

CALENDAR OF EVENTS/HEARING NOTICES

CALENDAR

December 2020

DELAWARE RIVER BASIN COMMISSION

PUBLIC NOTICE

The Delaware River Basin Commission held its quarterly public hearing on **Thursday, November 12, 2020**. In light of COVID-19 mitigation measures in effect for DRBC member states, the hearing was held remotely. Please check the Commission's website, www.drbc.gov, for details regarding the draft docket decisions that were the subjects of the public hearing.

The Commission's quarterly business meeting will be held remotely on **Wednesday, December 9, 2020**, beginning at **10:30 a.m.** Please check the Commission's website, www.drbc.gov, for details about the meeting format and how to attend.

For additional information, please visit the DRBC website at www.drbc.gov or contact Denise McHugh at denise.mchugh@drbc.gov or Patricia Hausler at patricia.hausler@drbc.gov.

DEPARTMENT OF EDUCATION

PUBLIC NOTICE

On March 12, 2020, Governor Carney issued a declaration of a state of emergency for the state of Delaware due to a public health threat. The State of Emergency allows all public meetings of executive branch public bodies, including the SBE, to be conducted electronically, either by means of telephone conference call or video-conference call.

In accordance with the State of Emergency, the State Board of Education is currently holding meetings electronically. The meeting information can be accessed via the public meeting calendar (<https://publicmeetings.delaware.gov/Search?q=&AnyAll=Any&AgencyID=22&StartDateInclusive=2020-08-01>). Members of the public can join the meeting via the web or telephone.

Meeting materials are available on the State Board of Education's eBoard site (<https://simbli.eboardsolutions.com/index.aspx?s=190001>). (If you are having technical difficulties accessing the site, please try a different browser.)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

PUBLIC NOTICE

4462 Public Drinking Water Systems

Pursuant to 16 **Del.C.** §122(3)(c), Health Systems Protection, Division of Public Health, Department of Health and Social Services, is proposing revisions to the regulations governing Public Drinking Water Systems. On December 1, 2020, the Division of Public Health plans to publish as "proposed" revisions to the Public Drinking Water Systems regulations. The revisions include:

- EPA-required corrections for specific rule primacy;
- Fluoride requirements for systems required to provide fluoride under Delaware law;
- Definitions and a new chapter for cross-connections; and
- Minor clarifications and technical changes.

Copies of the proposed regulations are available for review in the December 1, 2020 edition of the *Delaware Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Division of Public Health at (302) 744-4951.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning

the proposed regulations must submit them to Alanna Mozeik by Thursday, December 31, 2020, at:

Alanna Mozeik
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: Alanna.Mozeik@delaware.gov
Phone: (302) 744-4951

DEPARTMENT OF INSURANCE

OFFICE OF THE COMMISSIONER

PUBLIC NOTICE

1214 Suitability In Annuity Transactions

Regulation 1214 requires insurers and producers to establish a system to supervise recommendations made in the marketing and sale of annuities, which standards are also consistent with the standards imposed by the Financial Industry Regulatory Authority (FINRA). The regulation is an adoption of the National Association of Insurance Commissioners (NAIC) Model Regulation #275, Suitability in Annuity Transactions Model Regulation, as amended by the NAIC from time to time (Model #275).

In 2017, the NAIC appointed its Annuity Suitability (A) Working Group to review and revise, as necessary, Model #275, to promote greater uniformity across NAIC-member jurisdictions. Renewed interest in the model was prompted, in part, by work being done at the federal level. As described on the NAIC's website https://content.naic.org/cipr_topics/topic_annuity_suitability_best_interest_standard.htm:

In April 2016, the U.S. Department of Labor (DOL) completed regulations broadening its definition of "fiduciary investment advice" under the federal Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code (IRC). However, the rule was vacated by the 5th U.S. Circuit Court of Appeals in March of 2018 before it took effect.

The U.S. Securities and Exchange Commission (SEC) released a proposed rule package on April 18, 2018, updating the standard of care broker-dealers and investment advisers would be required to provide to retail investors. The NAIC submitted comments to the SEC during the exposure period to further coordinate efforts so that the respective regulatory developments can provide consistency for consumers, industry, and regulators. The final rule took effect on June 30, 2020.

In 2018, the New York State Department of Financial Services proposed a new "best interest" standard for agents and brokers licensed to sell life insurance and annuity products in the state aligning with the now vacated DOL "fiduciary rule" for retirement savings. Under the rule, product sales must prioritize customer's interest over sales commissions and agents and brokers' compensation should not be influenced by the products recommended. The rule went into full effect on February 1, 2020.

In 2019, the NAIC Annuity Suitability (A) Working Group completed updates to Model #275 which began in November 2017. The goal of the Working Group was to seek clear, enhanced standards for annuity sales so consumers understand the products they purchase, are made aware of any material conflicts of interest, and are assured those selling the products do not place their financial interests above consumers' interests.

The NAIC membership approved revisions to Model #275 in February of 2020 clarifying that all recommendations by agents and insurers must be in the "best interest" of the consumer and that agents and carriers may not place their financial interest ahead of the consumers' interest in making a recommendation. The model now requires agents and carriers to act with "reasonable diligence, care and skill" in making recommendations.

To satisfy the newly added "best interest" standard under Model #275 as amended in 2020, agents (producers) and carriers must satisfy four obligations: 1) care; 2) disclosure; 3) conflict of interest; and 4) documentation. The revisions also include enhancements to the current model's supervision system to assist agents (producers) and carriers in complying with the regulation (the "safe harbor" provisions).

It is noteworthy that states must work toward adopting the 2020 revisions within five years after adoption of the revisions by the full NAIC membership to maintain their authority to regulate the sale of fixed annuities. This is because Section 989J of the Dodd-Frank Act, known as the Harkin Amendment, applies to the revised model regulation. Section 989J confirms state authority to regulate the sale of fixed indexed annuities and exemption from federal securities regulation when certain conditions are met, including when the state in which the contract is issued or the state in which the carrier issuing the contract is domiciled: 1) has adopted requirements that "substantially meet or exceed the minimum requirements" established by the 2010 version of Model #275; and 2) "adopts rules that substantially meet or exceed the minimum requirements of any successor modifications to the model regulation" within 5 years of the adoption by the NAIC.

The NAIC considers the 2020 revisions to be a successor modification to the model that exceeds the requirements of the 2010 revisions, which is reflected in a drafting note to Section 1 - Purpose, as follows:

Section 989J of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") specifically refers to this model regulation as the "Suitability in Annuity Transactions Model Regulation." Section 989J of the Dodd-Frank Act confirmed this exemption of certain annuities from the Securities Act of 1933 and confirmed state regulatory authority. This regulation is a successor regulation that exceeds the requirements of the 2010 model regulation.

Accordingly, the Department is now proposing to update Regulation 1214 to incorporate the February 2020 amendments to Model #275. The authority for the proposed amendments is 18 **Del.C.** §§311, 2304, and 2312, in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101.

As required by 18 **Del.C.** §2312, the Department has determined to hold a virtual public hearing on the proposed amendments to Regulation 1214 on Monday, December 21, 2020 at 9:00 a.m. The hearing will be facilitated through WebEx at <https://stateofdelaware.webex.com/stateofdelaware/j.php?MTID=m8ec115baff535326feed4cc487f11a32>, meeting number (access code): 173 085 6988 and meeting password: DAhnHBS28e5. Holding a virtual public meeting is specifically permitted by Paragraph 5 of the Declaration of a State of Emergency for the State of Delaware due to a Public Health Threat issued by Governor John Carney on March 12, 2020 and extended monthly thereafter (see <https://governor.delaware.gov/health-soe/> for the complete list of modifications and extensions).

The proposed amendments appear 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 amendments to the regulation. Any written submission in response to this notice and relevant to the proposed amendments must be received by the Department of Insurance no later than 4:30 p.m. EST, the 5th day of January 2021. Any such requests should be directed to:

Leslie W. Ledogar, Regulatory Specialist
Delaware Department of Insurance
1351 West North St., Ste. 101
Dover, DE 19904
(302) 674-7379
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