal opportunity to participate in extracurriculars, including with supplementary aids and services deemed appropriate and necessary by their IEP teams." GACEC and SCPD each recommended that the Department "maintain a modified statement of non-discrimination" or "incorporate such a statement elsewhere in the DIAA regulations."

II. FINDINGS OF FACTS

The Department considered the two written submittals and determined not to make any changes as a result. The Department will submit the written submittals to the DIAA Board for consideration.

The Department finds that when 14 DE Admin. Code 1001 Participation in Extra Curricular Activities was adopted in 1997, the DIAA had not been created. DIAA was established in 2002 and the Board adopted regulations that establish the academic eligibility criteria for middle and high school students' participation in extracurricular activities. In accordance with 14 Del.C. §122(e), the Department finds that 14 DE Admin. Code 1001 Participation in Extra Curricular Activities is unnecessary. The Department also finds that the comment in 14 DE Admin. Code 1001 Participation in Extra Curricular Activities is a non-regulatory note that cites a Federal regulation. The Federal regulation itself stands. Accordingly, the Department finds that it is appropriate to repeal 14 DE Admin. Code 1001 Participation in Extra Curricular Activities.

III. DECISION TO REPEAL THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to repeal 14 DE Admin. Code 1001 Participation in Extra Curricular Activities. Therefore, pursuant to 14 Del.C. §§122(a) and 122(e), 14 DE Admin. Code 1001 Participation in Extra Curricular Activities, attached hereto as Exhibit A, is hereby repealed.

IV. TEXT AND CITATION

The text of 14 DE Admin. Code 1001 Participation in Extra Curricular Activities repealed hereby shall be in the

form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1001 Participation in Extra Curricular Activities in the *Administrative Code of Regulations* for the Department.

V. EFFECTIVE DATE OF ORDER

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

IT IS SO ORDERED the 12th day of December 2023.

Department of Education

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

Approved this 12th day of December 2023.

1001 Participation in Extra Curricular Activities

4.0 Academic Eligibility Criteria

~~Local school districts and charter schools shall establish their own academic eligibility criteria for participation in all extra-curricular activities except for interscholastic athletics. The academic eligibility criteria for interscholastic athletics is established in 14 **DE Admin. Code** 1009.2.6 DIAA Senior High School Interscholastic Athletics, and in 14 **DE Admin. Code** 1008.2.6 DIAA Junior High and Middle School Interscholastic Athletics.~~

~~Comment: In establishing and implementing academic eligibility criteria applicable to students with disabilities, districts are reminded that some flexibility may be contemplated by Federal guidelines. See 34 CFR Sec. 104.4.~~

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b)(15), 303, and 304(2) and 29 Delaware Code, Section 10113(b)(2) & (b)(4) (14 **Del.C.** §§122(b)(15), 303, & 304(2) & 29 **Del.C.** §10113(b)(2) & (b)(4))
14 **DE Admin. Code** 1021

ORDER

1021 DIAA Committees

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§122(b)(15), 303, and 304(2), the Delaware Interscholastic Athletic Association ("DIAA") Board of Directors developed amendments to 14 **DE Admin. Code** 1021 DIAA Committees. The regulation sets forth rules of practice and procedure concerning the DIAA Board of Directors' committees. The proposed amendments are to revise subsection 4.1 to increase the maximum number of Unified Sports® Committee members to 18 and require that the committee include one representative from each Unified® Sport recognized by DIAA and correct the numbering in subsection 4.5.

The amendments are exempt from the requirement of public notice and comment and are adopted informally in accordance with 29 **Del.C.** §§10113(b)(2) and 10113(b)(4).

II. FINDINGS OF FACTS

The Department finds that the regulation relates to interscholastic athletics at the middle and high school levels

and is necessary to implement 14 **Del.C.** Ch. 3. The Department further finds that the regulation sets forth rules of practice and procedure used by the DIAA Board of Directors. The Department also finds that the proposed change to subsection 4.5 is a nonsubstantive change to correct a technical error in numbering. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1021 DIAA Committees.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1021 DIAA Committees. Therefore, pursuant to 14 **Del.C.** §§122(b)(15), 303, and 304(2) and 29 **Del.C.** §§10113(b)(2) and 10113(b)(4), 14 **DE Admin. Code** 1021 DIAA Committees, attached hereto as Exhibit "A," is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1021 DIAA Committees amended hereby shall be in the form attached hereto as Exhibit "A" and said regulation shall be cited as 14 **DE Admin. Code** 1021 DIAA Committees in the *Administrative Code of Regulations* for the Department.

V. EFFECTIVE DATE OF ORDER

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

IT IS SO ORDERED the 15th day of December, 2023.

Department of Education

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

1021 DIAA Committees

(Break in Continuity of Sections)

4.0 Committee and Subcommittee Membership

- 4.1 Committees shall consist of no less than 10 and no more than 15 committee members in addition to 1 current Board member. Notwithstanding the foregoing, the Unified Sports® Committee shall consist of no less than 10 and no more than 18 committee members in addition to 1 current Board member and shall include 1 representative for each Unified Sport® recognized by DIAA. The Student-Athlete Advisory Subcommittee shall consist of no less than 10 and no more than 21 subcommittee members.

(Break in Continuity Within Section)

- 4.5 Each committee shall elect a chairperson, vice chairperson, and secretary every 2 years.

~~4.6.1~~ 4.5.1 The committee chairperson shall preside over all meetings of the committee.

~~4.6.2~~ 4.5.2 The committee's vice chairperson shall serve in the capacity of the committee's chairperson in the chairperson's absence.

***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/january2024/final/27 DE Reg 523 01-01-24.htm>

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), 1305(o), and 1305(l) (14 Del.C. §§1203, 1205(b), 1305(o), & 1305(l))
14 DE Admin. Code 1501

ORDER

1501 Salary Supplements for Educators

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §§1203, 1205(b), 1305(l), and 1305(o), the Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1501 Salary Supplements for Educators. The regulation concerns knowledge and skills salary supplements pursuant to 14 Del.C. §1305(k), national certification salary supplements pursuant to 14 Del.C. §1305(l), and additional responsibility assignment salary supplements pursuant to 14 Del.C. §1305(n). In accordance with 14 Del.C. §1305(o), the Professional Standards Board is required to annually review the supplements and promulgate recommendations as necessary. The proposed amendment to this regulation is to revise subsection 4.1.7 as a result of HB 231 of the 152nd General Assembly. HB 231 amended 14 Del.C. §1305(l) to allow salary supplements for school-based physical therapists who have passed the National Physical Therapy Exam (NPTE) administered by the Federation of State Boards of Physical Therapy and was signed into law on August 3, 2023.

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

II. FINDINGS OF FACTS

On November 2, 2023, the Professional Standards Board voted to propose 14 DE Admin. Code 1501 Salary Supplements for Educators, 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 amendment to subsection 4.1.7 is consistent with HB 231 of the 152nd General Assembly. In addition, the Department finds that the proposed amendment to the regulation is necessary to implement 14 Del.C. Ch. 12 and is 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 1501 Salary Supplements for Educators.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 DE Admin. Code 1501 Salary Supplements for Educators subject to the State Board of Education's approval. On November 16, 2023, the State Board of Education approved amending 14 DE Admin. Code 1501 Salary Supplements for Educators. Therefore, pursuant to 14 Del.C. §§1203, 1205(b), 1305(l), and 1305(o), 14 DE Admin. Code 1501 Salary Supplements for Educators, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 DE Admin. Code 1501 Salary Supplements for Educators amended hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 DE Admin. Code 1501 Salary Supplements for Educators in the *Administrative Code of Regulations* for the Department.

V. EFFECTIVE DATE OF ORDER

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

IT IS SO ORDERED the 16th day of November, 2023.

Department of Education

FINAL REGULATIONS

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

Approved this 16th day of November, 2023.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Wali W. Rushdan, II

/s/ Deborah Stevens, Vice President

/s/ Candice Fifer

/s/ Rev. Provey Powell, Jr.

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

*Please note that no changes were made to the regulation as originally proposed and published in the October 2023 issue of the *Register* at page 226 (27 DE Reg. 226). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

<https://regulations.delaware.gov/register/january2024/final/27 DE Reg 525 01-01-24.htm>

PROFESSIONAL STANDARDS BOARD

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

14 DE Admin. Code 1517

ORDER

1517 Paraeducator Permit

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 Del.C. §§1203 and 1205(b), the Professional Standards Board, acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed amendments to 14 DE Admin. Code 1517 Paraeducator Permit. The regulation concerns paraprofessional qualifications and training for issuance and renewal of a Paraeducator Permit. The proposed amendments include clarifying Section 1.0; adding, striking, and revising terms in Section 2.0; revising Section 3.0, which concerns issuing a Paraeducator Permit; revising the requirements for an Instructional Paraeducator Permit in Section 4.0; revising the requirements for a Service Paraeducator Permit in Section 5.0; adding the requirements for reissuance of an expired permit to Section 6.0; revising the application requirements in Section 7.0; adding Section 8.0, which concerns renewal of a Paraeducator Permit; revising the professional development activities for renewal in Section 9.0; adding Section 10.0, which concerns validity of a Paraeducator Permit; adding Section 11.0, which concerns the requirements for retaining a Paraeducator Permit; adding Section 12.0, which concerns disciplinary action; adding Section 13.0, which concerns applicants' and paraeducators' contact information; and adding Section 14.0, which concerns recognizing Title I Paraeducator Permits that are proposed to no longer be issued.

Notice of the proposed regulation was published in the *Register of Regulations* on October 1, 2023. The Professional Standards Board received two written submittals concerning the proposed regulation. Ann C. Fisher, Chairperson of the Governor's Advisory Council for Exceptional Citizens ("GACEC") commented that GACEC "supports the proposed changes because they offer additional alternatives for paraeducator licensure and continued education to help address the shortage of necessary paraprofessionals in schools." Benjamin Shrader, Chairperson of the State Council for Persons with Disabilities ("SCPD") commented that SCPD supports the proposed changes. SCPD further commented that the proposed regulation will see that individuals with ABAT and RBT certificates have been provided training that is more substantial than existing alternatives to a Paraeducator Permit and expanding opportunities for continuing education lowers the burden of renewing a Paraeducator Permit.

II. FINDINGS OF FACTS

On November 2, 2023, the Professional Standards Board considered the two written submittals and determined that further changes as a result of the written submittals were not necessary. The Professional Standards Board voted to propose 14 **DE Admin. Code** 1517 Paraeducator Permit, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendment to the regulation is necessary to implement 14 **Del.C.** Ch. 12 and is designed to improve the quality of the Delaware paraeducator workforce and to improve student performance. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1517 Paraeducator Permit.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1517 Paraeducator Permit subject to the State Board of Education's approval. On November 16, 2023, the State Board of Education approved amending 14 **DE Admin. Code** 1517 Paraeducator Permit. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1517 Paraeducator Permit, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

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

V. EFFECTIVE DATE OF ORDER

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

IT IS SO ORDERED the 16th day of November, 2023.

Department of Education

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

Approved this 16th day of November, 2023.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Wali W. Rushdan, II

/s/ Deborah Stevens, Vice President

/s/ Candice Fifer

/s/ Rev. Provey Powell, Jr.

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

***Please note that no changes were made to the regulation as originally proposed and published in the October 2023 issue of the *Register* at page 230 (27 DE Reg. 230). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/january2024/final/27 DE Reg 526 01-01-24.htm>

FINAL REGULATIONS

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Sections 1203, 1205(b), and 1220 (14 **Del.C.** §§1203, 1205(b), & 1220)
14 **DE Admin. Code** 1552

ORDER

1552 Junior Reserve Officers' Training Corps (JROTC) Teacher

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, the Professional Standards Board ("Board"), acting in consultation and cooperation with the Delaware Department of Education ("Department"), developed 14 **DE Admin. Code** 1552 Junior Reserve Officers' Training Corps (JROTC) Teacher. The proposed regulation concerns the requirements for a Junior Reserve Officers' Training Corps (JROTC) Teacher Standard Certificate in accordance with 14 **Del.C.** §1220. Proposed Section 1.0 provides who would be required to hold the Junior Reserve Officers' Training Corps (JROTC) Teacher Standard Certificate; Section 2.0 provides definitions for the proposed regulation; Section 3.0 concerns the issuance of a Junior Reserve Officers' Training Corps (JROTC) Teacher Standard Certificate; Section 4.0 provides the prescribed education, knowledge, and skill requirements for the issuance of a Junior Reserve Officers' Training Corps (JROTC) Teacher Standard Certificate; Section 5.0 provides the application requirements; Section 6.0 concerns Secretary of Education review; Section 7.0 concerns the validity of a Junior Reserve Officers' Training Corps (JROTC) Teacher Standard Certificate; Section 8.0 concerns the requirements to retain the Junior Reserve Officers' Training Corps (JROTC) Teacher Standard Certificate; Section 9.0 concerns disciplinary actions; and Section 10.0 concerns applicants' and Educators' contact information with the Department and specifies how they can change their name or address.

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

II. FINDINGS OF FACTS

On November 2, 2023, the Professional Standards Board voted to propose 14 **DE Admin. Code** 1552 Junior Reserve Officers' Training Corps (JROTC) Teacher, in the form attached hereto as Exhibit A, for adoption by the Department subject to the State Board of Education's approval.

The Department finds that the proposed amendment to the regulation is necessary to implement 14 **Del.C.** Ch. 12 and is 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** 1552 Junior Reserve Officers' Training Corps (JROTC) Teacher.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1552 Junior Reserve Officers' Training Corps (JROTC) Teacher subject to the State Board of Education's approval. On November 16, 2023, the State Board of Education approved amending 14 **DE Admin. Code** 1552 Junior Reserve Officers' Training Corps (JROTC) Teacher. Therefore, pursuant to 14 **Del.C.** §§1203, 1205(b), and 1220, 14 **DE Admin. Code** 1552 Junior Reserve Officers' Training Corps (JROTC) Teacher, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1552 Junior Reserve Officers' Training Corps (JROTC) Teacher amended hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1552 Junior Reserve Officers' Training Corps (JROTC) Teacher in the *Administrative Code of Regulations* for the Department.

V. EFFECTIVE DATE OF ORDER

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

IT IS SO ORDERED the 16th day of November, 2023.

Department of Education

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

Approved this 16th day of November, 2023.

State Board of Education

/s/ Shawn Brittingham, President

/s/ Wali W. Rushdan, II

/s/ Deborah Stevens, Vice President

/s/ Candice Fifer

/s/ Rev. Provey Powell, Jr.

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

*Please note that no changes were made to the regulation as originally proposed and published in the October 2023 issue of the *Register* at page 231 (27 DE Reg. 231). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

<https://regulations.delaware.gov/register/january2024/final/27 DE Reg 528 01-01-24.htm>

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 9706(g)(2) (16 Del.C. §9706(g)(2))
16 DE Admin. Code 4305

ORDER

4305 Trauma System Regulation

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS"), Division of Public Health initiated proceedings to amend 4305 Trauma System Regulation, pursuant to 29 Del.C. Ch. 101 and the authority as prescribed by 16 Del.C. §9706(g)(2).

On November 1, 2023 (27 DE Reg. 314), DHSS published in the *Delaware Register of Regulations* its notice of proposed regulatory amendments, pursuant to 29 Del.C. §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by December 1, 2023, 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.

FINDINGS OF FACT:

No changes were made to the regulations since publication as proposed. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed amendments to 4305 Trauma System Regulation are adopted and shall become effective January 11, 2024 (ten days), after publication of the final regulation in the *Delaware Register of Regulations*.

12/11/2023 | 4:38 pm EST

Date

Josette D. Manning, Esq.
DHSS Cabinet Secretary

*Please note that no changes were made to the regulation as originally proposed and published in the November 2023 issue of the *Register* at page 314 (27 DE Reg. 314). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

<https://regulations.delaware.gov/register/january2024/final/27 DE Reg 529 01-01-24.htm>

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Sections 3004F(d) and 3008F(a) (16 Del.C. §§3004F(d) & 3008F(a))
16 DE Admin. Code 4501

ORDER

4501 Regulations for Animals Held in Shelter

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS"), Division of Public Health initiated proceedings to amend 4501 Regulations for Animals Held in Shelter. These proceedings were initiated pursuant to 29 Del.C. Ch. 101 and the authority as prescribed by 16 Del.C. §§3004F(d) & 3008F(a).

On November 1, 2023 (27 DE Reg. 317(11/01/2023)), DHSS published in the *Delaware Register of Regulations* its notice of proposed regulatory amendments, pursuant to 29 Del.C. §10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by December 1, 2023, after which time DHSS would review information, factual evidence, and public comment to the said proposed regulations.

SUMMARY OF EVIDENCE:

In accordance with Delaware law, the public notice regarding proposed Department of Health and Social Services (DHSS), Division of Public Health (DPH) Regulations Governing Animals Held in Shelter were posted in the November 2023, *Delaware Register of Regulations*). Written comments were received on the proposed regulations during the public comment period (November 1, 2023, through December 1, 2023).

Comments were received by Robert Wasserbach, President, Faithful Friends Animal Society.

Public comments and the DHSS (Agency) responses are as follows:

Section 10, "Euthanasia in Animal Shelters": We ask that the terms "severely aggressive" (to mean posing an imminent danger to staff) and "aggressive" (to mean exhibiting defensive but trainable behaviors, such as food/treat guarding or aggression towards other animals) be added to the list of definitions to distinguish the levels of aggression since these terms influence the outcomes of animals held in shelters. One of the reasons the Office of Animal Welfare was formed was because a shelter, many years ago, was able to skirt euthanasia requirements by labeling virtually every animal euthanized as "severely aggressive" (when there were complaints from members of the public that this was not the case).

Agency Response: The Agency appreciates and acknowledges these comments. Neither "aggressive" nor "severely aggressive" are used in the regulations and therefore cannot be included in definitions.

The regulation will remain as written.

Section 10.2.3.8: We believe the euthanasia room should be accessible to a pet owner who is requesting euthanasia so that an owner can remain with his/her pet at the very end of its life until it takes its last breath. Is the owner considered to be a "member of the public"? Does this need to be clarified?

Agency Response: The Agency appreciates and acknowledges these comments. Privately owned pets may only be euthanized by a veterinarian in a private practice or clinic. These regulations

refer to euthanasia of shelter animals, not to end of life services for private pets offered in a veterinary clinic. Subsection 10.2.3.8 states that the public should not be present when euthanasia of a shelter animal is being performed.

The regulation will remain as written.

Section 11, "Euthanasia Methods and Procedures for Animal Shelters" Section 11.7: Along with the authorization, there should be documentation (e.g., signed checklist) to support that the shelter did indeed exhaust reasonable alternatives, per the conditions under 3004F(a) and (b), before it euthanizes an animal. The regulations should require this.

Agency Response: The Agency appreciates and acknowledges these comments. Subsection 11.7 requires documentation of the authorization to be kept in the animal's record and a copy be provided to the Department upon request.

The regulation will remain as written.

Section 11.7: What is an "animal care/control manager"? Would everyone interpret this as the same? Also, the term "director" could apply to a number of positions. It should be "executive director" of the organization. Overall, the regulation should limit who can authorize a euthanasia procedure. Perhaps it should only be a veterinarian or the executive director.

Agency Response: The Agency appreciates and acknowledges these comments. It is impossible to find one title that is used uniformly by all shelters. These terms are used to make it clear that shelter management or a veterinarian can authorize euthanasia.

The regulation will remain as written.

Section 14, "Record Keeping and Reporting for Animal Shelters." Although the number of animals at the beginning of the period is addressed in 14.1.3, I suggest that this actually be before 14.1.1, "Animal Intake Numbers by Type." This enables a more logical flow, Beginning Number plus Intake minus Outcomes= Ending Number. Also, for the Beginning Number, the regulation should make clear that this number does not include animals brought to a shelter's medical clinic for procedures such as spay/neuter and vaccines, where the animal is retrieved by its owner or colony cat caretaker after such procedure.

Agency Response: The Agency appreciates and acknowledges these comments. A format to be used for reporting animal statistics will be provided by the Department which will address the logical flow suggested above.

Animals receiving services at a shelter's veterinary clinic by an owner or colony caretaker are explicitly excluded from intake in this regulation. "Intake" is defined as "the number of live animals for which an animal shelter assumes custody and are admitted for temporary shelter and care. Intake includes all animals admitted to the shelter, foster care, or a satellite location."

The regulation will remain as written.

Section 14.1.1: The regulations should make it clear that animal intake numbers must exclude:

- Intra-agency transfers (i.e., transfers between branches of the same organization), except interagency transfers from out of state into Delaware.
- Animals brought to a shelter's medical clinic for procedures such as spay/neuter and vaccines, where the animal is retrieved by its owner or colony cat caretaker after such procedure.
- Animals to be euthanized at the request of the owner. Instead, there should be a separate paragraph (perhaps 14.1.8) on records regarding owner-requested euthanasia performed by the shelter, a private veterinarian at the request of or by referral from the shelter, or in a clinic, including, but not limited to, a community clinic, medical clinic, or health clinic, at the request of, referral from, or run by the shelter. These records should be periodically reviewed by the Office of Animal Welfare to ensure that the decision to euthanize was done in accordance with 3004F (b) and (c) of Title 16 Chapter 30F of the Code.

Agency Response: The Agency appreciates and acknowledges these comments. Regarding transfers in and out, per subsection 14.2, a format to be used for reporting animal statistics will be provided by the Department. This will include instruction on proper calculation of intakes and outcomes. Intra-agency transfers within the same agency and within the state would not be recorded in intakes or outcomes.

As stated in question 1, the definition of "Intake" excludes animals brought to a veterinary clinic for care, as they are not being admitted into the shelter's custody.

Regarding owner-requested euthanasia, only a veterinarian may euthanize a privately owned pet. Euthanasia of privately owned pets by a veterinary practice or veterinary clinic do not fall under authority of the Department and therefore are not included in statistics for shelter animals. Euthanasia of shelter pets only is governed by 16 Del.C. §3004. Subsection 11.7 states that euthanasia authorization documentation for shelter animals is required to be kept in the animal's record. Annual inspections include a review of euthanasia records.

The regulation will remain as written.

Section 14.1.2.7: The regulations should make it clear that euthanasia outcome numbers must include:

- Number of animals euthanized at the direction of the shelter (does not include owner-requested euthanasia); and
- Number of animals transferred to an out-of-state branch of the same organization that were subsequently euthanized. Otherwise, how do we know Delaware animals are not being transferred to an out-of-state branch and euthanized there (and not reported)?

Agency Response: The Agency appreciates and acknowledges these comments. Subsection 14.1.2.7 requires animal shelters to report the number of shelter pets euthanized. Subsection 14.1.2.6 requires animal shelters to record transfers out to out-of-state animal welfare organizations. The Department captures statistics for Delaware shelters only and has no authority to capture shelter animal statistics in other states.

The regulation will remain as written.

FINDINGS OF FACT:

No changes were made to the regulations since publication as proposed. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed amendments to 4501 Regulations for Animals Held in Shelter are adopted and shall become effective January 11, 2024 (ten days), after publication of the final regulation in the *Delaware Register of Regulations*.

12/14/2023 | 9:08 AM EST

Date

Josette D. Manning, Esq.
DHSS Cabinet Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the November 2023 issue of the *Register* at page 317 (27 DE Reg. 317). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/january2024/final/27 DE Reg 530 01-01-24.htm>

DEPARTMENT OF HUMAN RESOURCES

STATE EMPLOYEE BENEFITS COMMITTEE

Statutory Authority: 29 Delaware Code, Section 9602 (29 Del.C. §9602)
19 DE Admin. Code 2001

ORDER

2001 Group Health Insurance Plan Eligibility and Enrollment Rules

Pursuant to House Bill No. 4 amended by House Amendment No. 1(149th General Assembly), the Department of Human Resources and the Division of Statewide Benefits of the Department of Human Resources was established effective July 1, 2017, having powers, duties and functions as follows:

"(1) With the exception of deferred compensation pursuant to Chapter 60A of this title and any other investment or retirement savings plan, the Director of Statewide Benefits shall be responsible for the management and administration of all currently existing and future state employee benefits programs, including but not limited to group health, group life, flexible benefits, dental, vision, prescription, long-term

care, disability, supplemental benefits, and the Blood Bank."

Epilogue language referenced below from the FY24 Operating Budget Act - HB195, Section 25 allows the State Employee Benefits Committee to amend the Group Health Insurance Program Rules & Regulations by approving the changes and then sending them to the Registrar for publication in the Register of Regulations.

"Notwithstanding the provisions of the Administrative Procedures Act, 29 **Del.C.** c. 101 or any other laws to the contrary, the State Employee Benefits Committee is authorized to amend the rules for Employees Eligible to Participate in the State Group Health Insurance Program and the State Disability Insurance Program by approving such amendments and causing the amendments to be published in the Register of Regulations with such amendments to be effective as of the date of such publication unless otherwise specified by the State Employee Benefits Committee."

Pursuant to the authority vested in the State Employee Benefits Committee (SEBC) by **29 Del.C. §§5210(4), 9602(b)(4)**, the SEBC hereby amends the Eligibility and Enrollment Rules for the State of Delaware Group Health Insurance Plan (19 **DE Admin. Code** 2001), as shown on the attached version of such rules. The amendments shall have an effective date of January 1, 2024.

This order is effective December 07, 2023.

**STATE OF DELAWARE
DEPARTMENT OF HUMAN RESOURCES**

By:

Faith L. Rentz
Director, Statewide Benefits and Insurance Coverage Office

Date: December 07, 2023

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

<https://regulations.delaware.gov/register/january2024/final/27 DE Reg 532 01-01-24.htm>

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL**

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Statutory Authority: 7 Delaware Code, Chapters 60 and 74 and Section 6010(a) (7 **Del.C.** Chs. 60 & 74 & §6010(a))
7 **DE Admin. Code** 1351

Secretary's Order No.: 2023-WH-0032

RE: Approving Final Regulations to Amend 7 DE Admin. Code 1351: *Underground Storage Tank Systems*

**Date of Issuance: December 11, 2023
Effective Date of the Amendment: January 11, 2024**

1351 Underground Storage Tank Systems

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 proposed regulation amendments ("Amendments") to 7 DE Admin. Code 1351: *Underground Storage Tank Systems* ("Regulation"). Pursuant to 7 *Del.C.* Chapter 74, the Department is amending the Regulation to improve clarity for owners/operators of underground storage tanks ("UST") and incorporate by reference three documents: the Delaware Risk-Based Corrective Action Protocol ("DERBCAP"), Volume 2; the Hydrogeologic Investigation Guide ("HIG"), Volume 2; and the Vapor Intrusion Guidance ("VIG").

The existing Regulation outlines corrective action protocols for the regulated community in the event of a UST leak, referred to as a "Release." A "Release" is overfilling, leaking, emitting, discharging, escaping, leaching, or disposing of a regulated substance into groundwater, surface water, air, or soil. When a Release occurs, the Department refers to the DERBCAP as guidance.

The Department established the DERBCAP Volume 1 in January 2000 as guidance for owners and operators of USTs for soil screening, cleanup measures, and corrective actions at petroleum tank Release sites. In January 2023, the Department updated DERBCAP in Volume 2. The latest version modifies definitions and references, as well as updates the risk-based screening levels to the standards established in the American Society for Testing and Materials' *E 1739-95 (2015) Standard Guide for Risk-Based Corrective Action at Petroleum Release Sites*. While the DERBCAP is used for guidance by the Department, it is not enforceable by regulatory authority.

The Department recognized the necessity to strengthen and establish regulatory standards for the identification and remediation of UST Releases outlined in the DERBCAP and is incorporating by reference, the *DERBCAP Volume 2* into the Regulation. Additionally, the DERBCAP references the *HIG, Volume 2*; and *VIG*. To ensure a comprehensive inclusion through cross-referencing, the Department is also incorporating by reference the *HIG, Volume 2*, and the *VIG* into the Regulation.

The *HIG Volume 2* serves as a document to assist consultants, responsible parties, and the public with the requirements established in Part E §4.2 of the Regulation- *Requirements for Reporting, Release Investigation, Remedial Action, and No Further Action Determinations For Underground Storage Tank Systems*. The HIG outlines the steps for effectively fulfilling the hydrogeologic investigation which includes determining the nature of the Release, the extent of the Release, the physical characteristics of the site where the Release occurred, and the potential risks posed by the Release in accordance with the DERBCAP.

The *VIG* serves as a document to ensure consistency in assessing vapor intrusion risk from the investigative phase, through remediation. The guidance identifies vapor intrusion as a pathway for human exposure to dangerous levels of toxic vapors. It outlines a structured approach to assessing vapor intrusion risk for substances like petroleum and chlorinated solvents, along with other vapors, using screening levels. Additionally, it explains the circumstances that require a vapor intrusion investigation, outlines procedures for evaluating the associated risks, assessing remedial alternatives, and provides direction for developing Long-Term Stewardship Plans.

In addition to incorporating by reference the three documents, the Department is revising language throughout the Regulation. In alignment with Delaware's regulatory style manual, the Department is converting numbers written as a word to numerical digits. The Department is also updating the American Petroleum Institute Color Symbol System to reflect the newest version published as the fourth edition in April 2020.

The Department is also revising the definition of "Underground Storage Tank" to mean each compartment will be considered an individual UST. Currently, regardless of the number of compartments, an UST is considered as a single entity. Additional terms have also been defined for such as DERBCAP, HIG, Site Assessment, Tank, and Tier 0.

Lastly, the Department is consolidating duplicative language in sections of Parts B, C, and D of the Regulation, and establishing the language in new sections of Part A:

- Section 15.0 - Repair, Retrofits and Upgrade Requirements moved from Parts B, C, and D
- Section 16.0 - Change in Service and Empty UST Systems; moved from Parts B, C, and D
- Section 17.0 - Change in Substance Stored requirements moved from Parts B, C, and D
- Section 18.0 - Removal or Closure in Place requirements moved Parts B, C, and D

The Amendments allow the Department to enforce the measures outlined in the DERBCAP with the goal to prevent and detect a Release in USTs, and execute protocols specified in the HIG and the VIG. Moreover, the

Amendments enhance clarity of the Regulation for the regulated community and ultimately protect human health, safety and the environment.

The Department has the statutory basis and legal authority to act with regard to the formal promulgation of these Amendments, pursuant to 7 *Del.C.* §§6010(a) and 7 *Del.C.* Chapter 74. The Department published its initial proposed regulation Amendments in the August 1, 2023, *Delaware Register of Regulations*. Thereafter, the public hearing regarding this matter was held on August 30, 2023. All notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

It should be noted that after publication in the August 1, 2023, *Delaware Register of Regulations*, the Department made additional non-substantive revisions to the initial proposed Amendments (Department's Exhibit 7). The revisions, as set forth in the proposed *revised* 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 or commentary is required by the Department.

There were eighteen (18) members of the public in attendance at the virtual public hearing. Pursuant to 29 *Del.C.* §10118(a), the hearing record remained open for receipt of additional written comment for 15 days following the public hearing. The hearing record formally closed for comment in this matter at close of business on September 14, 2023, with one (1) written comment having been received by the Department.

Following the close of the Record with regard to public comment, and at the request of the Hearing Officer, a Technical Response Memorandum ("TRM") was provided by the Department's staff in the Division of Waste and Hazardous Substances and details the comment and response, in the same. Hearing Officer Theresa Smith prepared her report dated December 1, 2023 ("Report"), which expressly incorporated the Department's proposed revised Amendments into the hearing 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 *revised* 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 Waste and Hazardous Substances, and established by the Hearing Officer's Report, I find that the regulatory Amendments to 7 DE Admin. Code 1351, *Underground Storage Tank Systems*, are well-supported. I further find that the Department's Waste and Hazardous Substances experts fully developed the record to support adoption of these proposed *revised* Amendments. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the 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.* §§6010(a) 7 *Del.C.* Chapter 74;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Ch.60, to issue an Order adopting these proposed *revised* Amendments as final;
3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on August 30, 2023, and during the 15 days subsequent to the hearing (through September 14, 2023), before making any final decision;
4. Promulgation of the proposed revised amendments to 7 DE Admin. Code 1351: *Underground Storage Tank Systems* will enable the Department to amend regulatory requirements for owners/operators of underground storage tanks to (1) improve clarity for the regulated community, and (2) incorporate by reference three documents (Delaware Risk-Based Corrective Action Protocol, Volume 2; Hydrogeologic Investigation Guide, Volume 2; and Vapor Intrusion Guidance;
5. The Department has reviewed the proposed revised Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Chapter 104, and believes the same to be lawful, feasible, and desirable. It was determined that the proposed amendment to the term "tank," defined as "each compartment considered as a tank," will impose additional annual fees for 14% of the current regulated community that owns and operates underground storage tanks that have compartmentalized tanks. It was also determined that the proposed Amendment will not establish reporting requirements, and that the recommendations as proposed should be applicable to all Delaware individuals or small businesses equally;

6. The Department's Hearing Officer's Report, including its established record and the recommended proposed *revised* Amendments as set forth in Appendix "A," are hereby adopted to provide additional reasons and findings for this Order;

7. The Department's proposed regulatory Amendments, as initially published in the August 1, 2023, *Delaware Register of Regulations*, and then 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 are 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*; and

8. The Department shall submit this Order approving the proposed revised Amendments as final regulations 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.

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

Lisa Borin Ogden
For Shawn M. Garvin
Secretary

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

<https://regulations.delaware.gov/register/january2024/final/27 DE Reg 533 01-01-24.htm>

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Statutory Authority: 7 Delaware Code, Chapter 74A and Section 7401A (7 Del.C. Ch. 74A & §7401A)

7 DE Admin. Code 1352

Secretary's Order No.: 2023-WH-0033

**RE: Approving Final Regulations to Amend 7 DE Admin. Code 1352:
Aboveground Storage Tanks**

Date of Issuance: December 11, 2023

Effective Date of the Amendment: January 11, 2024

1352 Aboveground Storage Tanks

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 proposed regulation amendments ("Amendments") to 7 DE Admin. Code 1352: *Aboveground Storage Tanks* ("Regulation"). Pursuant to 7 Del.C. Chapter 74A, the Department is amending the Regulation to improve clarity for owners/operators of aboveground storage tanks ("AST") and incorporate by reference three documents: the Delaware Risk-Based Corrective Action Protocol ("DERBCAP"), Volume 2; the Hydrogeologic Investigation Guide ("HIG"), Volume 2; and the Vapor Intrusion Guidance ("VIG").

The existing Regulation outlines corrective action protocols for the regulated community in the event of an AST leak, referred to as a "Release." A "Release" is overfilling, leaking, emitting, discharging, escaping, leaching, or disposing of a regulated substance into groundwater, surface water, air, or soil. When a Release occurs, the Department refers to the DERBCAP as guidance.

The Department established the DERBCAP Volume 1 in January 2000 as guidance for owners and operators of ASTs for soil screening, cleanup measures, and corrective actions at petroleum tank Release sites. In January 2023, the Department updated DERBCAP in Volume 2. The latest version modifies definitions and references, as well as updates the risk-based screening levels to the standards established in the American Society for Testing and Materials' *E 1739-95 (2015) Standard Guide for Risk-Based Corrective Action at Petroleum Release Sites*. While the DERBCAP is used for guidance by the Department, it is not enforceable by regulatory authority.

The Department recognized the necessity to strengthen and establish regulatory standards for the identification and remediation of AST Releases outlined in the DERBCAP and is incorporating by reference, the *DERBCAP Volume 2* into the Regulation. Additionally, the DERBCAP references the *HIG, Volume 2*; and *VIG*. To ensure a comprehensive inclusion through cross-referencing, the Department is also incorporating by reference the *HIG, Volume 2*, and the *VIG* into the Regulation.

The *HIG Volume 2* serves as a document to assist consultants, responsible parties, and the public with the requirements established in Part E §5.0 of the Regulation- *Leak Reporting And Corrective Action Requirements For Aboveground Storage Tanks*. The *HIG* outlines the steps for effectively fulfilling the hydrogeologic investigation which includes determining the nature of the Release, the extent of the Release, the physical characteristics of the site where the Release occurred, and the potential risks posed by the Release in accordance with the DERBCAP.

The *VIG* serves as a document to ensure consistency in assessing vapor intrusion risk from the investigative phase, through remediation. The guidance identifies vapor intrusion as a pathway for human exposure to dangerous levels of toxic vapors. It outlines a structured approach to assessing vapor intrusion risk for substances like petroleum and chlorinated solvents, along with other vapors, using screening levels. Additionally, it explains the circumstances that require a vapor intrusion investigation, outlines procedures for evaluating the associated risks, assessing remedial alternatives, and provides direction for developing Long-Term Stewardship Plans.

In addition to incorporating by reference the three documents, the Department is revising language throughout the Regulation. In alignment with Delaware's regulatory style manual, the Department is converting numbers written as a word to numerical digits. The Department also added provisions under "Tier 0 Investigative Exemption". While the DERBCAP outlines Tier 0 sampling requirements, the Department has incorporated specific criteria for owners and operators of ASTs to request exemptions of Tier 0 sampling and analysis.

The Department has also modified and added terms for clarity purposes. The definition of "Aboveground Storage Tank" has been revised to mean each compartment will be considered an individual AST. Currently, regardless of the number compartments, an AST is considered a single entity. Additional terms have also been defined for clarity, such as Best Management Practices, DERBCAP, Fiduciary, Foreclosure, *HIG*, Imminent threat of a release, Lender, Repair, Responsible Party, Security interest, and Tier 0.

The Department is also removing Part B, Section 14.0, *Site Assessment Requirement* and consolidating the language within the Regulation. More specifically, the sampling language from Section 14.0 has been added to appropriate sections throughout the Regulation and other language requirements of this section are included in the *DERBCAP, Volume 2*.

The Amendments allow the Department to enforce the measures outlined in the DERBCAP with the goal to prevent and detect a Release in ASTs, and execute protocols specified in the *HIG* and the *VIG*. Moreover, the Amendments enhance clarity of the Regulation for the regulated community and ultimately protect human health, safety and the environment.

The Department has the statutory basis and legal authority to act with regard to the formal promulgation of these Amendments, pursuant to 7 *Del.C.* §§6010(a) and 7 *Del.C.* Chapter 74A. The Department published its initial proposed regulation Amendments in the August 1, 2023, *Delaware Register of Regulations*. Thereafter, the public hearing regarding this matter was held on August 30, 2023. All notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

It should be noted that after publication in the August 1, 2023, *Delaware Register of Regulations*, the Department made additional non-substantive revisions to the initial proposed Amendments (Department's Exhibit 7). The revisions, as set forth in the proposed *revised* 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 or commentary is required by the Department.

There were eighteen (18) members of the public in attendance at the virtual public hearing. Pursuant to 29 *Del.C.* §10118(a), the hearing record remained open for receipt of additional written comment for 15 days following the public hearing. The hearing record formally closed for comment in this matter at close of business on September 14, 2023, with one (1) written comment having been received by the Department.

Following the close of the Record with regard to public comment, and at the request of the Hearing Officer, a Technical Response Memorandum ("TRM") was provided by the Department's staff in the Division of Waste and Hazardous Substances and details the comment and response, in the same. Hearing Officer Theresa Smith prepared her report dated December 1, 2023 ("Report"), which expressly incorporated the Department's proposed *revised* Amendments into the hearing 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 *revised* 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 Waste and Hazardous Substances, and established by the Hearing Officer's Report, I find that the regulatory Amendments to 7 DE Admin. Code 1352, *Above Storage Tanks*, are well-supported. I further find that the Department's Waste and Hazardous Substances experts fully developed the record to support adoption of these proposed revised Amendments. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the 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.* §§6010(a) 7 *Del.C.* Chapter 74A;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Ch.60, to issue an Order adopting these proposed *revised* Amendments as final;
3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on August 30, 2023, and during the 15 days subsequent to the hearing (through September 14, 2023), before making any final decision;
4. Promulgation of the proposed revised amendments to 7 DE Admin. Code 1352: Aboveground Storage Tanks will enable the Department to amend regulatory requirements for owners/operators of aboveground storage tanks to (1) improve clarity for the regulated community, and (2) incorporate by reference three documents (Delaware Risk-Based Corrective Action Protocol, Volume 2; Hydrogeologic Investigation Guide, Volume 2; and Vapor Intrusion Guidance);
5. The Department has reviewed the proposed *revised* Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Chapter 104, and believes the same to be lawful, feasible, and desirable. It was determined that the proposed amendment to the term "tank," defined as "each compartment considered as a tank," will impose additional annual fees for 1% of the current regulated community that owns and operates aboveground storage tanks that have compartmentalized tanks. It was also determined that the proposed amendment will not establish reporting requirements, and that the recommendations as proposed should be applicable to all Delaware individuals or small businesses equally;
6. The Department's Hearing Officer's Report, including its established record and the recommended proposed *revised* Amendments as set forth in Appendix "A," are hereby adopted to provide additional reasons and findings for this Order;
7. The Department's proposed regulatory Amendments, as initially published in the August 1, 2023, *Delaware Register of Regulations*, and then 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 are 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*; and
8. The Department shall submit this Order approving the proposed revised Amendments as final regulations 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.
9. The Department shall serve and publish its Order on its internet site.

For Lisa Borin Ogden
Shawn M. Garvin
Secretary

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

<https://regulations.delaware.gov/register/january2024/final/27 DE Reg 536 01-01-24.htm>

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
Board of Elevator Mechanics

Statutory Authority: 24 Delaware Code, Section 6105(a)(1) (24 **Del.C.** §6105(a)(1))

ORDER

6100 Board of Elevator Mechanics

After due notice in the *Delaware Register of Regulations* and two Delaware newspapers, a public hearing was held on November 21, 2023 at a scheduled meeting of the Delaware Board of Elevator Mechanics ("Board") to receive comments regarding proposed rules and regulations to implement its licensing law, Chapter 61 of Title 24 of the Delaware Code. In particular, the proposed rules and regulations set forth the process whereby applicants may be eligible for licensure under the grandfathering provision. Standards for licensure, practice and continuing education are adopted. The Board also proposed adoption of a list of crimes substantially related to the practice of providing elevator services.

The proposed rules and regulations were published in the *Delaware Register of Regulations*, Volume 27, Issue 5, on November 1, 2023. Notice of the November 21, 2023 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 December 6, 2023, 15 days following the public hearing. The Board deliberated on the proposed revisions at its regularly scheduled meeting on December 14, 2023.

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 were no written comments submitted. At the public hearing on November 21, 2023, David Smarte of NAEC testified that, after July 1, 2023, the examinations were proctored by a third party. Further, Dayne Eisele of Delaware Elevator testified as to the requirement, in the statute, that the licensed elevator mechanic's license number be displayed on the licensee's vehicle.

Findings of Fact and Conclusions

Pursuant to 24 **Del.C.** § 6105(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 rules and regulations. The Board considered the testimony provided by Mr. Smart and Mr. Isley. The Board noted that the statutory language pertaining to the requirement of the license number being displayed on the licensee's vehicle was not included in the regulations and would be removed from Chapter 61 pursuant to a clean-

up bill. The Board decided that revision of the proposed rules and regulations was not needed.

Decision and Effective Date

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

IT IS SO ORDERED this 14th day of December 2023.

DELAWARE BOARD OF ELEVATOR MECHANICS

Joseph Williams, President

Justin Flumer (Absent)

Dominic Ryan, Vice President

Lydia Massey (Absent)

Sean Davenport

***Please note that no changes were made to the regulation as originally proposed and published in the November 2023 issue of the *Register* at page 325 (27 DE Reg. 325). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<https://regulations.delaware.gov/register/january2024/final/27 DE Reg 539 01-01-24.htm>

DEPARTMENT OF FINANCE DIVISION OF REVENUE

Statutory Authority: 16 Delaware Code, Section 10224A (16 Del.C. §10224A)

NOTICE

Implementation Date of House Substitute No. 2 for House Bill No. 160 relating to 988 Behavioral Health Crisis Intervention Services

November 16, 2023

SENT VIA E-MAIL

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

Dear Ms. Smallwood,

The House of Representatives and Senate of the Delaware General Assembly passed House Substitute No. 2 for House Bill No. 160 on June 20, 2023 and June 28, 2023, respectively. This Act received the constitutionally required vote. Section 11 of Article VIII of the Delaware Constitution requires the affirmative vote of three-fifths of the members elected to each house of the General Assembly to impose or levy a tax or license fee. Governor Carney signed this bill on August 16, 2023.

The legislation created the Behavioral Health Crisis Services Board ("Board") to provide oversight and input on the development of an integrated behavioral health crisis care system in the State of Delaware. It imposed a behavioral health crisis intervention services surcharge on business and residential telephone services, wireless telephone services, and prepaid wireless telephone services. The surcharge will create a dedicated funding source for behavioral health crisis services. The Behavioral Health Crisis Intervention Services Fund is created to receive the surcharge funds. The legislation established a 60-cent per month per line fee on phone lines and a 60-cent one-time fee on prepaid services. The Delaware State government is exempt from the behavioral health crisis intervention services surcharge.

Section 3 of the legislation states:

This Act takes effect on enactment and is to be implemented the earlier of the following:

- (1) Six months from the date of the Act's enactment.
- (2) The date of publication in the Register of Regulations of a notice of implementation by the Secretary of the Department of Finance.

Please accept this letter as a notice of implementation to publish in the Register of Regulations in accordance with Section 3 of House Substitute No. 2 for House Bill No. 160.

Sincerely,

Richard J. Geisenberger
Secretary of Finance
Department of Finance

GENERAL NOTICES

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF PUBLIC HEALTH

Statutory Authority: 29 Delaware Code, Section 7903 (29 Del.C. §7903)

NOTICE OF PUBLIC COMMENT

Delaware Drinking Water State Revolving Fund

Notice of Public Participation:

Public Comment on the Delaware Drinking Water State Revolving Fund Ranking Criteria

The Department of Health and Social Services, Drinking Water State Revolving Fund ("DWSRF") is announcing the publication of the draft Ranking Criteria for DWSRF projects.

- To meet public notice and participation requirements under §35.3580 of the Code of Federal Regulations (40 CFR Part 35 Subpart L), the Program, as the lead agency for the Drinking Water State Revolving Fund in Delaware, is publishing the draft Ranking Criteria. The draft ranking criteria will be available for public review at <https://www.dhss.delaware.gov/dhss/dph/hsp/dwsrf.html> for 30 days beginning January 2, 2024, through February 1, 2024.

The purpose of the public participation period is to gather comments regarding the draft ranking criteria.

SUMMARY OF PROPOSED REVISIONS TO RANKING CRITERIA

1. A revision to Section 2b, Affordability/Disadvantaged Community Considerations, to increase the max points from 100 to 175 to ensure projects in disadvantaged communities with significant public health problems are ranked the highest.
2. A revision to Section 2f, Storage, to add 30 points for projects addressing the lack of critical redundancy.

The opportunity for public comment on the draft ranking criteria is available for 30 days beginning January 2, 2024, through February 1, 2024. Comments may be provided to DWSRF by mail or email to:

DWSRF
417 Federal St, 3rd Fl, Suite 205, Dover, DE 19901
DHSS_DPH_DWSRF@delaware.gov

Responses to individual questions and comments will not be provided; however, the DWSRF staff will review and consider all comments and make any modifications to the ranking criteria that are deemed necessary. **DWSRF must receive your comments no later than 4:30 p.m. on Thursday, February 1, 2024.**

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))

REGISTER NOTICE

DOCKET # 2022-R-A-0006

Proposed Delaware's Second Limited Maintenance Plan Under the 2006 24-hour Fine Particulate Matter (PM2.5) National Ambient Air Quality Standard (NAAQS) State Implementation Plan (SIP) Revision

1. TITLE OF THE REGULATIONS:

Proposed Delaware's Second Limited Maintenance Plan Under the 2006 24-hour Fine Particulate Matter (PM2.5) National Ambient Air Quality Standard (NAAQS) State Implementation Plan (SIP) Revision.

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

The Department of Natural Resources and Environmental Control (DNREC) will conduct a public hearing on a proposed revision to Delaware's State Implementation Plan (SIP).

The hearing will address the Delaware second Particulate Matter Limited Maintenance Plan under the 2006 24-hour Fine Particulate Matter (PM2.5) National Ambient Air Quality Standard (NAAQS). On December 14, 2009, EPA designated the Philadelphia-Wilmington Area as nonattainment for the 2006 24-hour (PM2.5) NAAQS. On September 5, 2014, the EPA redesignated the area as attainment. Redesignated areas are required to submit two ten-year maintenance plans to ensure continued attainment with the NAAQS. This proposed second 10-year Particulate Matter Limited Maintenance Plan ensures that Delaware will continue to maintain the NAAQS through 2035.

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 # 2022-R-A-0006) will be held on Tuesday, January 23, 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:525367. To access the audio-only portion of the virtual hearing, dial 1-646-931-3860 and enter the Meeting ID 848 3456 0743. 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 SIP may be inspected online starting January 1, 2024 at http://regulations.delaware.gov/services/current_issue.shtml, or in-person, by appointment only, by contacting Kelsey Pangman by phone at 302-323-4542 or by email at Kelsey.Pangman@delaware.gov.

GENERAL NOTICES

The Department will accept public comment through the close of business on Wednesday, February 7, 2024. Comments will be accepted in written form via email to DNRECHearingComments@delaware.gov, or by using the online form at <https://de.gov/dnrecomments>, or by U.S. mail to the following address:

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

7. PREPARED BY:
Kelsey Pangman
Division of Air Quality-DNREC
715 Grantham Ln, New Castle, DE 19702
Phone: (302)323-4542; email: Kelsey.Pangman@delaware.gov

***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/january2024/general/Draft Proposed Daily 2006 PM25_Limited Maintenance Plan with Appendices_12-13-2023.pdf](http://regulations.delaware.gov/register/january2024/general/Draft%20Proposed%20Daily%202006%20PM25_Limited%20Maintenance%20Plan%20with%20Appendices_12-13-2023.pdf)

DELAWARE RIVER BASIN COMMISSION
PUBLIC NOTICE

The Delaware River Basin Commission will hold a public hearing on Wednesday, February 7, 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, at least ten (10) days prior to the meeting date.

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

For additional information, including links to live streams of these events, please visit the DRBC website at www.drbc.gov or contact Patricia Hausler at patricia.hausler@drbc.gov.

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

DELAWARE STATE FIRE PREVENTION COMMISSION
PUBLIC NOTICE
709 Fire Service Standards

The Delaware State Fire Prevention Commission, pursuant to 16 **Del.C.** § 6604(1), proposes to revise regulation 709, by updating language and labels. The proposed regulations update language related to NFPA standards, requirements for new Fire/EMS stations, training requirements, and handling of fire fighter injury investigations.

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. The Public Comment period will end on Friday, February 2, 2024.

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

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

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

DEPARTMENT OF FINANCE
OFFICE OF THE STATE LOTTERY
PUBLIC NOTICE**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 rules should be adopted.

The proposed amendments are to subsections 4.6.1, 4.6.2, 4.7.1, 4.7.2, 4.13, 14.5.2, 14.5.3, and 14.6 in 10 **DE Admin. Code** 203.

The amendment to these subsections will give the Lottery authority to proceed with clearer requirements for the licensing of Gaming and Non-Gaming Vendors, as well as for rehires and transfers of licensed employees.

CALENDAR OF EVENTS/HEARING NOTICES

Persons wishing to present their views regarding this matter may do so by submitting written comments by the close of business on or before February 1, 2024, at the offices of the Delaware State Lottery, Attn: Jayne Gooden, 1575 McKee Road, Suite 102, Dover, DE 19904.

The proposed amendments to subsections 4.6.1, 4.6.2, 4.7.1, and 4.7.2 clarify the requirements of Non-Gaming Vendor License applicants regarding thresholds pertaining to amount vendors will be paid and by how many casinos. The proposed amendment to subsection 4.13 alleviates confusion about which key people are required to be licensed in association with the vendor license application. The proposed amendments to Section 14.0 clarify fingerprinting and background requirements of licensees who would like to return to or transfer to a licensed position.

OFFICE OF THE STATE LOTTERY

PUBLIC NOTICE

205 Delaware Charitable Video Lottery Regulations

The Delaware State Lottery will seek public comments on the issue of whether certain amendments to its current rules should be adopted.

The proposed amendment is to subsection 5.1.30.1 in 10 **DE Admin. Code** 205.

The amendment to subsection 5.1.30.1 would remove the annual requirement for Charitable Gaming Organizations (CGOs) to submit an affidavit of membership if that CGO does not wish to exceed the minimum number of allowable video lottery machines.

Persons wishing to present their views regarding this matter may do so by submitting written comments by the close of business on or before February 1, 2024, at the offices of the Delaware State Lottery, Attn: Jayne Gooden, 1575 McKee Road, Suite 102, Dover, DE 19904.

The amendment to these subsections will save the Charitable Gaming Organizations (CGO) and the Delaware Lottery a great deal of effort by removing the requirement of submitting an annual affidavit when the CGO is not seeking to operate more than the allowable ten (10) video lottery machines. The CGOs are operated almost entirely by volunteers; the affidavit is unnecessary in almost all cases and represents extra effort on the part of the volunteers. It also eliminates the effort required by the Lottery to assist this group in what is sometimes a confusing process for them.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

PUBLIC NOTICE

Continuous Coverage for Children Enrolled in Medicaid

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of 31 **Del.C.** §512, Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DHSS/DMMA) is proposing to amend the Division of Social Services Manual (DSSM) 14800, 14810, 14810.1, 14810.2, 14820, 14820.1, 25100.1, and Title XIX Medicaid State Plan Continuous Eligibility for Children Reviewable Unit, specifically, to provide continuous eligibility to children Enrolled in Medicaid for a full 12-month period regardless of changes in circumstances with limited exceptions.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs, or other written materials concerning the proposed new regulations must submit same to, Planning and Policy Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906, by email to DHSS_DMMA_Publiccomment@Delaware.gov, or by fax to 302-255-4413 by 4:30 p.m. on January 31, 2024. Please identify in the subject line: Continuous Coverage for Children Enrolled in Medicaid

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

DEPARTMENT OF INSURANCE**OFFICE OF THE COMMISSIONER****PUBLIC NOTICE****611 Automobile Insurance Premium Refunds**

The Department is proposing new Regulation 611 to require carriers to refund any unearned automobile insurance premium on a cancelled policy within 30 days of the date when the refund becomes due.

The Department does not plan to hold a public hearing on proposed new Regulation 611. The proposed new regulation appears below and may also be viewed at the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed new regulation. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EST, the 2nd day of February 2024. Any such requests should be directed to:

Alisa Pritchard, Regulatory Specialist
Delaware Department of Insurance
1351 West North St., Ste. 101
Dover, DE 19904
(302) 674-7379
Email: DOI-Legal@delaware.gov

OFFICE OF THE COMMISSIONER**PUBLIC NOTICE****1004 Term and Universal Life Insurance Reserve Financing**

The Department of Insurance hereby gives notice of proposed new Regulation 1004 relating to Term and Universal Life Reserve Financing. The proposed new Regulation implements the National Association of Insurance Commissioners Model Regulation #787, which establishes uniform, national standards governing reserve financing arrangements pertaining to life insurance policies with secondary guarantees and ensures that funds consisting of primary security and other security are held in the forms and amounts required. The Delaware Code authority for the new regulation is 18 **Del.C.** §§311 and 915.

The proposed regulation appears below and may also be viewed on the Department of Insurance website at <http://insurance.delaware.gov/information/proposedregs/>. The Department will not be holding a public hearing on the proposed regulation.

Any person may file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed regulation. Any written submission in response to this notice and relevant to the proposed regulation must be received by the Department of Insurance no later than 4:30 p.m. EDT, the 2nd day of February 2024 and should be directed to:

Alisa Pritchard, Regulatory Specialist
Delaware Department of Insurance
1351 West North Street, Suite 101
Dover, DE 19904
(302) 674-7379
Email: DOI-Legal@delaware.gov

DEPARTMENT OF LABOR**DIVISION OF PAID LEAVE****PUBLIC NOTICE****1401 Rules Defining and Regulating the Healthy Delaware Families Act, Family and Medical Leave Insurance Program and the Division of Paid Leave**

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 19 **Del.C.** §105, the Delaware Department of Labor ("Department") proposes to introduce supplemental regulations addressing coordination of benefits and notice requirements to its existing regulation, Division of Paid Leave. Additional definitional verbiage and grammatical edits are administrative in nature and serve in part to clarify the intent of the Division as enacted through these regulations.

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

Christopher Counihan
Division Director, Division of Paid Leave
Delaware Department of Labor
4425 North Market Street, 4th Floor
Wilmington, DE 19802

Comments may also be directed via electronic mail to PFML@Delaware.gov. Any written submission in response to this notice and relevant to the proposed regulations must be received by the above contact at the Delaware Department of Labor no later than 4:00 p.m. EST, on February 1, 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.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF FISH AND WILDLIFE****PUBLIC NOTICE****3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements.**

This action is being proposed to modify the spring anchor gill net season by adding two weeks in February and eliminating two weeks in April and May to better synchronize the spring anchor gill net season with the availability of and market for Striped Bass. This action was recommended in a unanimous motion by the Advisory Council on Tidal Finfisheries at its September 19, 2023 meeting.

The hearing record on the proposed changes to 7 **DE Admin. Code** 3505 will be open January 1, 2024. The virtual public hearing will be held on Tuesday, January 30, 2024, beginning at 6:00 p.m. The web link to the virtual hearing can be accessed through the DNREC Public Hearings site at <https://dnrec.alpha.delaware.gov/public-hearings/>. If prompted, use Meeting ID: 836 4525 0188 Passcode: 607330. To access the audio-only portion of the virtual hearing, dial (305) 224-1968 and enter the Meeting ID and Passcode noted above. Closed captioning is available in over 20 languages, including English and Spanish, to attendees via the Zoom platform utilized for all DNREC Public Hearings.

Those wishing to offer verbal comments during DNREC virtual public hearings must pre-register no later than noon on the date of the virtual hearing. The designated page for this Pre-Registration process can be found here: <https://dnrec.alpha.delaware.gov/public-hearings/comments/registration/>

The proposed amendments may be inspected online starting January 1, 2024 at https://regulations.delaware.gov/services/current_issue.shtml, or in-person, by appointment only, by contacting John Clark by phone at 302-739-9914 or by email at John.Clark@delaware.gov.

Public comments will be received until close of business Wednesday, February 14, 2024. Comments will be accepted in written form via email to 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

PREPARED BY:

John H. Clark
Email: John.Clark@delaware.gov
Phone: (302)739-9914

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
Board of Pharmacy
PUBLIC NOTICE
2500 Board of Pharmacy

Pursuant to 24 **Del.C.** §2506(a)(1), the Delaware Board of Pharmacy ("Board") has proposed revisions to its Rules and Regulations. Subsections 5.1.5.1 and 5.1.5.2 have been amended to add an effective date of 6 months after the effective date of the regulation. Subsection 5.1.5.2 has been revised to state that the required written agreement must be between the dispensing pharmacy and the ordering physician or facility. Currently, subsection 5.1.5.2 states that the agreement must be between the pharmacist and physician or facility.

A public hearing will be held on February 21, 2024 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Pharmacy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address or at sarah.siok@delaware.gov.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be **March 7, 2024**. The Board will deliberate on all of the public comments at its regularly scheduled meeting.

DIVISION OF PROFESSIONAL REGULATION
BOARD OF FUNERAL SERVICES
PUBLIC NOTICE
3100 Board of Funeral Services

Pursuant to 24 **Del.C.** §3105(a)(1), the Delaware Board of Funeral Services ("Board") has proposed revisions to its Rules and Regulations. The proposed amendments would clarify subsections that relate to the Board's inspection program created pursuant to 24 **Del.C.** §3105(a)(15) and provide discretion for the Board to allow additional extensions for the time allowed to complete internships. The other proposed amendments reflect technical and style changes consistent with the *Delaware Administrative Code Drafting and Style Manual*.

The Board will hold a public hearing on the proposed regulation changes on January 23, 2024, at 10:00 a.m. in the second-floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Funeral Services, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address or at Michelle.Loper@delaware.gov.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be February 7, 2024. The Board will deliberate on all public comments at its next regularly scheduled meeting.

DIVISION OF PROFESSIONAL REGULATION
BOARD OF SOCIAL WORK EXAMINERS
PUBLIC NOTICE
3900 Board of Social Work Examiners

Pursuant to 24 **Del.C.** §3906(a)(1), the Delaware Board of Social Work Examiners ("Board") has proposed revisions to its rules and regulations. In particular, 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.

A public hearing will be held on January 22, 2024 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Social Work Examiners, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address or at jessica.lobaccaro@delaware.gov.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be February 6, 2024. The Board will deliberate on all of the public comments at its regularly scheduled meeting.

OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER
PUBLIC NOTICE
Rule 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.

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. 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, January 31, 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.

OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER**PUBLIC NOTICE****Rule 701 (Formerly Rule 51) A Rule Requiring the Biennial Renewal of Wholesale, Retail, and Annual Gathering Licenses****Rule 702 (formerly Rule 51.1) A Rule Requiring the Biennial Renewal of Supplier's 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 biennial renewal of liquor licenses for wholesale, retail, gatherings, and suppliers.

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. 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, January 31, 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.

OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER**PUBLIC NOTICE****Rule 1008 (Formerly Rule 19.1) Bottle Clubs - Licensing and Operation**

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 updates to 4 **DE Admin. Code** 1008, governing the standards of a restaurant and bottle club, specifically concerning the ability for bottle club licensees to provide bartending service, and to align the dining/bar seat ratio with licensed restaurants.

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., 3rd Floor
Wilmington, DE 19801

Comments may also be directed via electronic mail to 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 p.m. on January 31, 2024.

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