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# Delaware Register of Regulations

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Issue Date: June 1, 2010

Volume 13 - Issue 12, Pages 1480 - 1588

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Regulations:  
Proposed  
Final

Governor:  
Executive Orders

Calendar of Events &  
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before May 15, 2010.

*Rehoboth Beach at Sunrise*  
Photo by Meghan Knotts



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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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

13 **DE Reg.** 24-47 (07/01/09)

Refers to Volume 13, pages 24-47 of the *Delaware Register* issued on July 1, 2009.

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## SUBSCRIPTION INFORMATION

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

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken. When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

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

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## CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
July 1	June 15	4:30 p.m.
August 1	July 15	4:30 p.m.
September 1	August 16	4:30 p.m.
October 1	September 15	4:30 p.m.
November 1	October 15	4:30 p.m.

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

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**Symbol Key**

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

**Proposed Regulations**

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

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**DEPARTMENT OF AGRICULTURE**  
**HARNESS RACING COMMISSION**

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

**PUBLIC NOTICE**

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to change its Rule 7.6.6.6.7. The Commission will hold a public hearing on the proposed rule changes on August 17, 2010. Written comments should be sent to Hugh J. Gallagher, Administrator of Harness Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901. Written comments will be accepted for thirty (30) days from the date of publication in the *Register of Regulations* on June 1, 2010.

The proposed changes are for the purpose of updating the Rules to more reflect current policies, practices and procedures. Copies are published online at the *Register of Regulations* website: [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml)

A copy is also available for inspection at the Harness Racing Commission office.

**501 Harness Racing Rules and Regulations**

*(Break in Continuity of Sections)*

**7.0 Rules of the Race**

*(Break in Continuity within Section)*

**7.6 Racing Rules****7.6.1 Under Supervision of Starter**

- 7.6.1.1 Horses shall be under supervision of the starter from the time they arrive on the track until the start of the race.

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- 7.6.1.2 All horses shall parade from the paddock to the starting post, and no driver shall dismount without the permission of the starter. Attendants may not care for the horses during the parade except by permission of the starter.
- 7.6.1.3 After entering the track not more than ten (10) minutes shall be consumed in the parade of the horses to the post except in cases of unavoidable delay.
- 7.6.1.4 Horses awaiting post time may not be held on the backstretch in excess of five (5) minutes, except when delayed by an emergency.
- 7.6.2 Pre-Race Accidents  
When, before a race starts:
- 7.6.2.1 A horse is a runaway or is otherwise involved in an accident, such horse shall be examined by the racing veterinarian and if the horse is not ordered scratched by the veterinarian, the judges may permit the horse to compete and have this decision announced.
- 7.6.2.2 A driver is unseated and appears to have been injured, the horse that was being driven by that driver may compete with a substitute driver.
- 7.6.2.3 If a horse is scratched in error and cannot be added back into the pari-mutuel system, the horse may race for purse only. The judges shall ensure that the race announcer informs the public that the horse will be racing without pari-mutuel wagering.
- 7.6.3 Fair Start  
The starter shall give such orders and take such measures that do not conflict with the rules of racing, as are necessary to secure a fair start.
- 7.6.4 Starter's Duties
- 7.6.4.1 The starter shall be in the starting gate ten (10) minutes before the post time of the race.
- 7.6.4.2 The starter shall have control over the horses and authority to assess fines and/or suspend drivers for any violation of the rules from the formation of the parade until the word "go" is given.
- 7.6.4.3 The starter may assist in placing the horses when requested by the judges to do so.
- 7.6.4.4 The starter shall notify the judges and the drivers in writing of penalties imposed by him.
- 7.6.5 Starting
- 7.6.5.1 The starter shall have control of the formation of the parade until giving the word "go".
- 7.6.5.2 After warming up scores, the starter shall notify the drivers to come to the starting gate.
- 7.6.5.3 The horses shall be brought to the starting gate as near one-quarter of a mile before the start as the track will permit.
- 7.6.5.4 Allowing sufficient time so that the speed of the gate can be increased gradually, the following minimum speeds will be maintained:
- 7.6.5.4.1 For the first one-eighth of a mile, not less than 11 miles per hour.
- 7.6.5.4.2 For the next one-sixteenth of a mile, not less than 18 miles per hour.
- 7.6.5.4.3 From that point to the starting point, the speed will be gradually increased to maximum speed.
- 7.6.5.5 The starting point will be a point marked at a designated spot not less than 200 feet from the first turn. The starter shall give the word "go" at the starting point.
- 7.6.5.6 When a speed has been reached in the course of a start there shall be no decrease except in the case of a recall.
- 7.6.6 Recall Rules
- 7.6.6.1 In case of a recall, a light plainly visible to the drivers shall be flashed and a recall sounded, but the starting gate shall proceed out of the path of the horses. In the case of a recall, whenever possible, the starter shall leave the wings of the gate extended and gradually slow the speed of the gate to assist in stopping the field of horses. In an emergency, however, the starter shall use his discretion to close the wings of the gate.



- 7.6.6.2 There shall be no recall after the word "go" has been give unless there is a mechanical failure of the starting gate.
- 7.6.6.3 The starter shall attempt to dispatch all horses away in position and on gait but there shall be no recall for a breaking horse.
- 7.6.6.4 In the event a horse causes two recalls, it may be scratched by the judges.
- 7.6.6.5 The starter may sound a recall for the following reasons:
  - 7.6.6.5.1 A horse scores ahead of the gate;
  - 7.6.6.5.2 There is interference;
  - 7.6.6.5.3 A horse has broken equipment;
  - 7.6.6.5.4 A horse falls before the word "go" is given; or
  - 7.6.6.5.5 A mechanical failure of the starting gate;
  - 7.6.6.5.6 A horse comes to the gate out of position.
- 7.6.6.6 A fine and/or suspension may be applied to any driver for:
  - 7.6.6.6.1 Delaying the start;
  - 7.6.6.6.2 Failure to obey the starter's instructions;
  - 7.6.6.6.3 Rushing ahead of the inside or outside wing of the gate;
  - 7.6.6.6.4 Coming to the starting gate out of position;
  - 7.6.6.6.5 Crossing over before reaching the starting point;
  - 7.6.6.6.6 Interference with another driver during the start; or
  - 7.6.6.6.7 Failure to come up into position and stay in position behind the starting gate until the word "go" is given.
- 7.6.7 Starting Gate
  - 7.6.7.1 No persons shall be allowed to ride in the starting gate except the starter and the driver or operator and a patrol judge, unless permission has been granted by the Presiding Judge.
  - 7.6.7.2 Use of the mechanical loudspeaker for any purpose other than to give instructions to the drivers is prohibited. The volume shall be no higher than necessary to carry the voice of the starter to the drivers.
  - 7.6.7.3 The arms of all starting gates shall be provided with a screen or shield in front of the position for each horse.
  - 7.6.7.4 The official starter must ensure that the starting gate is in good working order prior to the beginning of each race program.
  - 7.6.7.5 The official starter and starting gate driver shall operate the starting gate in a manner consistent with the safe conduct of the race, the safety of the race participants and the safety of the patrons.
- 7.6.8 Two-Tiered Races
  - 7.6.8.1 In the event there are two tiers of horses, the withdrawing of a horse that has drawn or earned a position in the front tier shall not affect the positions of horses that have drawn or entered positions in the second tier.
  - 7.6.8.2 Whenever a horse is drawn from any tier, horses on the outside move in to fill the vacancy. Where a horse has drawn a post position in the second tier, the driver of such horse may elect to score out behind any horse in the front tier so long as it does not interfere with another trailing horse or deprive another trailing horse of a drawn position.
  - 7.6.8.3 When there is only one trailer, it may start from any position in the second tier. When there is more than one trailer, they must start from inside any horse with a higher post position.
- 7.6.9 Starting Without a Gate
  - 7.6.9.1 When horses are started without a gate the starter shall have control of the horses from the formation of the parade until giving the word "go". The starter shall be located at the wire or other point of start of the race at which point as nearly as possible the word "go"

shall be given. No driver shall cause unnecessary delay after the horses are called. After two preliminary warming-up scores, the starter shall notify the drivers to form in parade.

- 7.6.9.2 The driver of any horse refusing or failing to follow the instructions of the starter as to the parade or scoring ahead of the pole horse may be set down for the heat in which the offense occurs, or for such other period as the starter shall determine, and may be fined. Whenever a driver is taken down, the substitute shall be permitted to score the horse once. A horse delaying the race may be started regardless of its position or gait and there shall not be a recall because of a bad acting horse. If the word "go" is not given, all the horses in the race shall immediately turn on signal, and jog back to their parade positions for a fresh start. There shall be no recall after the starting word is given.

7.6.10 Horse Deemed a Starter

Horses shall be deemed to have started when the word "go" is given by the starter and all horses must go the course except in the case of an accident in which it is the opinion of the judges that it is impossible to go the course.

7.6.11 Unmanageable/Bad Acting Horses

- 7.6.11.1 If, in the opinion(s) of the judges and/or the starter, a horse is unmanageable or liable to cause accidents or injury to any other horse or to any driver, it may be sent to the barn. When this action is taken, the starter will notify the judges who will in turn notify the public and order any refunds as may be required in Rule 10 of these rules.
- 7.6.11.2 The starter may place a bad acting horse on the outside at his discretion. Such action may be taken only where there is time for the starter to notify the judges who will in turn notify the public prior to any pari-mutuel wagering on the race. If pari-mutuel wagering has already begun on the race, the horse must be scratched as stipulated in subdivision 1 above.

7.6.12 Post Positions, Heat Racing

- 7.6.12.1 The horse winning a heat shall take the inside position in the succeeding heat, unless otherwise specified in the published conditions of the race, and all others shall take their positions in the order they were placed in the prior heat.
- 7.6.12.2 When two or more horses dead heat, their positions shall be determined by lot.

7.6.13 Conduct of the Race

- 7.6.13.1 A driver shall not commit any of the following acts which are considered violations of driving rules:
- 7.6.13.1.1 Change course or position, or swerve in or out, or bear in or out during any part of the race in such a manner as to compel a horse to shorten its stride or cause another driver to change course, take his horse back, or pull his horse out of its stride.
  - 7.6.13.1.2 Impede the progress of another horse or cause it to break from its gait.
  - 7.6.13.1.3 Cross over too sharply in front of another horse or in front of the field.
  - 7.6.13.1.4 Crowd another horse by 'putting a wheel under it.'
  - 7.6.13.1.5 Allow another horse to pass needlessly on the inside, or commit any other act that helps another horse to improve its position.
  - 7.6.13.1.6 Carry another horse out.
  - 7.6.13.1.7 Take up or slow up in front of other horses so as to cause confusion or interference among the trailing horses.
  - 7.6.13.1.8 Maintain an outside position without making the necessary effort to improve his overall position.
  - 7.6.13.1.9 Strike or hook wheels with another sulky.
  - 7.6.13.1.10 Lay off a normal pace and leave a hole when it is well within the horse's capacity to keep the hole closed.
  - 7.6.13.1.11 Drive in a careless or reckless manner.

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**PROPOSED REGULATIONS**

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- 7.6.13.1.12 Fail to set, maintain or properly contest a pace comparable to the class in which he is racing considering the horse's ability, track conditions, weather and circumstances confronted in the race.
- 7.6.13.1.13 Riding 'half-in' or 'half-out'.
- 7.6.13.1.14 Kicking a horse.
- 7.6.13.1.15 Excessive and/or unnecessary conversation between and among drivers while on the racetrack during the time when colors are required is prohibited. Any violation of this rule may be punished by a fine, suspension or combination thereof.
- 7.6.13.2 A complaint by a driver of any foul, violation of the rules or other misconduct during a race shall be made immediately after the race to which it relates, unless the driver is prevented from doing so by an accident or injury or other reasonable excuse. A driver desiring to enter a claim of foul, or other complaint of violation of the rules, shall make this known to the starter before dismounting and shall proceed immediately to the paddock telephone to communicate immediately with the judges. Any driver who is involved in an objection or inquiry shall proceed immediately to the paddock telephone to communicate with the judges. The judges shall not cause the official sign to be posted until the matter has been dealt with.
- 7.6.13.3 If a violation is committed by a person driving a horse coupled as an entry the judges may set both horses back if, in their opinion, the violation may have affected the finish of the race, otherwise penalties may be applied individually.
- 7.6.13.4 In the case of interference, collision, or violation of any rules, the offending horse may be placed back one or more positions in that heat or dash, and in the event of such collisions, interference or violation preventing any horse from finishing the heat or dash, the offending horse may be disqualified from receiving any winnings and the driver may be fined or suspended. If a horse is set back, it must be placed behind the horse with which it interfered. If an offending horse has interfered with a horse involved in a dead heat and the offending horse is set back, it must be placed behind the horses in the dead heat.
- 7.6.13.5 If the judges believe that a horse is, or has been driven with design to prevent it winning a race or races, they shall consider it a violation by the driver.
- 7.6.13.6 If the judges believe that a horse has been driven in an inconsistent manner, they shall consider it a violation.
- 7.6.13.7 If the judges believe that a horse has been driven in an unsatisfactory manner due to lack of effort or a horse has been driven in an unsatisfactory manner for any reason, they shall consider it a violation punishable by a fine and/or suspension.
- 7.6.13.8 If a horse is suspected to have choked or bled during a race, the driver and/or trainer of that horse is required to report this to the judges immediately after the race.
- 7.6.13.9 If, in the opinion of the judges, a driver is for any reason unfit or incompetent to drive, or is reckless in his conduct and endangers the safety of horses or other drivers in a race, he shall be removed and another driver substituted at any time and the offending driver may be fined, suspended or expelled.
- 7.6.13.10 If for any cause other than being interfered with, or broken equipment, a horse fails to finish after starting a race, that horse shall be ruled out of any subsequent heat of the same event. If it is alleged that a horse failed to finish a race because of broken equipment, this fact must be reported to the paddock judge who shall make an examination to verify the allegation and report the findings to the judges.
- 7.6.13.11 A driver must be mounted in the sulky at all times during the race or the horse shall be placed as a non-finisher.
- 7.6.13.12 Shouting or other improper conduct in a race is forbidden.
- 7.6.13.13 Drivers shall keep both feet in the stirrups during the post parade and from the time the horses are brought to the starting gate until the race has been completed. Drivers shall be permitted to remove a foot from the stirrups during the course of the race solely for the

purpose of pulling ear plugs and once same have been pulled the foot must be placed back into the stirrup. Drivers who violate this rule may be subject to a fine and/or suspension.

7.6.13.14 Impelling of a Horse

7.6.13.14.1 Whips: Drivers will be allowed whips not to exceed 4 feet, plus a snapper not longer than 6 inches. Modification of a whip is prohibited.

7.6.13.14.1.1 Use: The use of a whip shall be confined to the areas above and between the sulky shafts and the outside wheel disks.

7.6.13.14.1.2 Drivers shall keep a line in each hand from the start of the race until the quarter pole.

7.6.13.14.1.3 From the quarter pole to the 7/8th pole, a driver may only use the whip once for a maximum of three strokes. Once the lead horse is at the 7/8th pole, these restrictions do not apply.

7.6.13.14.2 Violations:

7.6.13.14.2.1 Whipping under the arch or shafts of the sulky

7.6.13.14.2.2 Whipping a horse after the race

7.6.13.14.2.3 Causing injury (visible or not) with a whip

7.6.13.14.2.4 Striking or jabbing a horse with the butt end of a whip

7.6.13.14.2.5 Whipping a horse that is out of contention

7.6.13.14.2.6 Brutal, excessive, and or indiscriminate use of a whip.

7.6.13.14.2.6.1 Inspections: At extended pari-mutuel meetings, under the supervision of the judges, there may be a mandatory inspection of each horse following each race for evidence of excessive or brutal use of the whip. At all other meetings, the judges shall have the authority to order and/or conduct such inspections at their discretion.

7.6.13.15 The use of any goading device, or chain, or spur, or mechanical or electrical device other than a whip as allowed in the rules, upon any horse, shall constitute a violation.

7.6.13.16 The possession of any mechanical or electrical goading device on the grounds of an Association shall constitute a violation.

7.6.13.17 The judges shall have the authority to disallow the use of any equipment or harness that they feel is unsafe or not in the best interests of racing.

7.6.13.18 When a horse breaks from its gait, it shall be considered a violation on the part of the driver for:

7.6.13.18.1 Failure to take the horse to the outside of other horses where clearance exists.

7.6.13.18.2 Failure to properly attempt to pull the horse to its gait.

7.6.13.18.3 Failure to lose ground while on a break.

7.6.13.18.4 If no violation has been committed, the horse shall not be set back unless a contending horse on his gait is lapped on the hind quarter of the breaking horse at the finish. The judges may set any horse back one or more places if in their judgment, any of the above violations have been committed, and the driver may be penalized.

7.6.13.18.5 Any horse making a break which causes interference to other horses may be placed behind all offended horses. If there has been no failure on the part of the driver of the breaking horse in complying with Rule 7.6.13.20, no fine or suspension shall be imposed on the driver as a consequence.

7.6.13.19 If, in the opinion of the judges, a driver allows a horse to break for the purpose of losing a race, he or she shall be in violation of the rules.

7.6.13.20 It shall be the duty of one of the judges to call out every break made and have them duly recorded in judges official race reports.

7.6.13.21 The horse whose nose reaches the wire first is the winner. If there is a dead heat for first, both horses shall be considered winners. In races having more than one heat or dash,

where two horses are tied in the summary, the winner of the longer dash or heat shall be entitled to the trophy. Where the dashes or heats are of the same distance and the horses are tied in the summary, the winner of the faster dash or heat shall be entitled to the trophy. Where the dashes or heats are of the same time, both horses shall be considered winners and the entitlement of the trophy will be decided by lot.

- 7.6.13.22 The wire or finish line is a real line established with the aid of a surveyor's transit, or an imaginary line running from the center of the judges' stand to a point immediately across and at right angles to the track.
- 7.6.13.23 If, during the preliminary scores or during a race a driver is unseated in such a manner that he or she falls to the ground, the Presiding Judge or judges may direct the driver to report to the infirmary or to the emergency department of the nearest hospital for examination and receive clearance to continue with driving assignments on that day of racing.
- 7.6.13.24 If a horse is to warm up it must go its last warm-up on the same racing strip as it will compete on unless excused by the judges.
- 7.6.14 Harness Race Track Without a Hubrail
- 7.6.14.1 If at a racetrack which does not have a continuous solid inside hub rail, a horse or part of the horse's sulky leaves the course by running over or going inside the pylons or other demarcation which constitutes the inside limits of the course, the offending horse may be placed one or more positions where, in the opinion of the judges, the action gave the horse an unfair advantage over other horses in the race, or the action helped the horse improve its position in the race. Drivers may be fined or suspended for permitting a horse's sulky to run over or go inside the pylons or other demarcation which constitutes the inside limits of the course. In addition, when an act of interference causes a horse or part of the horse's sulky to cross the inside limits of the course, and the horse is placed by the judges, the offending horse shall be placed behind the horse with which it interfered.
- 7.6.14.2 In the event a horse or part of a horse's sulky leaves the course for any reason, it shall be the driver's responsibility to take all reasonable steps to safely reenter the race course as soon as possible.
- 7.6.15 Extended Homestretch
- 7.6.15.1 With approval of the Commission, a track may extend the width of its homestretch up to 10 feet inward in relation to the width of the rest of the racetrack.
- 7.6.15.2 In the event the home stretch is expanded pursuant to 7.6.15.1 above, the following shall apply:
- 7.6.15.2.1 When entering or while going through the homestretch for the first time in a race, no horse shall use the expanded inside lane in an attempt to pass other horses or improve its position. Any horse, which does so shall be disqualified and placed last in the order of finish.
- 7.6.15.2.2 the lead horse in the homestretch shall maintain as straight a course as possible while allowing trailing horses full access to the extended inside lane.  
If, in the opinion of the judges, the lead horse changes course in the homestretch in an attempt to prevent a trailing horse from passing, said horse shall be placed accordingly.
- 7.6.15.2.3 Horses using the expanded inside lane during the homestretch drive for the finish of the race, must first have complete clearance of the pylons marking the inside boundary of the racecourse. Any horse or sulky running over one or more of the pylons or going inside the pylons while attempting to use the expanded inside lane, may be disqualified or placed back one or more positions.
- 7.6.15.2.4 A horse may only be driven into the expanded homestretch lane for the purpose of passing another horse and may not be driven into the expanded homestretch lane for the purpose of blocking a trailing horse. If, in the opinion of the judges, a horse is driven into the expanded homestretch lane for the purpose of blocking a trailing horse,

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the driver of the blocking horse may be fined and/or suspended and the horse may be placed accordingly.

- 1 DE Reg. 923 (1/1/98)
- 2 DE Reg. 684 (10/01/98)
- 2 DE Reg. 1764 (4/1/99)
- 3 DE Reg. 432 (9/1/99)
- 3 DE Reg 1520 (5/1/00)
- 4 DE Reg 336 (8/1/00)
- 5 DE Reg. 832 (10/1/01)
- 7 DE Reg. 42 (7/1/03)
- 11 DE Reg. 1050 (02/01/08)
- 12 DE Reg. 1074 (02/01/09)
- 13 DE Reg. 841 (12/01/09)

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

**501 Harness Racing Rules and Regulations**

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## DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122 (14 Del.C. §122)  
14 DE Admin. Code 920

**Education Impact Analysis Pursuant To 14 Del.C. Section 122(D)**

**920 Educational Programs for English Language Learners (ELLs)**

### A. Type of Regulatory Action Required

Amendment to Existing Regulation

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

The Secretary of Education intends to amend 14 DE Admin. Code 920 Educational Programs for English Language Learners (ELLs) by replacing Delaware Student Testing Program (DSTP) with Delaware Comprehensive Assessment System (DCAS). This regulation was reviewed as part of the 5 year review cycle.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before July 2, 2010 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The regulation was reviewed and a technical amendment made to replace Delaware Student Testing Program (DSTP) with the new Delaware Comprehensive Assessment System (DCAS).

2. Will the amended regulation help ensure that all students receive an equitable education? The regulation was reviewed and a technical amendment made to replace Delaware Student Testing Program (DSTP) with the new Delaware Comprehensive Assessment System (DCAS).

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation was reviewed and a technical amendment made to replace Delaware Student Testing Program (DSTP) with the new Delaware Comprehensive Assessment System (DCAS).

4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation was reviewed and a technical amendment made to replace Delaware Student Testing Program (DSTP) with the new Delaware Comprehensive Assessment System (DCAS).

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision making at the local board and school level. The amended regulation replaces language referring to Delaware Student Testing Program (DSTP) with Delaware Comprehensive Assessment System (DCAS).

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? No additional requirements or mandates will be placed on the local board or school levels. The amended regulation replaces Delaware Student Testing Program (DSTP) with Delaware Comprehensive Assessment System (DCAS).

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability is with the same entity. The amended regulation replaces language referring to Delaware Student Testing Program (DSTP) with Delaware Comprehensive Assessment System (DCAS).

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? This amendment is consistent with State Code and policies. The amended regulation replaces language referring to Delaware Student Testing Program (DSTP) with Delaware Comprehensive Assessment System (DCAS).

9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of the regulation. The amended regulation replaces language referring to Delaware Student Testing Program (DSTP) with Delaware Comprehensive Assessment System (DCAS).

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no additional cost. The amended regulation replaces language referring to Delaware Student Testing Program (DSTP) with Delaware Comprehensive Assessment System (DCAS).

### **920 Educational Programs for English Language Learners (ELLs)**

This regulation shall apply to any district or charter school applying for or receiving funds to provide services or programs for English Language Learners (ELLs).

#### **1.0 Definitions**

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

**“Bilingual Programs”** Bilingual programs are programs that provide instruction using the student's native language and English across all subject areas or provide instruction in English across all subject areas with support in the native language.

**“English as a Second Language (ESL) Programs”** English as a Second Language Programs are programs providing instruction in English across all subject areas. This program takes into account the student's level of English proficiency and builds on the language skills and academic subject knowledge the student has acquired in his or her native language.

**“English Language Learners (ELLs)”** English Language Learners are students with limited English proficiency (also referred to as (LEP) Limited English Proficient Students). ELLs are individuals who, by reason of foreign birth or ancestry, speak a language other than English, and either comprehend, speak, read or write little or no English, or who have been identified as English Language Learners by

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a valid English language proficiency assessment approved by the Department of Education for use statewide.

## **2.0 Home Language Survey**

A home language survey or the questions contained in the survey shall be administered as part of the registration process for all registering students and shall elicit from the student's parent, guardian or Relative Caregiver the student's first acquired language and the language(s) spoken in the student's home or by the student.

- 2.1 Any student for whom a language other than English is reported on the home language survey or on the registration form as the student's first acquired language or as a language used in the student's home or by the student shall be administered an English language proficiency assessment. The assessment shall be conducted as soon as practicable, but not later than twenty five (25) school days after enrollment and shall be conducted by qualified personnel trained in the administration of the assessment instrument.
  - 2.1.1 The English language proficiency assessment shall be based on the English Language Proficiency Standards for English Language Learners K to 12 and shall assess listening, speaking, reading and writing. The assessment shall be validated for this purpose and approved by the Department of Education for use statewide.
  - 2.1.2 Any student who achieves a score on the English language proficiency assessment that is lower than the eligibility cut off score in listening, speaking, reading and writing established by the Department of Education shall be identified as an ELL and shall be entitled to a program of instruction for ELLs.

## **3.0 Programs of Instruction for ELLs**

Programs of instruction for ELLs shall include formal instruction in English language development; and instruction in academic subjects which is designed to provide ELLs with access to the regular curriculum. In selecting a program(s), each district shall choose programs that are research based and that have been demonstrated to be effective in the education of ELLs.

- 3.1 Programs shall be implemented consistent with the goal of prompt acquisition of full English proficiency. Programs shall include instruction in academic subjects which is equivalent in scope to the instruction that is provided to students who are not limited in English proficiency.
- 3.2 Instruction shall be delivered by individuals who meet Department of Education licensure and certification requirements and who are trained in the delivery of instruction to ELLs.
- 3.3 The student's parent, guardian or Relative Caregiver has a right to refuse placement of their child(ren) in either the Bilingual or the ESL program and also has the right to withdraw an identified student from either program. Parents, guardians or Relative Caregivers of eligible students who refuse placement of their student in either program or withdraw students from either program shall do so in writing.

## **4.0 English Language Proficiency Assessment**

Every student identified as an ELL will be administered an English language proficiency assessment annually.

- 4.1 Any student who achieves a score on the annual English language proficiency assessment that is higher than the eligibility cut off score in listening, speaking, reading and writing established by the Department of Education shall be transitioned as fully English proficient and placed in a regular classroom.
  - 4.1.1 For at least two school years following the identification of the student as fully English Proficient, the district or charter school shall monitor the academic performance of the student. Students who experience academic difficulty in the regular classroom during the transition period shall, based on further assessment re enter a Bilingual or ESL program or shall be provided with additional instructional services as necessary and appropriate.



**5.0 Annual Evaluation**

Each district and charter school receiving funds to provide services or programs for ELL's shall prepare an annual evaluation of its program(s). This evaluation shall be part of the district's annual evaluation process under and in compliance with the Consolidated Application.

**6.0 Data and Information Required**

Each district and charter school shall enter such data and information concerning ELLs as instructed by the Department of Education and as otherwise required by the Department into the statewide database.

**9 DE Reg. 398 (9/1/05)**

**7.0 Communication**

Each district and charter school shall ensure that communication with parents, guardians and Relative Caregivers, including notices of eligibility for programs for ELLs, notices about the student's educational performance and progress in such programs, and school information that is made available to other parents, guardians and Relative Caregivers shall be provided in English or to the extent practicable in a language the parent, guardian or Relative Caregiver can understand.

**9 DE Reg. 398 (9/1/05)**

**8.0 Inclusion in Delaware Student Testing Program**

ELLs and students transitioned as fully English proficient shall be included in the ~~Delaware Student Testing Program (DSTP)~~ Delaware Comprehensive Assessment System (DCAS) as provided for in the Department of Education document *Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency*, as the same may from time to time be amended hereafter.

**4 DE Reg. 467 (9/1/00)**

**9 DE Reg. 398 (9/1/05)**

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES****DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

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

**PUBLIC NOTICE****Non-Emergency Medical Transportation Services**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan regarding Non-Emergency Medical Transportation Services.

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 Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by June 30, 2010.

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.

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## SUMMARY OF PROPOSAL

The proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to amend the Title XIX Medicaid State Plan to implement the provisions of Section 6083 of the Deficit Reduction Act (DRA) of 2005 (Public Law 109-171) regarding Non-Emergency Medical Transportation Services.

### Statutory Authority

- Deficit Reduction Act (DRA) of 2005, Public Law 109-171, enacted on February 8, 2006
- 42 CFR §431.53, Assurance of transportation
- 42 CFR §440.170(a), Any other medical care or remedial care recognized under State law and specified by the Secretary (Transportation)
- 42 CFR §447.205, Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates

### Background

Section 6083 of the DRA amends section 1902(a) of the Social Security Act by adding a new section 1902(a)(70) that provides States the authority to establish, under the State plan, a non-emergency medical transportation (NEMT) brokerage program.

Medicaid programs are federally required in their Title XIX Medicaid state plans to ensure necessary transportation to and from providers. Federal regulations, at both §§431.53 and 440.170(a), permit this coverage in either of two ways, at the state's discretion: 42 CFR §431.53 permits coverage as an administrative expense; 42 CFR §440.170 permits transportation coverage as a medical expense under its State Medicaid plan. Besides the differences in federal financial participation (FFP) for this service for some states (the medical expense is federally reimbursed higher), the most significant difference in these two alternatives is the amount of service coordination and management that is permitted by 42 CFR §431.53.

Prior to enactment of the DRA, when a State elected to provide transportation as medical assistance under its State plan, the State needed to receive a waiver under 1915(b) of the Act in order to institute a NEMT brokerage program.

The law has changed. States are no longer required to obtain a section 1915(b) waiver in order to provide NEMT as an optional medical service through a contracted broker. Under section 1902(a)(70), a State may now use a NEMT brokerage program when providing transportation as medical assistance under the State plan.

### Summary of Proposal

The Delaware Medical Assistance Program (DMAP) has a non-emergency medical transportation brokerage program in place as an "administrative service". This amendment establishes DMAP's non-emergency medical transportation brokerage program in the State's Title XIX state plan pursuant to Section 6083 of the Deficit Reduction Act of 2005. This approach will allow for coverage of non-emergency medical transportation through a contracted broker as a medical service comparable to other medical services DMAP covers such as physician and hospital care.

The proposed amendment simultaneously repeals State plan language relating to transportation cost-sharing for Medicaid recipients. There will be no client co-payment requirement for non-emergency medical transportation services.

An approved state plan amendment will allow DMAP to continue to utilize a transportation broker for meeting the non-emergency transportation needs of Medicaid recipients.

The provisions of this amendment are effective July 1, 2010 and subject to approval by the Centers for Medicare and Medicaid Services (CMS).

**DMMA PROPOSED REGULATION #10-27a****REVISIONS:**

Revision:CMS  
OMB No.

ATTACHMENT 3.1-A  
Page 9a

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
State/Territory **DELAWARE**

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

24. Any other medical care and any other type of remedial care recognized under State law and specified by the Secretary.

a 1. Transportation (provided in accordance with 42 CFR 440.170 as an optional medical service).

- No limitations  
 With limitations

Non-emergency medical transportation is provided statewide through a brokerage program as an optional medical service in accordance with 1902(a)(70) of the Social Security Act and 42 CFR 440.170(a)(4) and all other requirements relating to Medicaid services.

a 2. Brokered Transportation

- Provided under section 1902(a)(70)

The State assures it has established a non-emergency medical transportation program in order to more cost-effectively provide transportation, and can document, upon request from CMS, that the transportation broker was procured in compliance with the requirements of 45 CFR 92.36 (b)-(f).

(1) The State will operate the broker program without the requirements of the following paragraphs of section 1902(a);

- (1) statewideness (indicate areas of State that are covered)  
 (10)(B) comparability (indicate participating beneficiary groups)  
 (23) freedom of choice (indicate mandatory population groups)

Revision:CMS  
OMB No.

ATTACHMENT 3.1-A  
Page 9a.1.

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## STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory **DELAWARE**

(2) Transportation services will include:

- |                                     |  |
|-------------------------------------|--|
| <input checked="" type="checkbox"/> | wheelchair van   |
| <input checked="" type="checkbox"/> | taxi   |
| <input checked="" type="checkbox"/> | stretcher car  |
| <input checked="" type="checkbox"/> | bus passes   |
| <input checked="" type="checkbox"/> | tickets  |
| <input checked="" type="checkbox"/> | secured transportation   |
| <input type="checkbox"/>            | such other transportation as the Secretary determines appropriate<br>(please describe) |

(3) The State assures that transportation services will be provided under contract with a broker who:

(i) is selected through a competitive bidding process based on the State's evaluation of the broker's experience, performance, references, resources, qualifications, and costs;

(ii) has oversight procedures to monitor beneficiary access and complaints and ensures that transport personnel are licensed, qualified, competent, and courteous;

(iii) is subject to regular auditing and oversight by the State in order to ensure the quality of the transportation services provided and the adequacy of beneficiary access to medical care and services;

(iv) complies with such requirements related to prohibitions on referrals and conflict of interest as the Secretary shall establish (based on prohibitions on physician referrals under section 1877 and such other prohibitions and requirements as the Secretary determines to be appropriate);

Revision:CMS

ATTACHMENT 3.1-A

OMB No.

Page 9a.2.

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## STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory **DELAWARE**

(4) The broker contract will provide transportation to the following categorically needy mandatory populations:

- |                                     |   |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | Low-income families with children (section 1931)          |
| <input checked="" type="checkbox"/> | Poverty-level related pregnant women                      |
| <input checked="" type="checkbox"/> | Poverty-level infants                                     |
| <input checked="" type="checkbox"/> | Poverty-level children 1 through 5                        |
| <input checked="" type="checkbox"/> | Poverty-level children 6 - 19                             |
| <input checked="" type="checkbox"/> | Qualified pregnant women AFDC-related                     |
| <input checked="" type="checkbox"/> | Qualified children AFDC-related                           |
| <input checked="" type="checkbox"/> | IV-E Federal foster care and adoption assistance children |
| <input checked="" type="checkbox"/> | TMA recipients (due to employment)                        |
| <input checked="" type="checkbox"/> | TMA recipients (due to child support)                     |
| <input checked="" type="checkbox"/> | SSI recipients  |

# PROPOSED REGULATIONS

(5) The broker contract will provide transportation to the following categorically needy optional populations:

- Optional poverty-level-related pregnant women
- Optional poverty-level-related infants
- Optional targeted low-income children
- Non IV-E individuals under 21 who are in foster care and who are under State adoption assistance agreements
- Individuals under 21 who are in foster care on their 18<sup>th</sup> birthday
- Individuals who meet income and resource requirements of AFDC or SSI
- Individuals who would meet the income & resource requirements of AFDC if child care costs were paid from earnings rather than by a State agency
- Individuals who would be eligible for AFDC if State plan had been as broad as allowed under Federal law
- Individuals who would be eligible for AFDC or SSI if they were not in a medical institution
- Individuals infected with TB
- Individuals screened for breast or cervical cancer by CDC program
- Individuals receiving COBRA continuation benefits
- Individuals in special income level group, in a medical institution for at least 30 consecutive days, with gross income not exceeding 300% of SSI income standard

Revision:CMS  
OMB No.

ATTACHMENT 3.1-A  
Page 9a.3.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
State/Territory **DELAWARE**

- Individuals receiving home and community based waiver services who would only be eligible under State plan if in a medical institution
- Individuals terminally ill if in a medical institution and will receive hospice care
- Individuals aged or disabled with income not above 100% FPL
- Individuals receiving only an optional State supplement in a 209(b) State
- Individuals working disabled who buy into Medicaid (BBA working disabled group)
- Individuals working disabled who buy into Medicaid under TWWIIA Basic Coverage Group
- Employed medically improved individuals who buy into Medicaid under TWWIIA Medical Improvement Group
- Individuals disabled age 18 or younger who would require an institutional level of care (TEFRA 134 kids)

(6) The State will pay the contracted broker by the following method:

- (i) risk capitation
- (ii) non-risk capitation
- (iii) other (e.g., brokerage fee and direct payment to providers)

# PROPOSED REGULATIONS

1509

Effective Date:

DELAWARE will implement this State plan amendment on **July 1, 2010**.

**DMMA PROPOSED REGULATION #10-27b**

**REVISIONS:**

STATE PLAN UNDER TITLE XIX UNDER THE SOCIAL SECURITY ACT ESTABLISHMENT AND  
 MAINTENANCE OF STATE AND FEDERAL STANDARDS  
 STATE OF DELAWARE  
 ATTACHMENT 3.1-D  
 METHODS OF PROVIDING TRANSPORTATION

Transportation is ~~covered as administrative service through a broker system~~ provided statewide through a brokerage program as an optional medical service in accordance with 1902(a)(70) of the Social Security Act, 42 CFR 440.170(a)(4) and all other requirements relating to Medicaid services.

**DMMA Proposed Regulation #10-27c**

**REVISIONS:**

ATTACHMENT 4.18-A  
 Page 1

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

A. The following charges are imposed on the categorically needy for services other than those provided under section 1905 (a) (1) through (5) and (7) of the Act:

Service	Type of Charge			Amount and Basis for Determination										
	Deductible	Coinsurance	Co-payment											
1. Non-Emergency Medical Transportation	<del>0-</del>	<del>0-</del>	\$1.00 per one-way trip	1. This co-payment is effective October 1, 2002 and is based on the ranges specified in 42 CFR §§44754 and 447.55.										
2. Pharmacy	-0-	-0-	X	2. This co-payment is effective January 10, 2005 and is based upon the cost of the drug as follows: <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;"><u>Medicaid Payment for the Drug</u></th> <th style="text-align: left;"><u>Co-payment</u></th> </tr> </thead> <tbody> <tr> <td>\$10.00 or less</td> <td style="text-align: right;">\$ .50</td> </tr> <tr> <td>\$10.01 to \$25.00</td> <td style="text-align: right;">\$1.00</td> </tr> <tr> <td>\$25.01 to \$50.00</td> <td style="text-align: right;">\$2.00</td> </tr> <tr> <td>\$50.01 or more</td> <td style="text-align: right;">\$3.00</td> </tr> </tbody> </table>	<u>Medicaid Payment for the Drug</u>	<u>Co-payment</u>	\$10.00 or less	\$ .50	\$10.01 to \$25.00	\$1.00	\$25.01 to \$50.00	\$2.00	\$50.01 or more	\$3.00
<u>Medicaid Payment for the Drug</u>	<u>Co-payment</u>													
\$10.00 or less	\$ .50													
\$10.01 to \$25.00	\$1.00													
\$25.01 to \$50.00	\$2.00													
\$50.01 or more	\$3.00													

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

B. The method used to collect cost sharing charges for categorically needy individuals:

**X** Providers are responsible for collecting the cost sharing charges from individuals

The agency reimburses providers the full Medicaid rate for services and collects the cost sharing charges from individuals.

C. The basis for determining whether an individual is unable to pay the charge, and the means by which such an individual is identified to providers, is described below:

~~Non-Emergency Transportation (NET) Co-payment~~

~~Non-Emergency Transportation (NET) is provided as an administrative activity under the State Plan. The State's position is that as an administrative activity, NET co-payment requirements are not subject to 42 CFR 447.53(b), exclusions from cost-sharing.~~

~~The Transportation Broker or Transportation Provider will, based on information available to them, make a determination of the client's ability to pay the co-payment. Non-payment of this standard cost-sharing amount may result in denial of the service at the Transportation Broker's or Transportation Provider's discretion. Providers may voluntarily provide transportation to client who cannot pay the co-payment amount, however the State will not reimburse the Transportation Broker or the Transportation Provider any co-payment amounts for which the client is or would have been liable. Further, the Transportation Broker or Transportation Provider have complete discretion as to whether they will pursue any unpaid co-payment amounts from clients who were provided non-emergency transportation but failed to reimburse the Transportation Provider the required co-payment fee at the time of the service. The State will not pursue unpaid co-payment amounts from clients.~~

Pharmacy Services Co-payment

The Pharmacy (Pharmacist) Provider will be advised via the Point-of-Sale System regarding the client's liability for the drug co-payment and the amount of the co-payment. When a client advises a pharmacy of an inability to pay the applicable co-payment amount at the time the prescription is filled, the pharmacy cannot refuse to fill the prescription and must dispense the drug as prescribed.

The client will remain liable for reimbursement of the co-payment amount and will be responsible for paying the pharmacy when financially able. Medicaid will not pay the co-payment amount to the pharmacy where a client declares an inability to pay. Provider payment will continue to be that sum which is the Medicaid fee minus the applicable client co-payment amount.

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

D. The procedures for implementing and enforcing the exclusions from cost sharing contained in 42 CFR 447.53 (b) are described below:

Exclusions from cost sharing requirements are programmed into the Medicaid Management Information System and the Point-of-Sale (POS) System.

Providers are informed about applicable service and amount; and, the prohibition of service denial if client is unable to meet the co-pay amount by the following methods: (1) provider manuals, which are distributed to all providers; (2) DMAP website; and (3) provider newsletters.

Co-payment requirements are set forth in provider manuals, which are distributed, to all providers. The billing instructions are updated and transmitted to providers via the Provider Newsletter. These instructions are incorporated in the billing instruction section of the provider manuals, which are given to all providers.

E. Cumulative maximums on charges: See descriptions below:

~~X For Non-Emergency Transportation (NET) Co-payment, the State policy does not provide maximums.~~

**X** For Pharmacy Services Co-payment, cumulative maximums have been established as described below:

\$15.00 cumulative monthly maximum co-payment amount aggregated for pharmacy services. Once a client has met the individual monthly maximum co-payment for his or her prescriptions, the Point of Sale (POS) System will NOT indicate a co-payment is due. Medicaid will keep track of the cumulative number of prescriptions for a client with co-payments. Any prescriptions dispensed after the cumulative maximum monthly co-payment amount is met are not subject to a co-payment. Reversal of a previously filled prescription with a co-payment will require a refund of the co-payment to the individual, and will cause the next prescription filled for that client to be adjudicated with a co-payment.

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## **DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

### **DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Sections 903(e)(1)(c); 903(f)  
(7 Del.C. §§903(e)(1)(c); 903(f))  
7 DE Admin. Code 3541

### **PUBLIC NOTICE**

**SAN # 2010-15**

**1. TITLE OF THE REGULATIONS:**

Tidal Finfish Regulation: 3541 Atlantic Sharks.

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

The Department of Natural Resources and Environmental Control will hold a public hearing regarding proposed modifications to Tidal Finfish Regulation 3541 concerning Atlantic sharks. The purpose of the proposed revision is to bring Delaware into compliance with the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Atlantic Coastal Sharks

The Interstate Fishery Management Plan for Atlantic Coastal Shark specifies which gears that fishermen are authorized to use in state waters on the Atlantic Coast. The gears that are authorized by ASFMC are hook and line, longline, gill net, trawl net, shortline, pound net and weir. At present, Delaware allows the use of hook and line, troll line, dip net, lift net, push net, cast net, spear or harpoon, haul seine, bag net, hoop net, fyke net, fish pot, and gill net for use in state waters to harvest food fish which includes sharks. To meet the requirements of the Interstate Fishery Management Plan, Delaware must restrict the commercial gears that may be used for the harvesting of Atlantic coastal sharks to hook and line, and gill net. Recreational fishermen are restricted to the use of rod and reel and hand line. Fishermen with a federal shark permit who are fishing outside of state waters are not



restricted to these gear types and may land sharks using any gear that is in accordance with the rules and regulations established by NOAA Fisheries.

Additionally, the Interstate Fishery Management Plan for Atlantic Coastal Shark specifies that a federal Commercial Shark Dealer Permit is required to buy and sell any shark caught in state waters. At the present time, the State of Delaware does not require seafood dealers to have this permit to buy and sell shark caught in state waters.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

Delaware is required to comply with the ASMFC plan for coastal sharks and the latest addendum to the Interstate Fishery Management Plan for Coastal Shark. Failure to do so may result in total closure of these fisheries in Delaware by order of the Secretary of Commerce.

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

7 Del.C. §903(e) (1) (c) and §903(f).

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

None

**6. NOTICE OF PUBLIC COMMENT:**

A public hearing on this regulation will be held in the Department of Natural Resources and Environmental Control (DNREC) auditorium located at 89 Kings Highway, Dover DE 19901 on June 21, 2010 at 6:30 PM. Comments for the hearing record should be addressed to Lisa Vest, Hearing Officer, Office of the Secretary, Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, De 19901 or by e-mail to [lisa.vest@state.de.us](mailto:lisa.vest@state.de.us)

**7. RESPONSIBLE STAFF MEMBERS:**

Craig Shirey (302) 739-9914 [craig.shirey@state.de.us](mailto:craig.shirey@state.de.us)

Scott Newlin (302) 735-2971 [scott.newlin@state.de.us](mailto:scott.newlin@state.de.us)

**3541 Atlantic Sharks**

(Penalty Section 7 Del.C. §936(b)(2))

**1.0 Definitions:**

**"Fillet"** shall mean to remove slices of fish flesh, of irregular size and shape, from the carcass by cuts made parallel to the backbone.

**"Land or Landing"** shall mean to put or cause to go on shore from a vessel.

**"Management Unit"** shall mean any of the non-sandbar large coastal species, small coastal species, pelagic species and prohibited species of sharks or parts thereof defined in this regulation. Smooth dogfish (*Mustelus canus*), although they are a species of shark, are not presently part of the management unit as defined above, and are not subject to minimum size or daily harvest restrictions. They are subject to the provisions of Regulation 3541, Sections 3.0 and 4.0.

**"Non-Sandbar Large Coastal Species"** shall mean any of the following species of sharks or parts thereof:

Great hammerhead, *Sphyrna mokarran*

Scalloped hammerhead, *Sphyrna lewini*

Smooth hammerhead, *Sphyrna zygaena*

Nurse shark, *Ginglymostoma cirratum*

Blacktip shark, *Carcharhinus limbatus*

Bull shark, *Carcharhinus leucas*

Lemon shark, *Neqapriion brevirostris*  
Silky shark, *Carcharhinus falciformis*  
Spinner shark, *Carcharhinus brevipinna*  
Tiger shark, *Galeocerdo cuvieri*

**“Pelagic Species”** shall mean any of the following species of sharks or parts thereof:

Porbeagle shark, *Lamna nasus*  
Shortfin mako, *Isurus oxyrinchus*  
Blue shark, *Prionace glauca*  
Oceanic whitetip shark, *Carcharhinus longimanus*  
Thresher shark, *Alopias vulpinus*

**“Prohibited Species”** shall mean any of the following species of sharks or parts thereof:

Basking shark, *Cetorhinidae maximus*  
White shark, *Carcharodon carcharias*  
Bigeye sand tiger, *Odontaspis noronhai*  
Sand tiger, *Odontaspis taurus*  
Whale shark, *Rhincodon typus*  
Bignose shark, *Carcharhinus altimus*  
Caribbean reef shark, *Carcharhinus perezii*  
Dusky shark, *Carcharhinus obscurus*  
Galapagos shark, *Carcharhinus galapagensis*  
Narrowtooth shark, *Carcharhinus brachyurus*  
Night shark, *Carcharhinus signatus*  
Atlantic angel shark, *Squatina dumerili*  
Caribbean sharpnose shark, *Rhizoprionodon porosus*  
Smalltail shark, *Carcharhinus porosus*  
Bigeye sixgill shark, *Hexanchus vitulus*  
Sevengill shark, *Heptranchias perlo*  
Sixgill shark, *Hexanchus griseus*  
Longfin mako, *Isurus paucus*  
Bigeye thresher, *Alopias superciliosus*

**“Sandbar shark”** shall mean *Carcharhinus plumbeus*

**“Shore fishing”** shall mean any fishing that does not take place on board a vessel. The terms "shore fishing" and "shore angler" are synonymous.

**“Small Coastal Species”** shall mean any of the following species of sharks or parts thereof:

Bonnethead, *Sphyrna tiburo*  
Atlantic sharpnose shark, *Rhizoprionodon terraenovae*  
Blacknose shark, *Carcharhinus acronotus*  
Finetooth shark, *Carcharhinus isodon*

**3 DE Reg. 1088 (02/01/00)**

**12 DE Reg. 1517 (06/01/09)**

**2.0** It shall be unlawful for any person to land, purchase, trade, barter, or possess or attempt to land, purchase, trade, barter, or possess a prohibited species.

**3.0** It shall be unlawful for any person to possess the fins from any shark in the management unit prior to landing said shark unless said fins are naturally attached to the body of said shark.

**4.0** It shall be unlawful for any person to fish for any shark while in state waters with any fishing equipment or by any method, except: (1) Hook and Line; (2) Gill Net.

**45.0** It shall be unlawful for any person to fillet a shark in the management unit prior to landing said shark. A shark may be eviscerated prior to landing said shark, but the head, tail, and fins must remain naturally attached to the carcass, except that commercial fishermen may eviscerate and remove the head of any shark reduced to possession, but the tail and fins must remain attached to the carcass.

**12 DE Reg. 1517 (06/01/09)**

**56.0** It shall be unlawful to release any shark in the management unit in a manner that will not ensure said sharks maximum probability of survival.

**67.0** It shall be unlawful for the operator of any vessel without a commercial food fishing license to have on board said vessel more than one non-prohibited shark per trip from among those species in the management unit, regardless of the number of people on board the vessel. In addition each recreational angler fishing from a vessel may harvest and possess one bonnethead, and one Atlantic sharpnose shark per trip.

**7.1** It shall be unlawful for any shark caught in state waters to be bought and sold without a federal Commercial Shark Dealer Permit.

**1 DE Reg. 345 (10/1/97)**

**3 DE Reg. 1088 (2/1/00)**

**8 DE Reg. 1718 (6/1/05)**

**12 DE Reg. 1517 (06/01/09)**

**78.0** It shall be unlawful for any person who has been issued a valid commercial food fishing license while on board any vessel to possess any non-prohibited shark from among those species in the management unit during the remainder of any period after the effective date a commercial quota for that group of sharks has been reached in said period or is projected to be reached in said period by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration and the U.S. Department of Commerce. Further, it shall be unlawful for any person who has been issued a valid commercial food fishing license while on board any vessel to possess any non-sandbar large coastal sharks, small coastal sharks, or pelagic sharks in excess of current federal daily harvest limits administered by the National Marine Fisheries Service.

**12 DE Reg. 1517 (06/01/09)**

**89.0** It shall be unlawful for any person to engage in a directed commercial fishery for a prohibited species.

**910.0** It shall be unlawful for the operator of any vessel without a commercial foodfishing license to have on board said vessel any non-prohibited shark from among those species in the management unit that measures less than 54 inches, fork length (tip of snout to indentation between dorsal and ventral tail lobes), with the exception of Atlantic sharpnose, blacknose, finetooth, bonnethead, and smooth dogfish sharks, for which no minimum size limit applies.

**3 DE Reg. 1088 (2/1/00)**

**1 DE Reg. 850 (1/1/98)**

**1 DE Reg. 1005 (2/1/98)**

**12 DE Reg. 1517 (06/01/09)**

**4011.0** It shall be unlawful for any shore angler without a commercial foodfishing license to take and reduce to possession any non-prohibited shark from among those species in the management unit less than 54 inches, with the exception of Atlantic sharpnose, blacknose, finetooth, bonnethead, and smooth dogfish sharks, for which no size limit applies.

**12 DE Reg. 1517 (06/01/09)**

**4412.0** It shall be unlawful for any shore angler without a commercial foodfishing license to take and reduce to possession more than one non-prohibited shark from among those species in the management unit per day (a day being 24 hours). Recreational shore anglers may also harvest one additional bonnethead, and one additional Atlantic sharpnose shark per day.

**8 DE Reg. 1718 (6/1/05)****12 DE Reg. 1517 (06/01/09)**

**4413.0** It shall be unlawful for any recreational or commercial fisherman to possess silky, tiger, blacktip, spinner, bull, lemon, nurse, scalloped hammerhead, great hammerhead, and smooth hammerhead sharks from May 15 through July 15, regardless of where the shark was caught. Fishermen who catch any of these species in federal waters may not transport them through Delaware state waters during the aforementioned closed season.

**12 DE Reg. 1517 (06/01/09)**

**4414.0** It shall be unlawful for any recreational or commercial fisherman to land or possess any sandbar sharks, except for a commercial fisherman in possession of a valid sandbar shark research permit issued by the National Marine Fisheries Service. There must be a qualified observer aboard any vessel that lands and possesses sandbar sharks fishing under the auspices of a valid federal research permit.

**12 DE Reg. 1517 (06/01/09)**

**4415.0** It shall be unlawful for any Delaware recreational or commercial fisherman to land or possess any species of shark in state waters that is illegal to catch or land or possess in federal waters. Presently it is unlawful for recreational fishermen to take and possess silky sharks in federal waters at any time of the year.

**12 DE Reg. 1517 (06/01/09)**

**4516.0** The Department may grant anyone permission to take and possess sharks that would otherwise be illegal to take and possess when used for display and/or research purposes. Applicants will need a current State of Delaware scientific collecting permit. Applicants must annually report the number, weight, species, location caught, and gear used for each shark collected for research or display purposes, and the annual disposition of said sharks throughout the life of each shark so taken. The Division reserves the right to place limits on or deny any request to take prohibited species of sharks under the auspices of a scientific collecting permit.

**8 DE Reg. 1718 (06/01/05)****12 DE Reg. 1517 (06/01/09)**

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## DEPARTMENT OF STATE PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code, Section 209(a) (26 Del.C. §209(a))  
26 DE Admin. Code 2002

### PUBLIC NOTICE

IN THE MATTER OF THE ADOPTION OF RULES		
CONCERNING THE IMPLEMENTATION OF 72 DEL.		
LAWS CH. 402 (2000) GRANTING THE COMMISSION		
THE JURISDICTION TO GRANT AND REVOKE THE		
CERTIFICATES OF PUBLIC CONVENIENCE AND		PSC REGULATION DOCKET NO. 51

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NECESSITY FOR PUBLIC UTILITY WATER UTILITIES |  
(OPENED NOVEMBER 12, 2000; REOPENED  
MARCH 20, 2007

**Notice of Further Proposed Rule-making:**

**Amendment of Rules for Granting, Supervising, and Revoking Certificates of Public Convenience and Necessity for Water Utilities**

Under 26 **Del.C.** §203C, the Public Service Commission ("PSC") holds the authority to grant a Certificate of Public Convenience and Necessity ("CPCN") to authorize an entity to begin water utility operations or allow an existing water utility to expand its operations or business to a new proposed service territory. This CPCN authority encompasses water utilities subject to the PSC's general regulation as well as municipal and other governmental water utilities, districts, or authorities. In 2001, the PSC adopted "Regulations Governing Water Utilities Including the Public Service Commission's Jurisdiction to Grant and Revoke Certificates of Public Convenience and Necessity." See 5 DE Reg. 212 (July 1, 2001). Those regulations set forth the process and criteria for reviewing, granting, or denying requests for CPCNs filed by water utilities.

Earlier, the PSC proposed to repeal the 2001 Rules related to water utility CPCNs in favor of a proposed new set of Rules. See 10 DE Reg. 1563-1580 and 11 **DE Reg.** 465-484. The Commission has now withdrawn those earlier proposed rules.

Pursuant to 26 **Del.C.** §§203(c) and 209(a), the PSC now proposes to repeal the 2001 rules and replace them with new "Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities." As set forth in PSC Order No. 7774 (May 4, 2010), the PSC believes the new rules will make improvements in the administration of the CPCN process. Initially, the proposed new rules implement the statutory changes made to the criteria for obtaining a CPCN (and the provisions of 26 **Del.C.** §203C) by 76 **Del. Laws** ch. 55 (June 28, 2007). Second, the new rules provide for more detailed requirements for notice to affected landowners, other interested persons, and the public of the CPCN application and provide specific requirements about the form of notice to be sent to affected landowners to inform them of their options. In addition, the new regulations add provisions placing limitations on the number of Proposed Service Areas that may be included in a CPCN application, and requiring the inclusion of a Plan of Service with the CPCN application.

You can review PSC Order No. 7774 (May 4, 2010) and the proposed new rules in the June 1, 2010 issue of the Delaware Register of Regulations. You can also review the Order and the new regulations at the PSC's Internet website located at <http://depssc.delaware.gov>. Written copies of the Order and proposed regulations can be obtained at the PSC's office at the address located below, for \$0.25 per page.

The PSC now solicits comments, suggestions, compilations of data, briefs, or other written materials about the proposed repeal of the 2001 Water Utility CPCN rules and the adoption of the proposed new Water Utility CPCN rules. If you want to file any such materials, you should submit an original and ten copies of such written documents on or before June 30, 2010. You should file such materials with the PSC at the following address:

Public Service Commission  
861 Silver Lake Boulevard  
Cannon Building, Suite 100  
Dover, DE 19904  
Attn: Reg. Dckt. No. 51

If possible, you should accompany such written comments with an electronic version of the submission. Such electronic copy may be filed on a copy-capable CD-Rom disk or sent as an attachment to an Internet e-mail addressed to [alisa.bentley@state.de.us](mailto:alisa.bentley@state.de.us).

The PSC will also conduct a public hearing on the new proposed regulations on Thursday, July 22, 2010. That hearing will begin at 1:00 P.M. and will be held at the PSC's office at the address set forth above. You may also submit comments and materials at such public hearing.

If you are disabled and need assistance or help to participate in the proceedings, please contact the PSC to discuss that assistance. If you want more information or have questions, you can contact the PSC about the matter at (800) 282-8574 (toll-free in Delaware) or (302) 736-7500. Inquiries can also be sent by Internet e-mail addressed to [andrea.maucher@state.de.us](mailto:andrea.maucher@state.de.us).

## **2002 Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities** ~~REGULATIONS CONCERNING WATER UTILITIES INCLUDING THE PUBLIC SERVICE COMMISSION'S JURISDICTION TO GRANT AND REVOKE CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY~~

### **1.0 Scope of Regulations.**

~~These regulations are intended to govern certain practices and procedures before the Delaware Public Service Commission relating to water utilities.~~

### **2.0 Definitions.**

As used in these regulations:

"~~Commission~~" means the Delaware Public Service Commission.

"~~CPCN~~" means a Certificate of Public Convenience and Necessity.

"~~DPH~~" means the Delaware Division of Public Health.

"~~DNREC~~" means the Delaware Department of Natural Resources and Environmental Control.

"~~Staff~~" means the Staff of the Delaware Public Service Commission.

"~~Secretary~~" means the Secretary of the Delaware Public Service Commission.

### **3.0 Application for Certificate of Public Convenience and Necessity.**

- 3.1 ~~An application for a Certificate of Public Convenience and Necessity to begin the business of a water utility or to extend or expand the business or operations of any existing water utility shall be made in writing and filed with the Commission. The application shall include all information and supporting documentation required by statute, the Rules of Practice and Procedure of the Commission, these regulations, and shall not be considered complete until all such information and supporting documentation has been filed with the Commission. At the time of filing, the application shall:~~
- 3.1.1 ~~Contain a statement explaining the reason(s) why the Commission should grant the CPCN, and citations to all statutory and regulatory authority upon which the application is based, or upon which the applicant relies to support the application;~~
  - 3.1.2 ~~Clearly state the relief sought by the application;~~
  - 3.1.3 ~~State the name, address, telephone number, and e-mail address (if any) of the person to be notified in the event the Staff determines there are deficiencies in the application;~~
  - 3.1.4 ~~Contain the supporting documentation required by 26 ~~Del.C.~~ §203C, including evidence that all the landowners of the proposed territory have been notified of the application;~~
  - 3.1.5 ~~Include a complete list of county tax map parcel number(s) for the area covered by the application;~~
  - 3.1.6 ~~Include (along with a complete list of tax map number(s)) corresponding names and addresses of property owners and a copy of all tax map(s) for the area;~~
  - 3.1.7 ~~For any proposed extension of service, contain a certification by the applicant that the extension will satisfy the provisions of 26 ~~Del.C.~~ §403C, including the following:~~
    - 3.1.7.1 ~~The applicant is furnishing water to its present customers or subscribers in this State in such fashion that water pressure at every house supplied is at least 25 pounds at all times at the service connection;~~

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**PROPOSED REGULATIONS**

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- ~~3.1.7.2 The applicant shall furnish water to the house or separate location of each new customer or subscriber in this State at the pressure of at least 25 pounds at each such location or house at all times at the service connection while continuing also to supply each old customer or subscriber at the pressure of at least 25 pounds at each house at all times at the service connection;~~
- ~~3.1.7.3 The applicant is not subject to a finding by the appropriate federal or state regulatory authority that it has materially failed to comply with applicable safe drinking water or water quality standards; and~~
- ~~3.1.7.4 The applicant is not subject to any Order issued by the Commission finding that the company has materially failed to provide adequate or proper safe water services to existing customers; and~~
- ~~3.1.8 For applications submitted under 26 Del.C. §203C(e), include a statement indicating whether the applicant has determined if a majority of the landowners of the proposed territory to be served object to the issuance of a CPCN to the applicant, and the documentation relied upon to support the applicant's determination.~~
- 3.2 If an application for a CPCN involves a water utility project or service that requires the review, approval or authorization of any other state or federal regulatory body, including DNREC, the State Fire Marshal or DPH, the application to the Commission shall so state and shall include the following:
  - ~~3.2.1 A statement of the current status of such application;~~
  - ~~3.2.2 If the application to the other regulatory body or bodies has already been filed, a copy of any permit, order, certificate, or other document issued by the regulatory body relating thereto; and~~
  - ~~3.2.3 If such an application or amendment thereof is filed with another state or federal regulatory body or a determination is made by any such regulatory body subsequent to the date of filing the CPCN application with the Commission, but prior to its determination, a copy of any permit, order, certificate or other document that has been issued relating thereto shall be filed with the Commission.~~
- 3.3 An applicant for a CPCN — other than a municipality or other governmental subdivision — shall provide with the application (if not presently on file with the Commission) the following:
  - ~~3.3.1 A corporate history including dates of incorporation, subsequent acquisitions and/or mergers;~~
  - ~~3.3.2 A complete description of all relationships between the applicant and its parent, subsidiaries, and affiliates. Furnish a chart or charts which depict(s) the inter-company relationships;~~
  - ~~3.3.3 A map identifying all areas, including all towns, cities, counties, and other government subdivisions to which service is already provided;~~
  - ~~3.3.4 A statement identifying any significant element of the application which, to the applicant's knowledge, represents a departure from prior decisions of the Commission;~~
  - ~~3.3.5 Annual reports to stockholders for applicant, its subsidiaries, and its parent for the last two years;~~
  - ~~3.3.6 The applicant's audited financial statements, 10K's, and all proxy material for the last two years; and~~
  - ~~3.3.7 Any reports submitted by the applicant within the preceding twelve months to any state or federal authorities in any proceedings wherein an issue has been raised about the applicant's failure to comply with any statute, regulation, rule, or order related to the provision of safe, adequate and reliable water service, including the water quality of water provided to existing customers.~~
- ~~3.4 A municipality or other governmental subdivision applying for a CPCN shall provide with the application (if not presently on file with the Commission) the statement and documents identified in subsections 3.3, 3.3.3, 3.3.4 and 3.3.7 hereof.~~
- ~~3.5 After a completed application has been filed and during the course of the Staff investigation of an application, the Commission may require an applicant to furnish additional information specifically related to the statutory standards for Commission review and consideration of an application, including the provision of safe, adequate, and reliable water service.~~
- ~~3.6 Supporting documentation not filed with the application must be made available for Staff inspection upon request.~~

**4.0 Additional Requirements for an Application Filed by a New Water Utility.**

- 4.1 If the applicant for a CPCN is a new water utility that has not previously been awarded a CPCN in Delaware, the application, in addition to meeting the requirements of section 3.0, shall include the following:
  - 4.1.1 Evidence that it possesses the financial, operational, and managerial capacity to comply with all state and federal safe drinking water requirements and that it has, or will procure, adequate supplies of water to meet demand, even in drought conditions, by maintaining supply sufficient to meet existing and reasonably anticipated future peak daily and monthly demands;
  - 4.1.2 A certified copy of the applicant's certificate of incorporation;
  - 4.1.3 Details of plant as to type, capacity, cost, status of plant construction, construction schedule, and estimated number of customers to be served; and
  - 4.1.4 A map showing the location and size, in acres or square feet, of the proposed territory, and the composition, diameter, length, and location of pipes to be initially installed.
- 4.2 If the applicant for a CPCN is a new water utility that is an unincorporated proprietorship, the applicant shall be subject to a rebuttal presumption that the applicant lacks the financial, operational, and managerial capacity to comply with the requirements for a CPCN.

**5.0 Review of application; deficiencies in the application.**

- 5.1 The Staff shall review all CPCN applications for compliance with applicable statutes and these regulations. The Staff will, within twenty one days after the date of filing, specifically identify any deficiencies in the application, and immediately request the Secretary to promptly notify the applicant of the alleged deficiencies. The applicant shall have thirty days from the date of the receipt of the notice from the Secretary of the deficiencies in the application to file a corrected or supplemental application. The Commission may, in its discretion, extend the period to cure deficiencies in the application for an additional thirty days.
- 5.2 Only upon the applicant's filing of a corrected or supplemental application correcting the deficiencies shall such application be deemed completed and filed with the Commission for purposes of the time limits for action by the Commission under 26 ~~Del.C.~~ §203C(h). In the event the alleged deficiencies are not cured within the time provided hereunder, Staff may move the Commission to reject the utility's application for non-compliance with these regulations.
- 5.3 Nothing in this regulation shall prevent an applicant from filing an application in draft form for Staff's informal review and comment without prejudice, such informal review and comment not to be unreasonably withheld by Staff; nor shall this regulation affect or delay the filing date of applications that comply with applicable statutes and these regulations, or whose non compliance is deemed minor or immaterial by the Commission or its Staff.

**6.0 Filing of application with DNREC, the State Fire Marshal, and DPH; coordination and cooperation.**

An applicant for a CPCN shall file a copy of the application and the supporting documentation required by section 3.0, subsections 3.1, 3.1.5, and 3.1.6 with DNREC, the State Fire Marshal, and DPH within three days of filing the same with the Commission. The Staff shall send written requests to DNREC, the State Fire Marshal, and DPH soliciting immediate written comment as to whether they are aware of any matters indicating that the applicant has been unwilling or unable to provide safe, adequate and reliable drinking water service to existing customers. The Staff shall coordinate and cooperate with DNREC, the State Fire Marshal, and DPH during the process of reviewing an application for a CPCN. The Staff shall also coordinate and cooperate with other interested state, local, and federal authorities.

**7.0 Provision of notice to all landowners of the proposed territory.**

- 7.1 Pursuant to the provisions of 26 ~~Del.C.~~ §203C(d)(1) and (e)(1), prior to filing the application with the Commission, the applicant shall provide written notice to all landowners of the proposed territory of the anticipated filing of the application.—



~~7.2 The written notice required by 26 Del.C. §203C(d)(1) and (e)(1) shall be sent to all landowners of the proposed territory not more than sixty days and not less than thirty days prior to the filing of the application.~~

**~~8.0 Landowners who object, opt-out, and/or request a public hearing; time limits; extension of time.~~**

~~8.1 In proceedings involving an application submitted under 26 Del.C. §203C(e), any landowner whose property, or any part thereof, is located within the proposed territory to be served shall be permitted to (i) object to the issuance of the CPCN; (ii) opt-out of inclusion in the territory; and/or (iii) request a public hearing. The applicant shall inform the Commission of the name and address of all landowners who notify the applicant of their objection to the issuance of the CPCN, their intention to opt-out of inclusion in the territory, and/or request a public hearing, and shall file with the Commission any written notices received from such landowners. The Commission shall maintain records identifying all landowners who have provided written notice of their objection to the issuance of the CPCN, their intention to opt-out of inclusion in the territory, and/or request a public hearing, and shall make such records available to the applicant.~~

~~8.2 A landowner shall notify the Commission, in writing, if the landowner-~~

~~8.2.1 objects to the issuance of the CPCN;~~

~~8.2.2 intends to opt-out of inclusion in the territory; and/or~~

~~8.2.3 requests a public hearing.~~

~~8.3 The notice to the Commission from the landowner must be filed with the Commission within-~~

~~8.3.1 sixty days from the date of the landowner's receipt of a written notice from the water utility that complies with applicable statutes and these regulations, of the landowner's inclusion in the service territory; or~~

~~8.3.2 thirty days of the filing of the completed application, whichever period is greater.~~

~~8.4 The Commission may, in the exercise of its discretion, extend the time to object, opt-out, and/or request a public hearing even though the period in which to do so has expired. The Commission shall accept for filing written notices from landowners that were sent to the applicant and transmitted by the applicant to the Commission.~~

**~~9.0 Notification to all landowners of the proposed territory of their rights to object, opt-out, and/or request a public hearing.~~**

~~9.1 Pursuant to 26 Del.C. §203C(e), and for the purposes of notification to all landowners of the proposed territory encompassed by the CPCN, the notice sent to the landowners of the proposed territory must include, at a minimum, the following statement:~~

~~"(1) Pursuant to Title 26, §203C(e) of the Delaware Code, an application for a Certificate of Public Convenience and Necessity (CPCN) will be submitted to the Delaware Public Service Commission on or about {enter date of intended submission}. Your property has been included within an area {enter name of your organization} intends to serve with public water and we are required to inform you of certain information. The area to be served is {provide a short hand description of the service area}. If you agree to the inclusion of your property in the proposed service area, no action on your part is required.~~

~~(2) Pursuant to current law, you may file an objection to receiving water service from {enter name of your organization}. Under Delaware law, the Public Service Commission cannot grant a CPCN to {enter name of your organization} for the proposed service area, including your property, if a majority of the landowners in the proposed service area object to the issuance of the CPCN. If you object to receiving water service from {enter the name of your organization}, you must notify the Commission, in writing, within sixty days of your receipt of this notice or within thirty days of the filing of the completed application for a CPCN, whichever is greater.~~

~~(3) Pursuant to current law, you may also elect to opt-out of inclusion in the proposed service area. The term "opt-out" means that you decide that you do not want to receive water service from {enter name of your organization}, even if a majority of the landowners in the proposed service area do~~

elect to receive water service from {enter name of your organization}. If you decide that you do not want to receive water service from {enter name of your organization} and instead wish to opt out, you must notify the Commission, in writing, within sixty days of your receipt of this notice or within thirty days of the filing of the completed application for a CPCN, whichever is greater.

- (4) You may also request a public hearing on this matter. A request for a public hearing must be made in writing to the Commission within sixty days of your receipt of this notice or within thirty days of the filing of the completed application for a CPCN, whichever is greater.
- (5) The written notice of your decision to object to the issuance of the CPCN, to opt out of receiving water service from {enter name of your organization}, and/or your written request for a public hearing, shall be sent to the Secretary of the Delaware Public Service Commission at the following address:

**Secretary**

**Delaware Public Service Commission**

**{insert the address of the Secretary of the Delaware Public Service Commission}**

- (6) Any written notice you send to the Commission must include the description of the service area referred to in paragraph (1) above and the name of the applicant so the Commission will be able to identify the CPCN application to which your notice is related.
- (7) Questions regarding objections, opt outs, and hearings may be directed to: {enter the name or title, and the address and telephone number of the Commission's contact person(s)}."

9.2 If a landowner sends a written notice directly to the applicant, the applicant shall file the notice with the Commission.

**10.0 Suspension or revocation of CPCN for good cause.**

10.1 Pursuant to the provisions of 26 ~~Del.C.~~ §203C(k) and (l), the Commission may suspend or revoke a CPCN, or a portion thereof, for good cause. Good cause shall consist of:

10.1.1 A finding by the Commission of material non compliance by the holder of a CPCN with any provisions of Titles 7, 16, or 26 of the ~~Delaware Code~~ dealing with obtaining water or providing water and water services to customers, or any order or rule of the Commission relating to the same; and

10.1.2 A finding by the Commission that, to the extent practicable, service to customers will remain uninterrupted under an alternative water utility or a designated third party capable of providing adequate water service, including a trustee or receiver appointed by the Delaware Court of Chancery; and

10.1.3 Either-

10.1.3.1 a finding by the Commission that there are certain methods to mitigate any financial consequences to customers served by the utility subject to suspension or revocation and the adoption of a plan to implement those methods; or

10.1.3.2 a finding by the Commission that there are no practicable methods to mitigate the financial consequences to customers.

10.2 In addition to the factors required by sections 10.1, 10.1.1, 10.1.2 and 10.1.3, the Commission may consider one or more of the following factors in determining whether to suspend or revoke a CPCN:-

10.2.1 Fraud, dishonesty, misrepresentation, self-dealing, managerial dereliction, or gross mismanagement on the part of the water utility; or

10.2.2 Criminal conduct on the part of the water utility; or

10.2.3 Actual, threatened or impending insolvency of the water utility; or

10.2.4 Persistent, serious, substantial violations of statutes or regulations governing the water utility in addition to any finding of non-compliance required by section 10, paragraph 10.1 above; or

10.2.5 Failure or inability on the part of the water utility to comply with an order of any other state or federal regulatory body after the water utility has been notified of its non-compliance and given an opportunity to achieve compliance; or

~~10.2.6 Such other factors as the Commission deems relevant to the determination to suspend or revoke a CPCN.~~

**~~11.0 Proceedings to suspend or revoke a CPCN for good cause.~~**

- ~~11.1 Proceedings before the Commission to suspend or revoke a CPCN for good cause shall be conducted in accordance with the procedures set forth in 29 Del.C. Ch. 101, Subchapter III.~~
- ~~11.2 Unless the Commission finds, pursuant to proceedings conducted in accordance with subsection 11.1 above, that~~
- ~~11.2.1 the conduct of a water utility poses an imminent threat to the health and safety of its customers; or~~
- ~~11.2.2 a water utility is unable to provide safe, adequate, and reliable water service, the Commission will not suspend or revoke a CPCN for good cause without first affording the water utility a reasonable opportunity to correct the conditions that are alleged to constitute the grounds for the suspension or revocation of the CPCN.~~

**~~12.0 Compliance with 29 Del.C. Ch. 101, Subchapter III.~~**

~~Proceedings before the Commission involving Certificates of Public Convenience and Necessity for water utilities shall be conducted in accordance with the procedures set forth in 29 Del.C. Ch. 101, Subchapter III, including any proceedings related to any findings under 26 Del.C. §203C(f) that an applicant is unwilling or unable to provide safe, adequate, and reliable water service to existing customers, or is currently subject to such a Commission finding.~~

**~~13.0 Waiver of requirements of sections 3.0 and 4.0.~~**

~~The Commission may, in the exercise of its discretion, waive any of the requirements of sections 3.0 and 4.0 above.~~

**5-DE Reg. 212 (07/01/04)**

**1.0 Authority and Scope of Regulations**

- 1.1 These regulations shall govern the process: (a) for a person or entity (as described in 26 Del.C. §203C(a)) to obtain a Certificate of Public Convenience and Necessity to begin operation as a water utility; and (b) for a water utility to obtain a Certificate of Public Convenience and Necessity to extend, expand, or enlarge its operations, business, or facilities beyond its then certificated service territory. These regulations also govern, in conjunction with the provisions of 26 Del.C. §203C, how the Commission administers, supervises, and revokes any such Certificate of Public Convenience and Necessity previously granted to a water utility.
- 1.2 These regulations are enacted pursuant to 26 Del.C. §§203C and 209(a).
- 1.3 In granting, denying, or revoking a Certificate of Public Convenience and Necessity under 26 Del.C. §203C and these regulations, the Commission shall act consistently with the procedures required by 29 Del.C. Ch. 101, Subchapters III and IV.
- 1.4 The Commission may modify or extend any of the timing requirements set forth in these regulations so long as such timing requirement is not required by statutory provision.
- 1.5 The Commission may by Order, and for good cause, waive any obligation under these regulations that is not required by statute and may, in an individual application, excuse any failure to comply with these regulations that is not material to the Commission's decision.

**2.0 Definitions**

- 2.1 The following words and terms, when used in these regulations, should have the following meanings, unless the context clearly indicates otherwise:

"Commission" refers to the Public Service Commission.

"CPCN" or "Certificate" means a Certificate of Public Convenience and Necessity required by the provisions of 26 Del.C. §203C.

"DPH" refers to the Division of Public Health of the Department of Health and Social Services.

"DNREC" refers to the Department of Natural Resources and Environmental Control.

"Existing development" or "existing subdivision" means an aggregate of parcels or properties within a particular geographic area:

(a) that constitute a single-named development or subdivision;

(b) that share common deed restrictions or covenants; or

(c) that are governed by a common homeowners' association or similar type of body.

The existence and boundaries of such a development or subdivision may be established by a plat or subdivision map, documents reflecting common deed or conveyance restrictions, homeowner association documents, or other means.

"Existing unincorporated community" means an aggregate of parcels or properties lying within a particular compact unincorporated geographic area that share common community interests; and

(a) that are generally recognized as an unincorporated community;

(b) that are commonly described as comprising a named community; or

(c) that are identified on maps as a particular named community.

The existence and boundaries of such an unincorporated community may be established by a plat, map, census data, post office designation, testimony of the residents, or other means.

"Landowner notification" means the process for delivering to each landowner of record the relevant form of notice prescribed by either these regulations or further Commission directive.

"Landowner of record" shall mean each person or entity as defined and described in 26 Del.C. §203C(j). A landowner of record may be identified by reference to public tax or public land records or by relevant land conveyance documents.

"New water utility" means, for the purposes of 26 Del.C. §203C(e)(2), an entity that has not previously provided water utility services to the public within this State.

"Postal Service" refers to the United States Postal Service.

"Proposed Service Area" is equivalent to "the proposed territory to be served" and means the area in which the applicant proposes to offer and provide its water utility services. The proposed service area shall be described by reference to one or more parcels or properties, identified by the relevant county tax map identification designations. If the proposed service area cannot be described by reference to parcels or properties, it may be described by a metes and bounds description, or any other equivalent description capable of being mapped.

"Record date" means the date for determining the persons and entities who are landowners of record in the Proposed Service Area. The record date shall be a date chosen by the applicant that is no more than sixty days prior to the date of filing of the application for a CPCN.

"SFM" refers to the Office of the State Fire Marshal. "Staff" refers to the Staff of the Commission.

"Secretary" refers to the Secretary of the Commission.

"Water utility" means a person or entity as defined by 26 Del.C. §102(8) that is obligated to obtain a CPCN under 26 Del.C. §203C(a).

### **3.0 Application for Certificate of Public Convenience and Necessity**

#### In General

3.1 An application for a Certificate to begin the business of a water utility, or to extend or expand the business, operations, or facilities of any existing water utility, shall be made in writing and shall be filed with the Commission.

3.2 An applicant may request, by a single application, Certificates for one to five Proposed Service Areas. In the case of an application joining multiple Proposed Service Areas, the application shall contain sufficient information and documentation to establish the applicant's entitlement to a Certificate for

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## PROPOSED REGULATIONS

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each separate Proposed Service Area. The Commission shall separately determine for each Proposed Service Area whether to grant a Certificate for that area. However, the Commission, by a single Order, may grant a CPCN for one or more of the Proposed Service Areas that have been joined in a single application.

- 3.3 The CPCN application shall include all information and supporting documentation required by 26 Del.C. §203C, the Commission's Rules of Practice and Procedure, and these regulations. An application shall not be considered to be complete and filed until all such information and supporting documentation has been submitted to the Commission. An application shall:
- 3.3.1 summarize the reason(s) why the Commission should grant the CPCN for each requested Proposed Service Area;
  - 3.3.2 provide specific citations to the statutory and regulatory provisions relied upon for a CPCN for each Proposed Service Area;
  - 3.3.3 identify any significant element of the application that, to the applicant's knowledge, poses a unique statutory or factual question or represents a departure from prior decisions of the Commission; and
  - 3.3.4 prominently state the name, address, telephone number, and e-mail address of the individual to be notified concerning the contents of the application.

### Information about each Proposed Service Area

- 3.4 The application shall include, for each Proposed Service Area requested:
- 3.4.1 a written description of the general geographic location of the area which also describes the type of area (such as a proposed development, an existing development or existing subdivision, an existing unincorporated community, or an aggregation of a number of parcels);
  - 3.4.2 a general map (reflecting towns or cities, and major transportation routes) appropriately marked to show the location of each Proposed Service Area;
  - 3.4.3 for applications premised on 26 Del.C. §203C(e)(1)b.3. a map, plat, or precise description of the boundaries of the existing development, existing subdivision, or existing unincorporated community accompanied by references to the documents or filings used to define and describe the existing development, existing subdivision, or unincorporated community;
    - 3.4.3.1 Upon request, the applicant shall provide the underlying documents or filings utilized to define and describe the existing development, existing subdivision, or existing unincorporated community; and
  - 3.4.4 a listing (using county, tax map parcel numbers or designations) of each parcel encompassed within the Proposed Service Area, accompanied by the name and mailing addresses of the landowner(s) of record for each such parcel as of the record date;
    - 3.4.4.1 The listing shall conspicuously identify the tax records or land record documents utilized by the applicant to determine the name and address of each landowner of record;
    - 3.4.4.2 The listing shall conspicuously identify the record date used for determining the landowners of record of the encompassed parcel or parcels;
    - 3.4.4.3 For a request premised on 26 Del.C. §203C(e)(1)b.3., the listing shall denote each parcel where all of the landowners of record have executed a petition requesting water utility services from the applicant; and
    - 3.4.4.4 For a request premised on 26 Del.C. §203C(e)(1)b.3., the listing shall also indicate the applicant's calculation of the total number of parcels in the Proposed Service Area and the total number of parcels where the landowners of record have executed a petition requesting water utility services from the applicant.

### Evidence of Landowner Notification

- 3.5 The application shall contain for each Proposed Service Area the documentation reflecting landowner notification as required by 26 Del.C. §203C(d)(1) or (e)(1), including:
- 3.5.1 copies of relevant Postal Service forms demonstrating that the applicant sent by certified mail the appropriate form of notice as required by these regulations to each landowner of record of each parcel encompassed within the Proposed Service Area;

- 3.5.2 copies of all materials or messages provided to the applicant by the Postal Service reflecting either delivery of the certified mail or failure of certified mail delivery because the delivery was "refused," "unclaimed," "undeliverable," "unknown," or otherwise not completed; and
- 3.5.3 a certification (or other evidence) that, for each earlier notice that was returned by the Postal Service due to a failure of certified mail delivery, the applicant then sent another copy of the required notice by first class United States mail to the best available address of the applicable landowner of record.

Criteria for a CPCN Request

- 3.6 For a request for a Proposed Service Area premised on 26 Del.C. §203C(d)(2)a., the application shall include all evidence (including reports or studies) that establish that the water sources and supplies then available in the Proposed Service Area do not meet the relevant standards governing drinking water for human consumption promulgated and enforced by the Department of Health and Social Services.
- 3.7 For a request for a Proposed Service Area premised on 26 Del.C. §203C(d)(2)b., the application shall include all evidence (including reports or studies) demonstrating that the supply of water available to the Proposed Service Area is insufficient to meet the projected demand.
- 3.8 For a request for a Proposed Service Area premised on 26 Del.C. §203C(e)(l)b.l., the application shall include a copy of a signed service agreement between the applicant and the developer of the proposed development or subdivision, and appropriate documentation reflecting that the development or subdivision has finally been approved by the relevant county or municipal government.
- 3.9 For a request for a Proposed Service Area premised on 26 Del.C. §203C(e)(1)b.2., the application shall include copies of each petition requesting that the applicant provide water services which has been signed by all of the landowners of record of each parcel in the Proposed Service Area. Each such petition must meet the criteria set forth in Section 8.0.
- 3.10 For a request for a Proposed Service Area premised on 26 Del.C. §203C(e)(1)b.3., the application shall include copies of each petition requesting that the applicant provide water services which has been signed by all of the landowners of record of a parcel to be encompassed by the Proposed Service Area. Each such petition must meet the criteria set forth in Section 8.0. The application shall include such petitions for a majority of the parcels within the existing development, existing subdivision, or existing unincorporated community that constitutes the Proposed Service Area.
- 3.11 For a request for a Proposed Service Area premised on 26 Del.C. §203C(e)(1)b.4., the application shall include a certified copy of the resolution or ordinance from the governing body of the relevant county or municipality that requests, directs, or authorizes the applicant to provide water utility services to the Proposed Service Area. If requested, the applicant must also provide additional references to demonstrate that the county or municipality enacting the ordinance or resolution has the appropriate legal authority to authorize the provision of water utility services to the Proposed Service Area.<sup>1</sup>

Additional Criteria for a CPCN Request by a Municipal Water Authority

- 3.12 If the applicant is a municipal water authority created under the provisions of Chapter 14 of title 16 of the Delaware Code, and it seeks a Proposed Service Area that lies, wholly or in part, outside of the political boundaries of the municipality or municipalities that originally created such municipal authority, the application shall also include, as required by 26 Del.C. §203C(n), a certified copy of a

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1. Pursuant to the provisions of 26 Del.C. §203C(e)(1)b.4., the resolution or ordinance shall only entitle the applicant to a Proposed Service Area that lies within the political boundaries of the county or municipality that entered the resolution or ordinance. If the applicant is a municipality or municipal utility, and it seeks a Proposed Service Area that lies, wholly or in part, outside of the municipality's political boundaries, the applicant must, in the case of those parcels that are outside of the political boundaries, either (1) provide documentation to support a Certificate under some other provision of 26 Del.C. §203C(d) or (e), or (2) cite another statutory provision that entitles the applicant to serve such parcels and which preempts the limitation expressed in 26 Del.C. §203C(e)(1)b.4.

resolution of the governing body of each such municipality requesting that the Certificate for the extra-territorial portion of the Proposed Service Area be granted.<sup>2</sup>

#### Plan of Service

3.13 An application shall include, for each Proposed Service Area, a description of how and when the applicant plans to provide water utility services to the Area, including an estimated timetable for providing service or an explanation as to why such an estimated timetable cannot be provided. If the Proposed Service Area is intended to be part of a regional water system, the applicant shall identify the region that includes the Proposed Service Area, and provide information setting forth the applicant's plans for the regional water system.<sup>3</sup>

#### Quality of Service Certifications and Information

3.14 In the case of a request by a water utility to expand or extend its operations and business, the application shall contain a certification that the proposed extension and expansion will satisfy the provisions of 26 Del.C. §403(c). The applicant shall certify that:

3.14.1 the applicant is then furnishing water to its present customers in such manner that water pressure at every connection is at least 25 pounds at all times;

3.14.2 the applicant will furnish water to each new customer in each Proposed Service Area at the pressure of at least 25 pounds at the service connection while continuing also to supply each existing customer at a pressure of at least 25 pounds at each service connection;

3.14.3 the applicant is not then subject to a ruling, decision, or finding by any Federal or State regulatory authority that found, concluded, or determined that the applicant materially failed to comply with applicable safe drinking water or water quality standards; and

3.14.4 the applicant is not subject to any finding or Order of the Commission that determined that the applicant materially failed to provide adequate or proper safe water services to existing customers.

3.15 If an applicant cannot supply each of the above certifications, the application shall include a statement why the provisions of 26 Del.C. §403(c) do not apply to the applicant or the particular application.

3.16 If an application will involve a water utility project or water utility services that require the review, approval, or authorization of any other State or Federal regulatory body (including DNREC, the SFM, or the DPH) the application shall also include:

3.16.1 a description of the nature of the review by the other regulatory body and current status of such review; and

3.16.2 a copy of any permit, order, certificate, approval, or other documents already issued by any other regulatory body, relating to the water project or services.

3.17 If, after the filing of the application, any other State or Federal regulatory body issues any permit, order, certificate, approval, or other documents related to the water project or services relevant to the application, the applicant shall promptly file such document with the Commission.

#### Additional Materials to be Supplied with the Application

3.18 Unless the following materials are already on file with, or available to, the Commission, an applicant - other than a municipal or other governmental water utility - shall provide with the application the following information:

3.18.1 a corporate or business history including dates of incorporation and subsequent acquisitions and/or mergers;

3.18.2 a complete description of all relationships between the applicant and its parent, subsidiaries, and affiliates, including a chart of such intra- and inter-company relationships;

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2. This requirement shall not apply in the case of a Proposed Service Area for a municipal water utility or a governmental water utility that lies within the political boundaries of the municipality or government.

3. This requirement shall not apply in the case of a Proposed Service Area for a municipal water utility or a governmental water utility that lies within the political boundaries of the municipality or government.

- 3.18.3 a map identifying all areas where the applicant then provides water utility services;
  - 3.18.4 the Annual Reports provided to owners of the applicant, or to the owners of its parent or subsidiaries, over the two-year period prior to the filing of the application;
  - 3.18.5 the audited financial statements, SEC 10K filings, and all proxy material related to the applicant for the two years prior to the filing of the application; and
  - 3.18.6 copies of all reports submitted by the applicant within the preceding twelve months to any State or Federal authority related to whether the applicant has complied with any statute, regulation, rule, or order concerning the provision of safe, adequate, and reliable water services (including the quality of water provided to existing customers).
- 3.19 Unless the materials are already on file with the Commission or available to the Commission, a municipal or other governmental water utility shall provide with the application the statement and documents identified in Sections 3.18.3 and 3.18.6.

#### **4.0 Additional Requirements for an Application Filed by a New Water Utility**

- 4.1 If the applicant is a new water utility, the application, in addition to fulfilling the requirements of Sections 3.0 through 3.19, shall also include the following:
  - 4.1.1 a copy of the applicant's certificate of incorporation, partnership agreement, or other enabling document;<sup>4</sup>
  - 4.1.2 materials that demonstrate that the applicant possesses the financial, operational, and managerial capacity to comply with all State and Federal safe drinking requirements and that the applicant has available, or will be able to procure, an adequate supply of water (even during drought conditions) to meet reasonably anticipated peak daily and monthly demands for its water utility services;
  - 4.1.3 a description of the plant to be utilized to provide its water utility services (including details as to the type and capacity of treatment facilities, cost of facilities, and the projected construction schedule);
  - 4.1.4 a map detailing the composition, diameter, length, and location of mains and pipes to be initially installed; and
  - 4.1.5 a projection of the number of customers to be served in the five-year period following the grant of the requested CPCN.

#### **5.0 Review of the Application and Deficiencies in the Application**

- 5.1 An applicant may ask the Staff to informally review a draft of an application prior to its formal filing. Such informal review shall not affect or delay the filing of an application that complies with applicable statutes and these regulations.
- 5.2 Upon filing, the Staff shall review an application for compliance with the applicable statutory provisions and these regulations. Within thirty days after the date of filing, Staff may notify the applicant of specific deficiencies in the application. The applicant shall have thirty days from the date of the receipt of such notice to file an amended or supplemental application. The Commission may, in its discretion, extend the period for curing deficiencies in the application for an additional period of time.
- 5.3 If the applicant submits an amended or supplemental application, the application shall then be deemed filed on the date of such submission for the purposes of the time limits set forth in 26 Del.C. §203C(h). In the event the deficiencies identified by Staff are not cured within the time period provided, Staff may request that the Commission reject the application.

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4. If the business structure of the applicant is a sole proprietorship, the Commission will presume, subject to rebuttal, that the applicant lacks the financial, operational, and managerial capabilities to provide adequate water utility services. An applicant that is a sole proprietorship may provide with its application evidence to rebut this presumption and demonstrate that it will have the capabilities to provide adequate and reliable services.



5.4 During the period the application is pending before the Commission, the Staff may request that the applicant provide additional relevant information or documents.

**6.0 Coordination with Other State Agencies, Counties, and Municipalities**

6.1 At the time of the filing of an application, or within three days thereafter, the applicant shall serve copies of its application on DNREC, the SFM, and the DPH.

6.2 At the time of the filing of an application, or within three days thereafter, the applicant shall also send a notice of its application, with a description of the Proposed Service Area, to the county in which the Area lies (in whole or in part).

6.3 In addition, if any parcel of land in a Proposed Service Area is located within a "future annexation area" or "future growth area" under a comprehensive plan (22 Del.C. §§101 and 702) adopted by a municipality that provides water utility services, then the applicant shall also serve a copy of the application on the municipality (or its municipal utility). The applicant shall serve such copy on the municipality (or its utility) at least thirty days prior to filing the application with the Commission. The application filed with the Commission shall include a certification of such service on the identified municipality.

6.4 During the process of reviewing an application, the Staff shall coordinate and cooperate with DNREC, the SFM, and the DPH. Staff may also coordinate and cooperate with other interested State, local, and Federal authorities in reviewing the request for a CPCN.

**7.0 Proposed Service Area**

7.1 For a request premised on 26 Del.C. §203C(d)(2)a, the Proposed Service Area shall encompass only such parcels of land that lack available water sources or supplies that meet the standards governing drinking water for human consumption promulgated and enforced by the Department of Health and Social Services.

7.2 For a request premised on 26 Del.C. §203C(d)(2)b, the Proposed Service Area shall encompass only such parcels of land that lack available water sources or supplies sufficient to meet the projected demand for water in such parcels.

7.3 For a request premised on 26 Del.C. §203C(e)(1)b.1., the Proposed Service Area shall encompass only such parcels that are within the subdivision or development plat or plan that has been finally approved by the relevant county or municipal government.

7.4 For a request premised on 26 Del.C. §203C(e)(1)b.2., the Proposed Service Area shall encompass either:

7.4.1 a single parcel; or

7.4.2 two or more contiguous parcels that will be provided water utility services by the same stand-alone system or by the same main extension.<sup>5</sup>

7.5 For a request premised on 26 Del.C. §203C(e)(1)b.4., the Proposed Service Area shall encompass only such parcels of land that the governing body of the county or municipality has directed, requested, or authorized the applicant to serve:

7.5.1 For a request premised on 26 Del.C. §203C(e)(1)b.3., the Proposed Service Area shall encompass only such parcels of land that lie within the existing development, existing subdivision, or the existing unincorporated community as described and defined under Section 2.1.

**8.0 Requirements Related to 26 Del.C. §203C(e)(1)(2) and (3)**

8.1 If a water utility solicits a landowner of record of a property to sign a petition to request water service, the utility must provide the landowner with the following notice:

5. If a landowner of record removes a contiguous property from the Proposed Service Area by the exercise of the "opt-out" option available under 26 Del.C. §203C(i), the exclusion of the parcel shall not render the remaining parcels non-contiguous.

**YOU SHOULD READ THIS NOTICE CAREFULLY. Public records list you as a landowner of the property with the following tax map parcel identification number(s): [insert tax map parcel identification number(s)] . [insert water utility's name] plans to file an application with the Delaware Public Service Commission requesting a Certificate of Public Convenience and Necessity (Certificate) to provide water service to a new territory described as [insert name and description of existing development, existing subdivision, or existing unincorporated community].**

**[INSERT WATER UTILITY'S NAME] WANTS YOU TO SIGN A PETITION BY WHICH YOU AGREE TO INCLUDE YOUR PROPERTY IN THE TERRITORY IT INTENDS TO SERVE. [INSERT WATER UTILITY'S NAME] ESTIMATES THAT IT WILL PROVIDE WATER SERVICE TO [insert description of proposed service territory and estimated timetable for providing service. If the utility cannot provide an estimated timetable for providing service, the notice must make the following disclosure in conspicuous language: [INSERT UTILITY'S NAME] IS UNABLE TO ESTIMATE WHEN IT WILL PROVIDE WATER SERVICE TO YOUR PROPERTY [AND] [insert description of proposed service territory].**

**IF YOU SIGN THE PETITION PROPOSED BY [INSERT WATER UTILITY'S NAME] YOUR DECISION TO INCLUDE YOUR PROPERTY IN [INSERT WATER UTILITY'S NAME] SERVICE TERRITORY MAY BE PERMANENT. IT MAY ALSO AFFECT YOUR ABILITY TO OBTAIN A PERMIT FOR A NEW WELL.**

**IF YOU DO NOT WISH TO BE INCLUDED IN [INSERT WATER UTILITY'S NAME] SERVICE TERRITORY, DO NOT SIGN THE PETITION.**

**IF YOU DO NOT SIGN THE PETITION, [INSERT WATER UTILITY'S NAME] MAY NEVERTHELESS SEND YOU A LETTER ASKING YOU TO INCLUDE YOUR PROPERTY IN ITS SERVICE TERRITORY. IF YOU RECEIVE SUCH A LETTER, YOU MAY HAVE TO TAKE ADDITIONAL ACTION.**

**IF YOU HAVE ANY QUESTIONS, COMMENTS, OR CONCERNS, PLEASE CONTACT THE PUBLIC SERVICE COMMISSION AT (302) 736-7500 (in Delaware, call 800-282-8574).**

- 8.2 For a request premised on either 26 Del.C. §203C(e)(1)b.2. or 26 Del.C. §203C(e)(1)b.3., each petition requesting water utility services from the applicant must:**
- 8.2.1 bear the signature of each landowner of record (or a duly authorized agent) that is requesting water utility services from the applicant;**
  - 8.2.2 reflect the date for each signature by each landowner of record, which date shall not be any earlier than one year prior to the date of the filing of the application;**
  - 8.2.3 bear a printed recitation of the name of each landowner of record executing the petition;**
  - 8.2.4 describe the nature and office of the executing individual if the request is by an artificial entity;**
  - 8.2.5 identify the tax map parcel number associated with each landowner of record requesting water service;**
  - 8.2.6 list the present mailing address and telephone number of each landowner of record that executes the request for water utility services; and**
  - 8.2.7 contain the following statement in conspicuous language:**

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I UNDERSTAND THAT BY SIGNING THIS PETITION MY PROPERTY MAY HAVE TO REMAIN IN [INSERT WATER UTILITY'S NAME] SERVICE TERRITORY PERMANENTLY. I ALSO UNDERSTAND THAT IT MAY AFFECT MY ABILITY TO OBTAIN A PERMIT FOR A NEW WELL.

IF YOU HAVE ANY QUESTIONS, COMMENTS, OR CONCERNS, PLEASE CONTACT THE PUBLIC SERVICE COMMISSION AT (302) 7367500 (in Delaware, call 800-282-8574).

- 8.3 If a petition under 26 Del.C. §203C(e)(1)b.2. or 26 Del.C. §203C(e)(1)b.3. involves a petition for water utility services on behalf of condominium units as defined by 26 Del.C. §203C(j), the applicant shall provide with such petition the materials required by 26 Del.C. §203C(g)(1).
- 8.4 If a petition for water utility services is executed by an agent of the landowner of record, the applicant shall provide with the petition evidence to demonstrate the agent's authority to act for the landowner of record.
- 8.5 Each water utility shall file with the Commission any written materials the utility proposes to use to solicit landowners of record to sign a petition requesting water utility service from the utility.

## **9.0 Notice to Landowners in the Proposed Service Area**

- 9.1 Pursuant to the provisions of 26 Del.C. §203C(d)(1) and (e)(1), prior to filing the application, the applicant shall send the form of notice prescribed by these regulations to each landowner of record in the Proposed Service Area. The landowners of record shall be determined as of the record date.
- 9.2 The form of notice required by these regulations shall be sent to each landowner of record not more than thirty-five days and not less than thirty days prior to the filing of the application.
- 9.3 For requests premised on 26 Del.C. §203C(d)(2)a. or b., the notices shall be sent by United States Postal Service certified mail, return receipt requested, with delivery restricted to the addressee.
- 9.4 For requests premised on 26 Del.C. §203C(e)(1)b.l. or 4., the notices shall be sent by United States Postal Service certified mail, return receipt requested, with delivery restricted to the addressee.
- 9.5 For requests premised on 26 Del.C. §203C(e)(1)b.2. or 3., the notices shall be sent to those landowners of record who did not execute a petition for water services by United States Postal Service certified mail, return receipt requested, and with delivery restricted to the addressee. In the case of landowners of record who did execute petitions for water service, the notices shall be sent by United States Postal Service certified mail, return receipt requested.
- 9.6 If the Postal Service returns to the applicant any materials reflecting that, in the case of a particular landowner of record, the certified mail delivery required under Sections 9.3 through 9.5 failed because the delivery was "refused," "unclaimed," "undeliverable," "unknown," or otherwise not completed, then the applicant shall promptly re-send the form of the required notice by first class United States mail to the best available address of that landowner of record.
- 9.7 The Commission, by Order, may authorize a method of providing notice to landowners of record that is equivalent to the methods set forth in Sections 9.3 through 9.6.

## **10.0 Form of Notice to Landowners of Record**

- 10.1 The notice to be sent to landowners of record in a request premised on either 26 Del.C. §203C(d)(2), 26 Del.C. §203C(e)(1)b.1., or 26 Del.C. §203C(e)(1)b.4. shall be in a form approved by the Commission.
- 10.2 If the request is premised on 26 Del.C. §203C(e)(1)b.2., the form of notice sent to landowners of record must include the following statements:

YOU SHOULD READ THIS NOTICE CAREFULLY.

Public records list you as a landowner of the property with the following tax map parcel identification number(s): *[insert tax map parcel identification number(s)]*. Within thirty-five (35) days, *[insert water utility's name]* plans to file an application with the Delaware Public Service Commission requesting a Certificate of Public Convenience and Necessity (Certificate) to provide water service to a new territory described as *[insert description of the proposed service territory]*.

**[INSERT WATER UTILITY'S NAME] HAS INCLUDED YOUR PROPERTY IN THE TERRITORY IT INTENDS TO SERVE. [INSERT WATER UTILITY'S NAME] ESTIMATES THAT IT WILL PROVIDE WATER SERVICE TO *[insert description of proposed service territory and estimated timetable for providing service. If the utility cannot provide an estimated timetable for providing service, the notice must make the following disclosure in conspicuous language: [INSERT UTILITY'S NAME] IS UNABLE TO ESTIMATE WHEN IT WILL PROVIDE WATER SERVICE TO YOUR PROPERTY OR [insert description of proposed service territory]*.**

**IF YOU DO NOT TAKE ANY ACTION NOW, YOU MAY LOSE YOUR CHOICE OF WHO CAN PROVIDE WATER SERVICE TO YOUR PROPERTY AND WHETHER YOU CAN OBTAIN A WELL PERMIT.**

- 1) You may choose to be included in the utility's proposed service territory. If you signed a petition for water service asking to be included in the utility's proposed service territory, you do not have to take any action.
- 2) You have the right to "opt-out" of the utility's proposed service territory. If you "opt-out", your property will not be included in the utility's service territory. You can do this even though others in *the proposed service territory* might desire water service from the utility. You should understand that being included in a utility's service territory does not mean that public water service will be immediately available to your property or that, when available, you will be required to hook-up to the public water system. However, if your property is included in the utility's water service territory, and later the water from the well providing your drinking water cannot be used, the Department of Natural Resources and Environmental Control might deny you a permit for a new well if public water is available to your property. On the other hand, if you elect to "opt-out" of the utility's service territory, but later change your mind and decide to connect to the utility's public water system, you could be charged additional fees.
- 3) You may object to the Public Service Commission granting a Certificate for *the proposed service territory*. For example, you may object that the water utility does not have the legal right to serve the territory. You should review the law about what a utility must provide in order to obtain a Certificate (contact the Public Service Commission to obtain a copy of the law). If you file such an objection, you will need to tell the Public Service Commission why the utility should not receive the Certificate. Please note that an objection will not remove your property from a proposed service territory. To remove your property from the service territory, you must request to "opt-out."

Attached to this letter is a form which allows you (and other owners of the property) to exercise your options. You have seventy-five (75) days from your receipt of this notice to file your objection with the Commission. Although you may exercise your right to "opt-out" of the utility's service territory at any time before the Certificate is granted, if you choose to

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# PROPOSED REGULATIONS

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opt-out, it is requested that you complete the form and return it to the Public Service Commission at the address listed below within seventy-five (75) days from the date you receive this notice:

Delaware Public Service Commission  
861 Silver Lake Boulevard  
Cannon Building, Suite 100  
Dover, Delaware 19904

If you want to "opt-out" or object, you must send the completed form to the Public Service Commission, even if you already informed the utility of your intent to "opt-out" or object.

If you have any questions, comments or concerns, please contact the Public Service Commission at (302) 736-7500 (in Delaware, call 800-282-8574).

10.3 If the request is premised on 26 Del.C. §203C(e)(1)b.3., the form of notice sent to landowners of record must include the following statements:

YOU SHOULD READ THIS NOTICE CAREFULLY.

Public records list you as a landowner of the property with the following tax map parcel identification number(s): [insert tax map parcel identification number(s)]. Within thirty-five (35) days, [insert water utility's name] plans to file an application with the Delaware Public Service Commission requesting a Certificate of Public Convenience and Necessity (Certificate) to provide water service to a new territory described as [insert name and description of existing development, existing subdivision, or existing unincorporated community].

[INSERT WATER UTILITY'S NAME] HAS INCLUDED YOUR PROPERTY IN THE TERRITORY IT INTENDS TO SERVE. [INSERT WATER UTILITY'S NAME] ESTIMATES THAT IT WILL PROVIDE WATER SERVICE TO [insert description of proposed service territory and estimated timetable for providing service. If the utility cannot provide an estimated timetable for providing service, the notice must make the following disclosure in conspicuous language: [INSERT UTILITY'S NAME] IS UNABLE TO ESTIMATE WHEN IT WILL PROVIDE WATER SERVICE TO YOUR PROPERTY OR [insert name and description of existing development, existing subdivision, or existing unincorporated community].

IF YOU DO NOT TAKE ANY ACTION NOW, YOU MAY LOSE YOUR CHOICE OF WHO CAN PROVIDE WATER SERVICE TO YOUR PROPERTY AND WHETHER YOU CAN OBTAIN A WELL PERMIT.

- 1) You may choose to be included in the utility's proposed service territory. If you signed a petition for water service asking to be included in the utility's proposed service territory, or, if you did not sign a petition for water service but want to be included, you do not have to take any action.
- 2) You have the right to "opt-out" of the utility's proposed service territory. If you "opt-out", your property will not be included in the utility's service territory. You can do this even though others in [insert development or community name] might desire water service from the utility. You should understand that being included in a utility's service territory does not mean that public water service will be immediately available to your property or that, when available, you will be required to hook-up to the public water system. However, if your property is included in the utility's water service territory, and later the water from the well

providing your drinking water cannot be used, the Department of Natural Resources and Environmental Control might deny you a permit for a new well if public water is available to your property. On the other hand, if you elect to "opt-out" of the utility's service territory, but later change your mind and decide to connect to the utility's public water system, you could be charged additional fees.

- 3) You may object to the Public Service Commission granting a Certificate for [insert development or community name] . For example, you may object that the water utility does not have the legal right to serve the territory. You should review the law about what a utility must provide in order to obtain a Certificate (contact the Public Service Commission to obtain a copy of the law). If you file such an objection, you will need to tell the Public Service Commission why the utility should not receive the Certificate. Please note that an objection will not remove your property from a proposed service territory. To remove your property from the service territory, you must request to "opt-out."

Attached to this letter is a form which allows you (and other owners of the property) to exercise your options. You have seventy-five (75) days from your receipt of this notice to file your objection with the Commission. Although you may exercise your right to "opt-out" of the utility's service territory at any time before the Certificate is granted, if you choose to opt-out, it is requested that you complete the form and return it to the Public Service Commission at the address listed below within seventy-five (75) days from the date you receive this notice:

Delaware Public Service Commission 861 Silver Lake Boulevard  
Cannon Building, Suite 100  
Dover, Delaware 19904

If you want to "opt-out" or object, you must send the completed form to the Public Service Commission, even if you already informed the utility of your intent to "opt-out" or object.

If you have any questions, comments or concerns, please contact the Public Service Commission at (302) 736-7500 (in Delaware, call 800-282-8574).

- 10.4 In a request under 26 Del.C. §203C(e), the notice sent to each landowner shall also include a form of response (in a form approved by the Commission) that allows the landowner to easily and plainly exercise the options available under the form of notice.
- 10.5 Except as the Commission might specifically approve, the applicant shall not include any other correspondence with the landowner notice required by these regulations. The exterior of the envelope for any notice shall carry language (approved by the Commission) to alert the landowner of the importance of the notice.
- 10.6 The applicant is not required to send the Section 10.0 opt-out notice with a solicitation notice sent pursuant to Section 8.0 of these regulations.
- 10.7 Within ten days of the filing of the application, the applicant shall also publish in two newspapers of general circulation a form of public notice of its application. The Commission shall approve a form of such public notice. The applicant shall promptly file proof of such publication with the Commission. In the published notice of each CPCN application, the utilities shall provide a description of the properties involved, including (a) the nearest intersecting roads (i.e at the intersection of Canterbury Road and Delaware Avenue or approximately one-half mile from intersection of Canterbury Road and Delaware Avenue); (b) directional information about the parcels (i.e on the north side of Delaware Avenue, etc.); (c) a listing of Property Tax ID numbers if available (metes and bounds descriptions if Tax ID numbers are unavailable or if neither of those are available, some description capable of being mapped); and (d) the street address(es) shall also be provided if available.

**11.0 Landowner's Options to Object or "Opt-Out," and Objections from Other Interested Persons or Entities**

- 11.1 A landowner or record of a parcel that is, in whole or in part, within a Proposed Service Area may object to a CPCN being granted by filing with the Commission a signed written document reflecting such objection. The objection shall set forth the reasons why the applicant is not entitled to a Certificate. Except for good cause, the written objection shall be filed with the Commission no later than seventy- five (75) days after the landowner receives the notice required under Sections 9.1 and 10.1.
- 11.2 The Commission may allow persons or entities that are not landowners of record to file an objection to an application for a CPCN. The objection shall set forth the person's or entity's interest in the matter and the reasons why the applicant is not entitled to a Certificate. Except for good cause, the objection by a non-landowner shall be filed with the Commission no later than forty days after publication of the notices required under Section 10.7.
- 11.3 In an application premised on 26 Del.C. §203C(e)(1)b.2. or 3., a landowner of record of a parcel that is, in whole or in part, within a Proposed Service Area may: (a) object to the issuance of the CPCN, or (b) "opt-out" and have the landowner's parcel excluded from the Proposed Service Area pursuant to 26 Del.C. §203C(i). A landowner of record may exercise one or more of the above options:
- 11.3.1 The applicant shall immediately inform the Commission of the name and address of each landowner of record that notifies the applicant, either verbally or in writing, that the landowner wishes to exercise any of the options under Section 11.3. The applicant shall immediately file with the Commission any written documents from a landowner that exercises any of the options in Section 11.3.
- 11.4 At any time prior to the issuance of the CPCN premised on 26 Del.C. §203C(e)(1)b.2.or 3., a landowner of record of a parcel that is, in whole or in part, within a Proposed Service Area, may file with the Commission a signed written document requesting that the landowner's parcel be excluded from the Proposed Service Area pursuant to 26 Del.C. §203C(i). A parcel will be excluded from the Proposed Service Area if any landowner of record of such parcel submits a signed "opt-out" request for exclusion of the parcel. The Commission may deny an "opt-out" request submitted by a landowner of record if the landowners of record holding, or vested with, a controlling interest in the parcel rescind, or countermand, the request to "opt-out." The other owners shall demonstrate to the Commission that they hold the authority to bind the parcel.
- 11.5 The Commission shall maintain a record of all written documents received from landowners of record that exercise the options available under Sections 11.1 through 11.4.
- 11.6 An applicant shall retain all records related to an application for a Certificate for a period of seven years after the date of the filing of the application. The applicant shall make such records available to the Commission upon request.

**12.0 Suspension or Revocation of CPCN for Good Cause**

- 12.1 Pursuant to the provisions of 26 Del.C. §203 (k) and (1), the Commission may suspend or revoke a CPCN, or a portion thereof, for good cause. Good cause shall consist of:
- 12.1.1 a finding by the Commission that the holder of a CPCN has not materially complied with: (a) any provisions of Titles 7, 16, or 26 of the Delaware Code dealing with obtaining water or providing water and water services to customers; or (b) any order or rule of the Commission relating to the same;
- 12.1.2 a finding by the Commission that, to the extent practicable, service to customers will remain uninterrupted under an alternative water utility or a designated third party capable of providing adequate water service, including a trustee or receiver appointed by the Delaware Court of Chancery; and
- 12.1.3 either (a) a finding by the Commission that there are certain methods to mitigate any financial consequences to customers served by the utility subject to suspension or revocation and the adoption of a plan to implement those methods; or (b) a finding by the Commission that there are no practicable methods to mitigate the financial consequences to customers.

- 12.2 In addition to the factors required by Sections 12.1.1, 12.1.2, and 12.1.3, the Commission may also consider one or more of the following factors in determining whether to suspend or revoke a CPCN:
- 12.2.1 fraud, dishonesty, misrepresentation, self-dealing, managerial dereliction, or gross mismanagement on the part of the water utility; or
  - 12.2.2 criminal conduct on the part of the water utility; or
  - 12.2.3 actual, threatened or impending insolvency of the water utility; or
  - 12.2.4 persistent, serious, substantial violations of statutes or regulations governing the water utility in addition to any finding of non-compliance required by Section 12.1.1 above; or
  - 12.2.5 failure or inability on the part of the water utility to comply with an Order of any other State or Federal regulatory body after the water utility has been notified of its non-compliance and given an opportunity to achieve compliance; or
  - 12.2.6 such other factors as the Commission deems relevant to the determination to suspend or revoke a CPCN.

## **13.0 Proceedings to Suspend or Revoke a CPCN for Good Cause**

- 13.1 Proceedings before the Commission to suspend or revoke a CPCN for good cause shall be conducted in accordance with the procedures set forth in 29 Del.C. Ch. 101, Subchapters III and IV.
- 13.2 Unless the Commission finds, pursuant to proceedings conducted in accordance with Section 13.1 above, that (a) the conduct of the water utility poses an imminent threat to the health and safety of its customers; or (b) the water utility is incapable of providing safe, adequate, and reliable water service, the Commission will not suspend or revoke a CPCN for good cause without initially affording the water utility a reasonable opportunity to correct the conditions that are alleged to constitute the grounds for the suspension or revocation of the CPCN.



**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 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.

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**DEPARTMENT OF AGRICULTURE  
THOROUGHBRED RACING COMMISSION**

Statutory Authority: 3 Delaware Code, Section 4815(b)(3)(c)(3) (3 **Del.C.** §4815(b)(3)(c)(3))  
3 **DE Admin. Code** 1002

**1002 Delaware Jockeys' Health and Welfare Benefit Board Regulations****ORDER**

Pursuant to 29 Del.C §10108(c) and 3 Del.C §10103, the Delaware Jockey's Health & Welfare Benefit Board issues this Order adopting proposed amendments to the Board's Rules. Following notice and a public hearing on May 25, 2010, the Board makes the following findings and conclusions:

**Summary of the Evidence**

1. The Board posted public notice of the proposed amendments in the April 1, 2010 Register of Regulations and for two consecutive weeks in The News Journal and Delaware State News.
2. These amendments were proposed to increase the number of Jockeys that are eligible to enroll in the Funded plan. The proposed rule change amends Rule 2.1.1.1, eliminates Rule 2.1.1.2, and re-numbers Rule 2.1.1.3.
3. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony on May 25, 2010, at the public hearing on the proposed amendments to the Board's Rules.

**Findings of Fact and Conclusions**

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony on May 25, 2010, at the public hearing. No comments were received by writing. No comments were received by testimony.

2. The Board concludes that the proposal should be adopted to amend Rule 2.1.1.1, eliminate Rule 2.1.1.2., and re-number Rule 2.1.1.3.

3. The effective date of this Order will be ten (10) days from the publication of this Final Order in the Register of Regulations on June 1, 2010.

**IT IS SO ORDERED** this 25th day of May 2010.

Edward J. Stegemeier, Chairman  
Bernard J. Daney, Ex-Officio  
Bessie Gruwell, DTHA Board Member  
William Hollick, Jockey Board Member  
John E. Mooney, DRA Board Member  
Clinton Potts, Jockey Board Member  
Heriberto Rivera, Jr., Jockey's Guild Board Member

## 1002 Delaware Jockeys' Health and Welfare Benefit Board Regulations

\*Please note that no additional changes were made to the regulation as originally proposed and published in the May 2010 issue of the *Register* at page 1378 (13 DE Reg. 1378). Therefore, the final regulation is not being republished. A copy of the entire final regulation is available at:

[1002 Delaware Jockeys' Health and Welfare Benefit Board Regulations](#)

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## DEPARTMENT OF EDUCATION

### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122 (14 Del.C. §122)  
14 DE Admin. Code 731

### 731 School Food Service Employees

### REGULATORY IMPLEMENTING ORDER

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education intends to amend 14 DE Admin. Code 731 School Food Service Employees. The regulation was reviewed pursuant to the five-year review cycle. The amendments were limited to formatting only.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Friday, April 2, 2010, in the form hereto attached as *Exhibit "A"*. No comments were received for this regulation.

#### II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 731 School Food Service Employees to review as part of the five-year cycle. The amendments were limited to formatting only.

#### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 731 School Food Service Employees. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 731 School Food Service Employees attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C.

§122(e), 14 **DE Admin. Code** 731 School Food Service Employees 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** 731 School Food Service Employees amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 731 School Food Service Employees 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 May 16, 2010. 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 16th day of May 2010.

#### DEPARTMENT OF EDUCATION

Lillian M. Lowery, Ed.D., Secretary of Education

Approved this 16th day of May 2010

#### 731 School Food Service Employees

##### 1.0 Experience

School food service employees may be granted one (1) year's experience for each creditable year of experience in similar employment.

##### 2.0 Determination of Employee Staffing and Formula

2.1 School districts shall determine the salaries paid to cafeteria workers as follows:

2.1.1 Of the total number of full time workers assigned to a food preparing cafeteria, a maximum of two may be paid as a cook baker. Satellite schools are eligible for state funded positions as set forth in 14 **Del.C.** §1322(c).

**8 DE Reg. 1608 (5/1/05)**

##### 3.0 Salary Formula

3.1 The salaries prescribed in 14 **Del.C.** §1322(e) for general workers, cooks and bakers shall be paid by the State from funds not derived from local food service operations as determined by the formula:

3.1.1 Seven (7) hours of labor per 100 meals determined as follows:

3.1.1.1 Total number of reimbursable lunches served in the base month; plus

3.1.1.2 Total number of reimbursable breakfasts served in the base month; plus

3.1.1.3 Total of all other meals served in the base month determined by aggregating all income.

3.1.1.3.1 The number of meals prepared and served shall be based on the average reported for the month of October on the monthly reimbursement claim.

3.2 Each school district ~~will~~ shall submit to the Department of Education a computation sheet for cafeteria workers with data showing hourly rate and hours worked not to exceed the maximum allowed under state formula.

- 3.3 Each school district shall submit a roster of cafeteria managers to the Department of Education showing names of managers and the salaries prescribed in 14 **Del.C.** §1322(a). Each district shall also submit a computation sheet as prescribed by the Department to determine the number of meals served according to the state formula.

**3 DE Reg. 1542 (5/1/00)**

**8 DE Reg. 1608 (5/1/05)**

**13 DE Reg. 1257 (4/1/10)**

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**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122 (14 **Del.C.** §122)  
14 **DE Admin. Code** 733

**733 Payment of Substitutes for Teachers**

**REGULATORY IMPLEMENTING ORDER**

**I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

The Secretary of Education intends to reauthorize 14 **DE Admin. Code** 733 Payment of Substitutes for Teachers with no changes. This was reviewed as part of the 5 year review cycle.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Friday, April 2, 2010, in the form hereto attached as *Exhibit "A"*. No comments were received for this regulation.

**II. FINDINGS OF FACTS**

The Secretary finds that it is appropriate to reauthorize 14 **DE Admin. Code** 733 Payment of Substitutes for Teachers with no changes. This was reviewed as part of the 5 year review cycle.

**III. DECISION TO AMEND THE REGULATION**

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 733 Payment of Substitutes for Teachers. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 733 Payment of Substitutes for Teachers attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 733 Payment of Substitutes for Teachers 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** 733 Payment of Substitutes for Teachers amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 733 Payment of Substitutes for Teachers 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 May 16, 2010. 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 16th day of May 2010.

**DEPARTMENT OF EDUCATION**

Lillian M. Lowery, Ed.D., Secretary of Education

Approved this 16th day of May 2010

**733 Payment of Substitutes for Teachers**

**1.0 Payment of Substitutes for Teachers**

- 1.1 State substitute teacher funds may be used to pay substitutes for State funded teachers when the state funded teachers are unavailable for duty under the provisions of 14 **Del.C.** §1318, 29 **Del.C.** §5524 and 29 **Del.C.** §5933 (for sick leave calculations for teachers qualifying for workers' compensation).
- 1.2 Substitutes for state funded teachers may also be paid from State substitute teacher funds for:
  - 1.2.1 Military leave for training or duty not in excess of 15 working days per year.
  - 1.2.2 Kindergarten Teachers on Abbreviated Days. In order to allow kindergarten teachers additional time for parent conferences, substitute teachers may be hired using state substitute teacher funding for ½ day on abbreviated days when kindergarten is scheduled.
  - 1.2.3 Teachers participating in Department of Education initiated committee work and project assignments.
- 1.3 Substitutes for teachers who are absent without pay may be charged to the Division I teacher salary line.
- 1.4 Substitutes for teachers who are paid from federal funds shall be paid from federal funds from the federal program involved or local funds.
- 1.5 Substitutes for teachers who are paid from local funds shall be paid from local funds.
- 1.6 Substitutes for teachers who are paid from State funds for a fractional part of a State teacher unit and a fractional part from other funds shall be paid on the same proportional basis.
- 1.7 Substitutes shall be paid from State substitute teacher funds the amounts authorized for the various classes of substitutes as provided for in 14 **Del.C.** §1326. School districts paying more for teacher substitutes than prescribed in 14 **Del.C.** §1326 shall do so from local or federal funds. Federal funds may be used only if the federal program permits that use.

**3 DE Reg. 1542 (5/1/00)**

**8 DE Reg. 1609 (5/1/05)**

**13 DE Reg. (06/01/10)**

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

Statutory Authority: 31 Delaware Code, Chapter 5, Section 512  
(16 **Del.C.**, Ch. 5, §512)

**ORDER**

**Citizenship and Alienage and Deemed Newborns**

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Title XIX Medicaid State Plan, the Title XXI Delaware Healthy Children Program

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State Plan and, the Division of Social Services Manual (DSSM) to make administrative changes regarding Citizenship and Alienage and Deemed Newborns. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the April 2010 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 30, 2010 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

### **SUMMARY OF PROPOSED AMENDMENTS**

The purpose of this regulatory action is to amend the Title XIX and Title XXI State Plans and existing rules in the Division of Social Services Manual (DSSM) necessitated by the citizenship documentation requirements of the Deficit Reduction Action (DRA) of 2005 and the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA). These amendments provide for medical assistance coverage to certain immigrants who are lawfully residing in the United States and are otherwise eligible for assistance, as described under CHIPRA. This population was previously required to complete a 5-year waiting period to be eligible for federal medical assistance. Children who were otherwise eligible for Medicaid and subject to the 5-year bar formerly received medical coverage under Delaware's State-Funded Only (Medical Assistance) Program. Children who were otherwise eligible for the Delaware Healthy Children Program (DHCP) did not receive State-funded coverage.

In addition, this regulatory action proposes amendments that remove the requirements for an infant to be deemed Medicaid-eligible for 12 months because of "newborn" status, a mandatory coverage group under the Medicaid program.

#### **Statutory Authority**

- Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, Public Law 104-193, enacted on August 22, 1996
- Deficit Reduction Action (DRA) of 2005, Public Law 109-171, enacted on February 8, 2006
- Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Public Law 111-3, enacted on February 3, 2009

#### **Background**

##### ***DRA***

The Deficit Reduction Act (DRA) of 2005 (Public Law 109-171) was signed into law on February 8, 2006. Prior to the enactment of the DRA, a signature on the application form under penalty of perjury attesting that an individual was a citizen or national of the United States was sufficient. No further documentation was required unless there was information to the contrary. In addition, there was no requirement to verify identity.

Section 6036 of the DRA of 2005 amends the Federal Medicaid statute to require that individuals declaring to be a citizen or national of the United States for purposes of qualifying for Medicaid must present satisfactory documentary evidence of citizenship or nationality and identity when initially applying for Medicaid or upon a recipient's first Medicaid redetermination. Section 6036 prohibits states from receiving federal reimbursement for medical assistance provided under Medicaid to an individual who has not provided satisfactory documentary evidence of citizenship or nationality.

##### **CHIPRA**

##### ***Citizenship***

Previously, under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (P.L. 104-193), individuals who entered the United States on or after August 22, 1996, were barred from participating in any federal means-tested program for five years from their date of entry and could only receive emergency services and labor and delivery only.

In State Fiscal Year 1998, the Delaware legislature appropriated State-only funds to provide coverage of full Medicaid benefits to legally residing noncitizens who are ineligible for full Medicaid benefits because of PRWORA. Coverage for these aliens will be provided on a fee for service basis and is subject to the availability of state funding. In the event state funding is exhausted, the benefits will be reduced to coverage of emergency services and labor and deliver only.

Section 214 of the Children's Health Insurance Program Reauthorization Act of 2009 (P.L. 111-3), known as CHIPRA, now allows States the option to extend coverage to all otherwise eligible children and pregnant women who are lawfully residing in the United States (U.S.). These amendments do not extend coverage to children and pregnant women who do not have documentation of their legal entry to the U.S.

CHIPRA also requires a state to apply this requirement to both Medicaid and CHIP if they choose to adopt this option.

### **Deemed Newborns**

On January 1, 1991, Section 4603 of the federal Omnibus Budget Reconciliation Act of 1990 required states to adopt Section 1902(e)(6) of Title XIX of the Social Security Act, which continued eligibility for pregnant women when there was a change in income of the family of which she is a member. Additionally, Section 1902(e)(4) provides automatic Medicaid eligibility to infants born to Medicaid eligible women, providing that the infant continues to live with his/her mother and that the mother remain eligible for Medicaid or would remain eligible if still pregnant.

Section 113 of CHIPRA amends the automatic enrollment for children born to women receiving pregnancy-related assistance under Title XIX, Section 1902(e)(4) of the Social Security Act as follows:

A child born to a woman eligible for and receiving medical assistance under a State plan on the date of the child's birth shall be deemed to have applied for medical assistance and to have been found eligible for such assistance under such plan on the date of such birth and to remain eligible for such assistance for a period of one year...

### **Summary of Proposed Amendments**

#### *Old Policy - Citizenship*

Currently, certain immigrants who arrived in the United States on or after August 22, 1996 were subject to a five-year bar on receiving federal benefits, including Medicaid and the Delaware Healthy Children Program other than emergency services and labor and delivery only. At this time, Delaware provides coverage for Medicaid children using State-only funds.

#### *New Policy - Citizenship*

As a result of the option allowed under Section 214 of the CHIPRA, Delaware is electing, through these amending regulations: 1) to provide coverage to children and pregnant women who are lawfully residing in the United States; and, 2) to receive federal financial participation for services currently provided using State-only funds. Adoption of this option will result in a cost-savings since the cost will now be shared with the federal government. This policy applies to both persons in existing open cases and new applicants.

#### *Old Policy - Deemed Newborns*

Currently, deemed newborn Medicaid eligibility required that the newborn must come home from the hospital to live with the mother, remain a member of the mother's household, and that the mother remain eligible for Medicaid, or would remain eligible if still pregnant.

#### *New Policy - Deemed Newborns*

As a result of the provision mandated under Section 113 of CHIPRA, Delaware will delete the following deemed eligibility requirements: 1) the infant must be a member of the mother's household and, 2) that the mother remain Medicaid-eligible or would have remained eligible is she were still pregnant. The effect of this amendment is that an infant who was born to a woman who was Medicaid-eligible at the time of the infant's birth shall remain

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eligible through the month of the infant's first birthday, even if the infant is no longer living with the mother or the mother would no longer qualify for Medicaid. This change will ensure the continuous availability of medical care to infants during their first year of life.

#### *State Plan Amendments (SPAs)*

The sections of the Title XIX Medicaid State Plan that are affected by this regulatory action are Attachment 2.2-A, Mandatory Coverage - Categorically Needy and Other Required Special Groups and Attachment 2.6-A, Eligibility Conditions and Requirements.

The section of the Title XXI Delaware Healthy Children State Plan that is affected by this regulatory action is Section 4, Eligibility Standards and Methodology.

#### *Division of Social Services Manual (DSSM)*

The sections of the Division of Social Services Manual (DSSM) affected by this regulatory action are:

DSSM 14300 through DSSM 14420, Citizenship and Alienage and DSSM 18100, Delaware Healthy Children Program: The proposed revisions are being made to reorganize and reformat the content to align and conform to federal regulations and guidance. This includes updating, revising, clarifying, and deleting text /terminology, where necessary. DMMA is not changing existing policies or procedures, but is clarifying the content to reflect current practices.

DSSM 14350, Ineligible Aliens: This proposed amendment authorizes coverage under Medicaid or CHIP to certain legal immigrant pregnant women and children. CHIP does not currently provide coverage of emergency services and labor and delivery only.

DSSM 14810, Continuously Eligible Newborn, DSSM 14920.6, Retroactive Eligibility for Newborns, DSSM 16280, Deemed Eligibility of Newborns: The proposed revisions are being made to eliminate the requirement that a deemed newborn must come home from the hospital to live with the mother, remain in the mother's household, and that the mother remain eligible for Medicaid.

#### **Fiscal Impact Statement**

Currently, the medical services used by these groups of eligible persons are being reimbursed with State-only Funds. This proposal will allow the State to claim a federal match on all medical services reimbursed through the Delaware Medical Assistance Program for this group of lawfully admitted noncitizen children and pregnant women. Implementation of these rules will result in a projected annual savings to the General Fund of \$555,600.00.

#### **SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES**

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of Social Services (DSS) has considered each comment and responds as follows.

The GACEC and the SCPD have reviewed the Division of Medicaid and Medical Assistance (DMMA) proposal to adopt changes to both Medicaid and CHIP (a/k/a Delaware Healthy Children Program) eligibility standards. The proposed changes were published in the April 2010 *Delaware Register of Regulations*. The major changes are outlined at 13 DE Reg. at 1274-1276. Since the regulation expands access to medical care, both Councils endorse them subject to consideration of one minor amendment, i.e., substituting "individuals with disabilities" for "disabled individuals" in §14400G. Council notes the following proposed changes that are beneficial to our constituents.

First, some pregnant women and children previously disqualified from federally-subsidized Medicaid and CHIP (children only) during a five-year waiting period will now be eligible for full Medicaid benefits.

Second, newborns will be continuously eligible for full Medicaid benefits for one year after birth regardless of whether they remain in the mother's household and regardless of whether the mother is Medicaid-eligible.

Third, since some of these individuals are currently covered only by a State-funded program, the availability of eligibility in federally subsidized programs is expected to result in annual cost savings of \$555,600.00. At 1276. Overall, the 35 pages of revisions are relatively technical and appear to match the drafters' intent. Moreover, while



they contemplate acquisition of verification of identity, citizenship, qualified alien status, and/or lawful alien status as required by federal law, they provide applicants with a 90-day period to obtain the requisite proof during which period coverage is provided. See §14390.1.

**Agency Response:** DMMA agrees; "individuals with disabilities" has been substituted for "disabled individuals" in §14400G. Thank you for your endorsement.

#### FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the April 2010 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Title XIX Medicaid State Plan, the Title XXI Delaware Healthy Children Program State Plan and, the Division of Social Services Manual (DSSM) regarding Citizenship and Alienage and Deemed Newborns is adopted and shall be final effective June 10, 2010.

Rita M. Landgraf, Secretary, DHSS

#### DMMA FINAL ORDER REGULATION #10-25d

#### REVISIONS:

#### Division of Social Services Manual

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

#### 14400 Acceptable Evidence of U. S. Citizenship and Identity

Both citizenship AND identity can be verified by the Social Security Administration through the State Verification Exchange System (SVES). If verification cannot be obtained through SVES, verification of citizenship and identity must be obtained from original documents or certified copies from the issuing agency. Once documentation of citizenship and identity has been provided, it is not necessary to obtain documentation again.

The list below provides acceptable documentation for verifying citizenship and identity. There are four levels of verification listed in order of preference. If a higher level document is not available, a lower level may be used.

##### A. First level documentation of both citizenship AND identity

1. A U.S. passport. A U.S. passport does not have to be currently valid to be accepted as evidence of U.S. citizenship, as long as it was originally issued without limitation. Do not accept any passport as evidence of U.S. citizenship when it was issued with a limitation. However, such a passport may be used as proof of identity. Note: Spouses and children were sometimes included on one passport through 1980. The citizenship and identity of the included person can be established when one of these passports is presented. U.S. passports issued after 1980 show only one person.
2. A Certificate of Naturalization (DHS Forms N-550 or N-570)
3. A Certificate of U.S. Citizenship (DHS Forms N-560 or N-561)

##### B. Second level documentation of citizenship

1. A U.S. public birth certificate showing birth in one of the 50 States, the District of Columbia, Puerto Rico (if born on or after January 13, 1941), Guam (on or after April 10, 1899), the Virgin Islands of the U.S. (on or after January 17, 1917), American Samoa, Swain's Island, or the Northern Mariana Islands (after November 4, 1986 (NMI local time)).
2. A Certification of Report of Birth (DS-1350)
3. A Report of Birth Abroad of a U.S. Citizen (Form FS-240)
4. A Certification of birth issued by the Department of State (Form FS-545)
5. A U.S. Citizen I.D. card (I-197 or I-179)
6. A Northern Mariana Identification Card (I-873)
7. An American Indian Card (I-872)

8. A final adoption decree showing the child's name and U.S. place of birth. In situations where an adoption is not finalized and the State in which the child was born will not release a birth certificate prior to final adoption, a statement from a State approved adoption agency that shows the child's name and U.S. place of birth is acceptable. The adoption agency must state in the certification that the source of the place of birth information is an original birth certificate.
9. Evidence of U.S. Civil Service employment before June 1, 1976
10. U.S. Military Record showing a U.S. place of birth. (DD-214 or similar official document showing a U.S. place of birth)
11. A data verification with the Systematic Alien Verification for Entitlements (SAVE) Program for naturalized citizens.
12. Child Citizenship Act - Obtain documentary evidence that verifies that at any time on or after February 27, 2001, the following conditions have been met: (i) at least one parent of the child is a U.S. citizen by either birth or naturalization and this has been verified; (ii) the child is under the age of 18; (iii) the child is residing in the U.S. in the legal and physical custody of the U.S. citizen parent; (iv) the child was admitted to the U.S. for lawful permanent residence and this has been verified; and (v) if adopted, the child satisfies the requirements of section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1) pertaining to international adoptions (admission for lawful permanent residence as IR-3 or IR-4).

**C. Third level documentation of citizenship**

1. Extract of a hospital record on hospital letterhead established at the time of the person's birth that was created 5 years before the initial application date and that indicates a U.S. place of birth. For children under age 16, the document must have been created near the time of birth or 5 years before the date of application. Do not accept a souvenir "birth certificate" issued by the hospital.
2. Life, health, or other insurance record showing a U.S. place of birth that was created at least 5 years before the initial application date and that indicates a U.S. place of birth. For children under age 16, the document must have been created near the time of birth or 5 years before the date of application. Life or health insurance records may show biographical information for the person including place of birth and can be used to establish U.S. citizenship when it shows a U.S. place of birth.
3. Religious record recorded in the U.S. within 3 months of birth showing the birth occurred in the U.S. and showing either the date of the birth or the individual's age at the time the record was made. The record must be an official record recorded with the religious organization.
4. Early school record showing a U.S. place of birth. The school record must show the name of the child, the date of admission to the school, the date of birth, a U.S. place of birth, and the name(s) and place(s) of birth of the applicant's parents.

**D. Fourth level documentation of citizenship**

1. Federal or State census record showing U.S. citizenship or a U.S. place of birth. Census records from 1900 through 1950 contain certain citizenship information. The census record must also show the applicant's age.
2. One of the documents listed that shows a U.S. place of birth and was created at least 5 years before the application for Medicaid. For children under age 16, the document must have been created near the time of birth or 5 years before the date of application. This document must be one of the following and show a U.S. place of birth:
  - a) Seneca Indian tribal census record.
  - b) Bureau of Indian Affairs tribal census records of the Navajo Indians.
  - c) U.S. State Vital Statistics official notification of birth registration.
  - d) A delayed U.S. public birth record that is recorded more than 5 years after the person's birth.
  - e) Statement signed by the physician or midwife who was in attendance at the time of birth
  - f) The Roll of Alaska Natives maintained by the Bureau of Indian Affairs.
3. Institutional admission papers from a nursing facility, skilled care facility, or other institution created at least 5 years before the initial application date that indicates a U.S. place of birth. Admission papers generally show biographical information for the person including place of birth. The record can be used to establish U.S. citizenship when it shows a U.S. place of birth.
4. Medical (clinic, doctor, or hospital) record created at least 5 years before the initial application date that indicates a U.S. place of birth. For children under age 16, the document must have been created near

# FINAL REGULATIONS

the time of birth or 5 years before the date of application. Medical records generally show biographical information for the person including place of birth. The record can be used to establish U.S. citizenship when it shows a U.S. place of birth. (Note: An immunization record is not considered a medical record for purposes of establishing U.S. citizenship.)

5. Written affidavit. Affidavits should only be used in rare circumstances. If the documentation requirement needs to be met through affidavits, the following rules apply:
  - a) There must be at least two affidavits by two individuals who have personal knowledge of the event(s) establishing the applicant's or recipient's claim of citizenship.
  - b) At least one of the individuals making the affidavit cannot be related to the applicant or recipient. Neither of the two individuals can be the applicant or recipient.
  - c) The persons making the affidavits must be able to provide proof of their own citizenship and identity.
  - d) If the individual making the affidavit has information which explains why documentary evidence establishing the applicant's claim of citizenship does not exist or cannot be readily obtained, the affidavit should contain this information as well.
  - e) The applicant or representative must make a separate affidavit explaining why the evidence does not exist or cannot be obtained.
  - f) The affidavits must be signed under penalty of perjury and need not be notarized.

## E. Documentation of identity.

1. Identity documents described in 8 CFR 274a.2(b)(1)(v)(B)(1). Exception: Do not accept a voter's registration card or Canadian driver's license as listed in 8 CFR 274a.2(b)(1)(v)(B)(1).
  - a) Driver's license issued by a State or Territory either with a photograph of the individual or other identifying information of the individual such as name, age, sex, race, height, weight, or eye color.
  - b) School identification card with a photograph of the individual.
  - c) U.S. military card or draft record.
  - d) Identification card issued by the Federal, State, or local government with the same information included on drivers' licenses.
  - e) Military dependent's identification card.
  - f) Certificate of Degree of Indian Blood, or other American Indian/Alaska Native Tribal document with a photograph or other personal identifying information relating to the individual such as age, weight, height, race, sex, and eye color.
  - g) U.S. Coast Guard Merchant Mariner card.
2. A cross match with Office of Vital Statistics.
3. Three or more documents that together reasonably corroborate the identity of an individual provided such documents have not been used to establish the individual's citizenship and the individual submitted second or third level evidence of citizenship. Such documents must at a minimum contain the individual's name, plus any additional information establishing the individual's identity. All documents used must contain consistent identifying information. These documents include employer identification cards, high school and college diplomas from accredited institutions (including general education and high school equivalency diplomas), marriage certificates, divorce decrees, and property deeds/titles.

## F. Special identity rules for children

For children under age 16, a clinic, doctor, hospital, or school record may be accepted. School records include nursery or daycare records and report cards if verified with the issuing school. If none of the above documents in the preceding groups are available, an affidavit may be used. An affidavit is only acceptable if it is signed under penalty of perjury by a parent, guardian, or caretaker relative stating the date and place of the birth of the child and cannot be used if an affidavit for citizenship was provided. The affidavit is not required to be notarized. An affidavit for children under age 18 may be accepted when a school ID card or driver's license is not available.

## G. Special identity rules for **[disabled]** individuals **[with disabilities]** in institutional care facilities

An affidavit signed under penalty of perjury by a residential care facility director or administrator on behalf of an institutionalized individual in the facility.

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\*Please note that no additional changes were made to the regulation as originally proposed and published in the April 2010 issue of the *Register* at page 1273 (13 DE Reg. 1273). Therefore, the final regulation is not being republished. A copy of the entire final regulation is available at:

**Citizenship and Alienage and Deemed Newborns**

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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### ORDER

#### DMAP General Policy Manual: Utilization Control – Prior Authorization

#### NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Delaware Medical Assistance Program Provider Specific Policy Manual - General Policy Manual related to Prior Authorization. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the March 2010 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2010 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### SUMMARY OF PROPOSAL

The proposed revises the Division of Medicaid and Medical Assistance (DMMA) policy for Prior Authorization. This rulemaking is required to clarify what prior authorization is and how the DMMA uses prior authorization to determine eligibility to receive services and to determine that services are medically necessary.

#### Statutory Authority

- Social Security Act §1902(a)(30)(A) mandates that states "provide such methods and procedures relating to the utilization of, and payment for, care and services available under the plan ... as may be necessary to safeguard against unnecessary utilization of such care and services."
- 42 CFR §440.230(d), *Sufficiency of amount, duration, and scope* provides that a state "may place appropriate limits on a service based on such criteria as medical necessity or on utilization control procedures."
- 42 CFR Part 456 addresses *Utilization Control*, including methods and procedures relating to the utilization of, and the payment for, care and services.

#### Summary of Proposal

The purpose of this rule is to adopt revised prior authorization procedures and criteria to ensure that the Delaware Medical Assistance Program (DMAP) prior authorization process follows sound fiscal practices, meets the medical needs of the State's vulnerable population, and promotes a collaborative partnership with our DMAP providers, while holding all parties involved accountable for their role in the process.

The proposed rule, identified in the DMAP General Policy Provider Manual, primarily removes detailed prior authorization criteria for specific categories of services and procedures from General Policy as prior authorization criteria already exists in each of the service's own dedicated provider policy specific manual. The intent is to

improve the logical organization of the prior authorization policy set and eliminate duplication of content and inconsistency; and, make corresponding adjustments to the rule text, as appropriate.

#### **Fiscal Impact Statement**

These revisions impose no increase in cost on the General Fund.

#### **SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE**

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

The Governors Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) have reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMA's) proposal to amend a Medicaid prior authorization "policy" published s 13 **DE Reg.** 1166 in the March 1, 2010 issue of the *Register of Regulations*. Specifically, the Division proposes to delete an existing policy with specific standards in favor of revising a general policy which then cross references 16 separate policy manuals (§1.21.6). We have the following observations.

First, DMMA is required to issue its standards as regulations in conformity with the Administrative Procedures Act. See Title 29 **Del.C.** §§10161(b), 10111, and 10113. The preface to the proposal indicates that DMMA is amending "the Delaware Medical Assistance Program (DMAP) General Policy Provider Manual." At 1166. The preface then invites comments on "the proposed new regulations". Id. Unfortunately, it is, at best, unclear that the Manual is a regulation.

The Delaware Administrative Code is available on-line and contains an index for "Title 16 Health & Social Services" at <http://regulations.delaware.gov/AdminCode/title16/index.shtml>. The index lists DDDS, DLTCRP, DPH, DSS, and DSAMH, but not DMMA. The DSS site includes the DSSM (containing Medicaid regulations) but does not include DMAP provider manuals. If someone accesses the DHSS website, clicks DMMA, and then clicks "regulations", you are referred to the Administrative Code (which lacks a DMMA entry) and the DSSM. Only if you click "manuals", then "downloads", then "manuals" again on the DMMA website will you discover the 186-page General Provider Manual and thirty-one (31) policy provider specific manuals containing a host of prescriptive, substantive standards. See attachment.

There are multiple problems with this system:

- A. The manuals should be adopted as regulations consistent with the APA since they contain many substantive standards. If they are regulations, they should appear in the Administrative Code.
- B. The manuals are very difficult to locate without an extensive search.
- C. If the manuals are not regulations, they can be changed without the benefit of publication for public comment.

**Agency Response:** The Delaware Administrative Procedures Act is the process that allows for notice to providers prior to making changes and gives providers the opportunity to provide input prior to implementation. The proposed defines a matter of significant interest to the public as an agency action regarding a matter that the agency knows to be of widespread citizen interest. Therefore, in the interest of due process (fairness) and public participation (notice and comment), DHSS/DMMA initiated this rulemaking through the Administrative Procedures Act (APA) process.

Since publication of the first *Delaware Register of Regulations* in 1997, the Delaware Medical Assistance Program (DMAP) has long utilized the public notice and comment process for changes to the content of provider manuals for almost thirteen (13) years. Specifically, Prior Authorization (PA) requirements were addressed approximately thirty-four (34) times since the inception of the *Delaware Register* in July 1, 1997. Revisions to prior authorization criteria first appeared in the November 1, 1997 issue; and, the most recent publication in the *Register's* December 1, 2003 issue.

Prior authorization (PA) is a utilization control process used by DMAP as a tool to control inappropriate or unnecessary spending in this program. Looked at in the larger context, the provider manuals are not to be viewed as a sole source stand-alone resource. As noted in the DMAP Contract for Services, which incorporates the provider manuals by reference, providers agree to "...abide by the rules, regulations, policies and procedures of the DMAP, and to comply with all the terms, conditions, and requirements as set forth herein..." From time to time, program policies will change. DMAP will send the provider notification in the form of bulletins and revised manual pages. Upon publication of those revised manual pages, the contract between providers and DMAP is amended. The DMAP provider manuals are best used in combination with other resources, including provider informational bulletins, provider alerts, other DMMA manuals and other types of communications.

The proposed changes to the Prior Authorization (PA) criteria is a clarification that more clearly sets forth how DHSS/DMMA uses prior authorization to determine eligibility to receive medically necessary services; that prior authorization requirements are identified in the Delaware Medical Assistance Program Provider Manuals; and, that reimbursement is contingent upon following proper prior authorization instructions and approval. Therefore, in the interest of public participation, DHSS/DMMA initiated changes to this process through the public notice and comment process.

The intent of this public notice and comment process was to provide affected providers a voice in shaping this regulatory requirement. Much can be learned in this public process and often final order regulations provide necessary clarification and reasonable adjustments as a result of the comment period. Although this comment is outside the scope of the proposed regulation, to address the use and efficiency of the DMAP website as a resource, DMMA will consider your comments when making future improvements.

No change to the regulation was made as a result of these comments.

Second, Section 1.21.6 contains a list of sixteen (16) contexts in which prior authorization is required. However, it also recites that the list is "not all-inclusive" and directs the reader to the 21 manuals for more specific information. This is not very informative or "user-friendly". A Medicaid beneficiary will often be unable to determine whether prior authorization is required due to the "maze" of standards and the catch-all recital that the list is "not all-inclusive." A provider who fails to obtain prior approval when required by these obtuse standards is not paid. See §1.21.2. The unpaid provider may then pressure the beneficiary to pay. Although an informed Beneficiary could rely on §1.16.1 protections, this presupposes the beneficiary somehow locates the manual. Moreover, providers can nevertheless pressure payment through other means (e.g. threatening to "drop" as patient).

**Agency Response:** The proposed Prior Authorization rule contains major categories of services and is not intended to encompass all possible services that may require prior authorization. The absence of any service from this rule shall in no way be construed to indicate non-coverage just as inclusion imply a guarantee of coverage.

If a service beyond that described in the proposed regulation is medically necessary, documentation substantiating the need for the service or treatment is all that is required.

Although, there are numerous potential ways to reasonably present information to users, DMMA finds the DMAP website usable in the context of accessibility, layout/appearance and website navigation. As indicated in the "agency response" above, DMMA will consider your comments when making future improvements, including creating a link to access information regarding "Members Rights & Responsibilities" for DMAP recipients.

No change to the regulation was made as a result of these comments.

## FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the March 2010 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Delaware Medical Assistance Program Provider Specific Policy Manual - General Policy Manual related to Prior Authorization is adopted and shall be final effective June 10, 2010.

Rita M. Landgraf, Secretary, DHSS

\*Please note that no changes were made to the regulation as originally proposed and published in the March 2010 issue of the *Register* at page 1166 (13 DE Reg. 1166). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**DMAP General Policy Manual: Utilization Control – Prior Authorization**

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**DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code, Chapter 5, §512  
(31 **Del.C.**, Ch. 5, §512)

**9059 Income Exclusions**

**ORDER**

**NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, *Income Exclusions*. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the April 2010 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 30, 2010 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROPOSED CHANGES**

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Food Supplement Program, specifically, *Income Exclusions*.

**Statutory Authority**

- Food, Conservation, and Energy Act of 2008 (Public Law 110-246)
- Food and Nutrition Act of 2008, Section 5(d)(18)
- 7 CFR §273.9(c), *Income exclusions*

**Background**

Food and Nutrition Act of 2008 as amended through Public Law No. 110-246, commonly referred to as the *2008 Farm Bill* reauthorizes and amends the original Food Stamp Act of 1977.

**Income Exclusions for Combat-Related Military Pay**

The Act at Section 4101 of the Food and Nutrition Act of 2008 makes statutory the income exclusion for combat-related military pay.

**Child Support Payments**

The Food and Nutrition Act of 2008 at Section 5(d) gives the State agency an option regarding the treatment of child support payments.

## Filipino Veterans Equity Compensation Fund (FVECF) Payments

Section 1002 of the American Recovery and Reinvestment Act of 2009 (ARRA) established the Filipino Veterans Equity Compensation Fund (FVECF) to issue one-time payments to eligible Filipino veterans and the spouses of veterans who served in the military of the Government of the Commonwealth of the Philippines during World War II. The compensation fund offers one-time payments of up to \$15,000 to eligible persons.

## Summary of Proposed Changes

**DSSM 9059: Income Exclusions:** The purpose and effect of the proposed changes is: 1) to add new federal laws exempting certain income; and, 2) to change a state-option regarding the treatment of child support payments. Food and Nutrition Service (FNS) now exempts combat pay and payments from the Filipino Veterans Equity Compensation Fund as income in the Food Supplement Program (FSP). The Division of Social Services (DSS) has elected to change the treatment of child support payments made by a FSP household member to an income exclusion instead of a deduction to allow more households to meet the gross income test. Additional changes are proposed to reformat and reorganize original text to simplify language and improve readability.

## SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of Social Services (DSS) has considered each comment and responds as follows.

The GACEC and the SCPD have reviewed the Division of Social Services proposal to revise its regulation defining the exclusions from countable income in its Food Supplement Program. We would like to share the following recommendation.

The only recommendation the Councils would like to make is in the context of §9059U.20 which contains the following exclusion:

20. Crime Act of 1984, P.L. 103-322, exclude payments to a victim from a crime victim compensation program from income and resources.

In Delaware, the crime victim compensation program, codified at Title 11 **Del.C.** Ch. 90, is known as the "Victims' Compensation Assistance Program" or "VCAP". To provide guidance to DSS workers, it would be preferable to add the following sentence to Par. 20: "In Delaware, the primary crime victim compensation program is created by statute [Title 11 **Del.C.** Ch. 90] and is known as the "Victims' Compensation Assistance Program".

**Agency Response:** A person could receive victims' compensation payments from any state where a crime was committed against them. DSS feels that it is best to keep the regulation generic and not have information specific to Delaware. To do so would generate questions from field staff about other states. No change to the regulation was made as a result of these comments.

## FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the April 2010 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding the Food Supplement Program (FSP), specifically, Income Exclusions, is adopted and shall be final effective June 10, 2010.

Rita M. Landgraf, Secretary, DHSS



**DSS FINAL ORDER REGULATION #10-26****REVISIONS:****9059 Income Exclusions**

\*Please note that no changes were made to the regulation as originally proposed and published in the April 2010 issue of the *Register* at page 1174(13 DE Reg. 1174). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**9059 Income Exclusions**

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**DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code, Chapter 5, Section 512  
(16 Del.C., Ch. 5, §512)

**Child Care Subsidy Program****ORDER****NATURE OF THE PROCEEDINGS:**

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to provide information of public interest with respect to the Child Care Subsidy Program regarding Review and Determination. The Department's proceedings were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of public comment pursuant to 29 **Delaware Code** Section 10115 in the April 2010 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 30, 2010 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROPOSED CHANGE**

The proposed change described below amends Child Care Subsidy Program policies in the Division of Social Services Manual (DSSM) regarding Review/Determination.

**Statutory Authority**

45 CFR §98.1, *Goals and purposes*

**Summary of Proposed Change**

**DSSM 11004.11, Review/Determination:** This manual revision implements new policy regarding child care eligibility requirements. The Division of Social Services (DSS) intends to adopt rules: 1) to extend the six month review period to a twelve month review period; and, 2) to add language referencing the return of the interim report. Child care assistance cases will remain open continuously for twelve months and a child care/food benefit case will close if the parent/caretaker fails to complete a review or return the six month interim report. These revisions promote the well-being of children by providing consistency of care. Additional changes are proposed to reformat and reorganize original text to simplify language and improve readability.

## SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGES

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observation and recommendation summarized below. DSS has considered the comment and responds as follows.

The GACEC and the SCPD has reviewed the Division of Social Services proposal to revise its standards related to eligibility reviews and redeterminations for its child care subsidy program. We would like to share the following observation.

The Councils have only one recommended amendment. The regulation being deleted contained the following requirement: "Do not allow an authorization to end without first ensuring the parents/caretakers were given timely and adequate notice." This concept is absent from the proposed regulation. It should be reinstated. Otherwise, the regulation literally directs workers to automatically "close the child care case" based on any of several occurrences (e.g. child moves; parent does not cooperate; parent fails to submit six month report). Advance notice would be required by 16 **DE Admin. Code** Part 5000, §5301.

**Agency Response:** After review, DSS agrees the sentence should remain. The deleted requirement has been reinstated.

### FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the February 2010 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Child Care Subsidy Program policies regarding Review/Determination is adopted and shall be final effective June 10, 2010.

Rita M. Landgraf, Secretary, DHSS

## DSS FINAL ORDER REGULATION #10-28 REVISION:

### 11004.11 Review/Determination

#### 45 CFR 98.1

~~Authorizations remain effective for the entire authorization period as long as parents/caretakers continue to meet the requirements for service (such as the parent/caretaker remains a Food Stamp Employment & Training (FS E&T) participant, keeps employment, remains income eligible, etc.). At least once every six months and just prior to the end of each authorization period, review/redetermine the circumstances of each parent/caretaker to see if child care services can continue.~~

~~It will not always be necessary to schedule parents/caretakers for a face to face interview or to repeat the application process. As long as parents/caretakers provide some proof that they remain employed, a Food Stamp or TANF Employment & Training (FS E&T) participant or, remain an employed TANF recipient, and verify income or special needs and remain income eligible, they remain eligible for child care services. However, at least once per year, schedule parents/caretakers for a face to face interview.~~

~~If parents/caretakers fail to show for a recertification interview or fail to provide necessary documentation, close the Child Care case. If the parents/ caretakers provide good cause for their failure to act, and the case has not closed, continue service. If the case has closed complete the redetermination and backdate to the first day of the month the authorization would have begun.~~

~~Good cause can be anything believed to be reasonable, but generally includes things such as:~~

- ~~1. illness;~~

2. ~~court required appearance;~~
3. ~~a household emergency (fire, heating problem, family crisis, etc.);~~
4. ~~lack of transportation; or~~
5. ~~bad weather.~~

~~Do not allow an authorization to end or close a case without first ensuring the parents/caretakers were given timely and adequate notice.~~

~~Parents/caretakers whose child care case closes because of their failure to keep a redetermination interview or provide verification of need and income may request a fair hearing.~~

~~In the event the agency errs in not completing a redetermination before a parent/caretaker's current authorization expires (such as change of Case Manager causes no redetermination letter to go out), still do a redetermination authorization, backdated to the first day of the month the new authorization would have begun had the agency not erred.~~

~~Parents/caretakers whose child care cases close because they failed to keep a redetermination or provide verification, can reapply for service. However, if DSS is in a "wait list" situation, these parents/caretakers will be subject to DSS' priority service order (see Section 11004.3.1).~~

**9-DE-Reg-572 (10/01/05)**

All childcare applicants and recipients are continuously eligible for child care services for twelve months. This means that the applicants and recipients remain eligible for child care services unless:

- A. The child moves out of or is removed from the parent's/caretaker's home, or
- B. The child moves out of state, or
- C. The child is deceased, or
- D. The parent/caretaker does not cooperate with child support requirements

In the event of any of the above, close the child care case.

Additionally, the child care parent fee will **not** change during the authorization unless the parent/caretaker in a single parent home loses his or her job or one or both parents in a two parent home loses his or her job. (See DSSM 11004.12.1 Continuing Child Care after Loss of Need.)

Complete a review/redetermination of the circumstances of each parent/caretaker at least once every twelve months and just prior to the end of each authorization period.

Close the child care case if parents/caretakers fail to complete a review or return the six month interim report. Only child care/food benefit cases will receive an interim report. If the parents/caretakers provide good cause for their failure to complete or return the report, the case should be processed.

Good cause can be anything believed to be reasonable, but generally includes things such as:

1. illness;
2. court required appearance;
3. a household emergency (fire, heating problem, family crisis, etc.);
4. lack of transportation; or
5. bad weather.

Parents/caretakers whose child care cases close because they failed to complete a redetermination or provide verification, can reapply for service. However, if DSS is in a "wait list" situation, these parents/caretakers will be subject to DSS' priority service order (see Section 11004.3.1).

**[Do not allow an authorization to end or close a case without first ensuring the parents/caretakers were given timely and adequate notice.]**

**13 DE Reg. (06/01/10)**

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## DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314 & 1111 (18 Del.C. §§314, 1111)  
18 DE Admin. Code 505

### ORDER

Proposed Regulation 505 relating to Fiduciary Responsibilities for Producers was published in the *Delaware Register of Regulations* on April 1, 2010. The comment period remained open until May 3, 2010. There was no public hearing on proposed Regulation 505. Public notice of the proposed Regulation 505 in the *Register of Regulations* was in conformity with Delaware law.

### SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Comment was received from the Delaware Association of Insurance Agents & Brokers (DAIAB). The comment was centered on Section 10.0, dealing with deposits in interest-bearing accounts. DAIAB believes that the two options available for deposit of funds are too restrictive and suggests that a myriad of other accounts should be added to reflect the options that exist in the financial realm today.

### FINDINGS OF FACT

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

The requirements of the proposed Regulation 505 best serve the interests of the public and of producers and comply with Delaware law. Requiring the funds of insureds, that will not be immediately remitted to insurers, to be deposited in fully-insured bank accounts serves the purpose of keeping these funds secure. Adding additional options that may increase interest earned on the deposits for short periods of time do not serve the ultimate purpose of consumer protection.

### DECISION AND EFFECTIVE DATE

Based on the provisions of 18 Del.C., §§314, 1111 and 29 Del.C., §§10113-10118 and the record in this docket, I hereby adopt Regulation 505 as may more fully and at large appear in the version attached hereto to be effective on June 11, 2010.

### TEXT AND CITATION

The text of the proposed Regulation 505 last appeared in the *Register of Regulations* Vol. 13, Issue 11, pages 1281-1283.

**IT IS SO ORDERED** this 7th day of May 2010.

Karen Weldin Stewart, CIR-ML  
Insurance Commissioner

**505 Fiduciary Fund Requirements for Insurance Producers****1.0 Authority**

This regulation is adopted by the Commissioner pursuant to 18 Del.C. §§311, 1706 (e), and 2304(7). It is promulgated in accordance with 29 Del.C. Ch. 101.

**2.0 Scope**

This regulation shall apply to all producers as defined herein.

**3.0 Definitions**

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

“Anti-commingling” is when the agent is required to keep premium monies in a separate account from the agency's capital, operating or other monies.

“Commingling” is the act of maintaining all fiduciary funds and some or all of the agency's other funds in a single banking account.

“Fiduciary capacity” is the position of a person who acts on behalf of another in matters involving property or money. The term implies a position of trust and power in which confidence is placed and responsibility and good faith are required.

**4.0 Consent of the Insurer Required.**

No insurance producer shall sell, solicit, or negotiate a contract of insurance and fraudulently appropriate or convert to his own use or, with intent to use or fraudulently appropriate, take, or otherwise dispose of, or withhold, appropriate, lend, invest or otherwise use or apply money or substitutes for money received by him as an insurance producer, contrary to the instructions or without the consent of the insurer.

**5.0 Holding of Premium Funds**

All insurance producers shall hold premium funds in a fiduciary capacity.

**6.0 Immediate Remittance, Separate Bank Accounts Not Required**

6.1 Producers who make immediate remittance of collections to their entities need not maintain separate bank accounts for these collections.

6.2 To constitute immediate remittance, payments to entities shall be in the same form as the collection was received from the insured, with the exception of payments by the insured made in cash or with check.

6.3 To constitute immediate remittance, remittance shall occur within five business days.

**7.0 Mingling of Premium Funds, when permitted.**

7.1 Insurance producers who have the express written consent of their entities to mingle premium moneys with their own funds may do so if the following exists:

7.1.1 Monies held in a fiduciary capacity are reasonably ascertainable from the books of accounts and records of the producers.

7.1.2 Amounts due entities are equal to or less than the combined accounts receivable and current bank balances.

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## **8.0 Commingling of funds, when not permitted.**

- 8.1 A producer who does not have the express consent of his entities to commingle moneys with his personal funds shall hold the premium moneys separate from other funds in accordance with the following:
- 8.1.1 A producer who does not make immediate remittance to his entities may not deposit premiums in office operating accounts but shall keep the moneys in a separate bank account from which disbursement may not be made other than for the payment of premiums to the entities, the return of premiums to the insured or the transfer of commissions or the withdrawal of voluntary deposits.
- 8.1.2 Voluntary deposits in the premium account in excess of premiums collected and unpaid to entities may be made for the purpose of maintaining a minimum balance, to guarantee the adequacy of the account or for the purpose of the payment premiums to the entities in advance of their collection. These deposits may not be withdrawn except to the extent that the remaining balance is equal to the total of net premiums collected and unpaid to entities.
- 8.1.3 The deposit of a premium collection in a separate bank account may not be construed as a mingling by the producer of the net premium and of the commission portion of the premium. The commission portion of the premium may be withdrawn from the separate bank account at the discretion of the producer.
- 8.1.4 The maintenance in a separate bank account of at least the net balance of premiums collected and unpaid to the entities by producers operating under the "account current system" shall be construed as compliance with this section and with 18 Del.C. §§1706 (e) and 2304(7), if the funds so held are readily ascertainable from the books of account and records of producers.

## **9.0 Operating and Premium Accounts, Requirements**

When both an operating and a premium account are maintained by producers under this section for purposes of segregating premiums collected, the premium account balance shall include funds sufficient to pay premiums collected and any amount delinquent or in dispute with the entity represented. Upon reconciliation of delinquent or disputed accounts, excess moneys remaining in the premium bank account may be withdrawn as if they had been voluntary deposits.

## **10.0 Deposit of Premiums Collected from Insureds**

A producer may deposit premiums collected from insureds in an interest bearing account when the producer is not required to make an immediate remittance to the entity of premium moneys, if the moneys are not placed in an account upon which a penalty may be levied against the principal for early withdrawal and/or if the moneys are placed in an account insured by the United States government or instruments secured by the United States government.

## **11.0 Separability**

If any provision of this regulation, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of such provisions, and the application of such provisions to any person or circumstance other than those as to which it is held invalid, shall not be affected.

## **12.0 Effective Date**

This regulation becomes effective on June 11, 2010.

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**FINAL REGULATIONS**

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**DEPARTMENT OF LABOR  
DIVISION OF INDUSTRIAL AFFAIRS****OFFICE OF WORKERS' COMPENSATION**

Statutory Authority: 19 Delaware Code, Section 2322B (19 Del.C. §2322B)  
19 DE Admin. Code 1341 and 1342

**1341 Workers' Compensation Regulations  
1342 Health Care Practice Guidelines****ORDER**

A public meeting was held on May 3, 2010, by the Department of Labor to receive public comments relating to revised sections of the Definitions, the Fee Schedule Instructions and Guidelines ("Fee Schedule Instructions"), and the Artificial Lumbar Disc Replacement section of the Low Back Practice Guidelines. The members of the Health Care Advisory Panel ("HCAP") present recommend that the Secretary of Labor adopt this proposal as it was published in the *Register of Regulations*, Volume 13, Issue 10 (April 2010).

**SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

## Exhibits Admitted:

Exhibit 1 - News Journal, Affidavit of publication of notice of public meeting.

Exhibit 2 - Delaware State News, Affidavit of publication of notice of public meeting.

Exhibit 3 - Written comments submitted by American Insurance Association prior to the public meeting.

No further written comments were received by the Delaware Department of Labor. After the Panel concluded with their introductions, the public was invited to share their comments.

The following comments were made during the public meeting.

Definitions

No Public Comment

Fee Schedule Instructions:

Mr. Richard Stokes spoke on behalf of Property Casualty Insurance Association of America. He said his organization does not support the changes to regulation 4.20.1.1 regarding anesthesia, as well as 4.26.1.3.5, regarding puncture site reimbursement. Mr. Stokes stated those "dramatic" changes will increase costs to the system.

Mr. Eric Goldberg spoke on behalf of the American Insurance Association (AIA) and said he "echos" Mr. Stokes comments regarding anesthesia.

Low Back Practice Guideline:

Mr. Eric Goldberg spoke on behalf of the American Insurance Association (AIA) regarding the changes to section 6.0 of the Low Back Practice Guidelines. He reiterated the written comments submitted by his organization that AIA Directors of Workers' Compensation could not find one study that supported the change to remove the "one level" degenerative disc disease and allow for multiple levels. In addition, he commented that the FDA was not petitioned nor did it approve multiple levels.

Mr. Goldberg also commented that his organization was unaware of any other guidelines around the country that supported reducing from 6 months to 4 months the required non-invasive treatment prior to performing a disc anthroplasty

Mr. Richard Stokes said he "echos" Mr. Goldberg's comments.

The Panel voted:

- (1) Unanimously to recommend approval of the Definitions revisions;
- (2) Unanimously to recommend approval of the Fee Schedule Instructions revisions; and
- (3) With one nay vote from Theresa Smith to recommend approval of the Low Back Practice Guideline revisions.

Therefore, the HCAP agreed to submit and recommend for adoption by the Delaware Department of Labor the revisions to the Definitions, the Fee Schedule Instructions and Guidelines, and the Artificial Lumbar Disc Replacement section of the Low Back Practice Guidelines.

### **RECOMMENDED FINDINGS OF FACT WITH RESPECT TO THE EVIDENCE AND INFORMATION**

The HCAP is persuaded that the proposals are consistent with administrating the statutory directives in the workers' compensation law.

### **RECOMMENDATION**

The proposals are respectfully submitted to the Secretary of Labor for consideration with a recommendation for adoption this 3<sup>rd</sup> day of May, 2010.

### **HEALTH CARE ADVISORY PANEL**

Bruce Rudin, M.D., Chair

Harry Gravell

Glenn Brown, MMSC, PT

James Downing, M.D.

A. Richard Heffron

Theresa Smith

Joseph J. Rhoades, Esquire

George B. Heckler, Esquire, Vice Chair

R. Walter Power, M.D.

Douglas Briggs, D.C.

Barry Bakst, D.O.

Wayne Smith

Josette Covington, M.D., MPH

### **DECISION AND EFFECTIVE DATE**

Having reviewed and considered the record and recommendations of members of the Health Care Advisory Panel to adopt revisions of the Definitions; the Fee Schedule Instructions and Guidelines, and the Artificial Lumbar Disc Replacement section of the Low Back Practice Guidelines. The Definitions; the Fee Schedule Instructions and Guidelines; and the Artificial Lumbar Disc Replacement section of the Low Back Practice Guidelines are hereby adopted by the Delaware Department of Labor and made effective June 11, 2010.

### **TEXT AND CITATION**

The proposed Definitions; the Fee Schedule Instructions and Guidelines; and the Artificial Lumbar Disc Replacement section of the Low Back Practice Guidelines notice appeared in the *Register of Regulations*, Volume 13, Issue 10 (April 1, 2010). The Definitions; the Fee Schedule Instructions and Guidelines; and the Artificial



Lumbar Disc Replacement section of the Low Back Practice Guidelines are available from the Department of Labor, Division of Industrial Affairs, Office of Workers' Compensation or on the department's website: [www.delawareworks.com](http://www.delawareworks.com).

**DEPARTMENT OF LABOR**

John McMahon, Secretary of Labor

\*Please note that no changes were made to the regulation as originally proposed and published in the April 2010 issue of the *Register* at page 1283 (13 DE Reg. 1283). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**Workers' Compensation and Health Care Practice Guidelines Regulations**

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL****DIVISION OF AIR AND WASTE MANAGEMENT**

Statutory Authority: 7 Delaware Code, Chapter 60 (7 **Del.C.**, Ch. 60)

**Secretary's Order No. 2010-A-0014**

**Date of Issuance: May 18, 2010**

**Effective Date: June 11, 2010**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control (Department), the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced matter.

**Procedural History**

On March 8, 2010, the Department's issued Start Action Notice 2010-10, which approved Division of Air and Waste Management, Air Quality Management Section's (AQM) request to begin the formal regulatory development process to establish a new regulation at 7 **DE Admin. Code** 1150 entitled "*Outer Continental Shelf Air Regulations*." AQM prepared a proposed regulation, which incorporated by reference the United States Environmental Protection Agency's (EPA) regulations at 40 CFR Part 55. The Department published the proposed regulation in the April 1, 2010 *Delaware Register of Regulations* and in newspapers of general circulation. The public notices also provided notice of an April 21, 2010 public hearing to be held in the AQM's office in Dover.

The Department did not receive any written public comment on the proposed regulation within the thirty day public comment period that began on April 1, 2010. No member of the public attended the April 21, 2010 public hearing held before presiding Hearing Officer Robert P. Haynes. Department representatives, Mark Prettyman and Ron Amirikian, of AQM attended the public hearing, and developed the record to support the proposed regulation. Mr. Haynes, in a Report dated May 5, 2010 and attached hereto, recommended that the Department adopt the proposed regulation as a final regulation with one small non substantive correction based upon the extensive record AQM developed to support the proposed regulation.

**Findings**

I find that the record supports approval of the proposed regulation, as corrected, as a final regulation in order to allow the Department to exercise its delegated jurisdiction to regulate and reduce harmful air pollution emissions

from any source located within the Outer Continental Shelf (OCS), which is an area 25 miles beyond Delaware's seaward boundary. The proposed regulation incorporates the EPA regulation by reference and will allow Delaware to issue any air pollution control permits, as to requiring applicants to seek a permit from EPA. Any air pollution control permit issued to an OCS source of air pollution would apply Delaware air pollution control regulations. I find that the proposed regulation is well supported in the record and adopt the reasoning in the Report and its recommendations, which includes adopting the proposed regulation, as corrected for a minor non-substantive change, as a final regulation.

Consequently, this Order approves the proposed regulation, as set forth in Appendix A to the Report, as a final regulation based upon the record and the information developed at the public hearing.

In conclusion, the following findings and conclusions are entered:

1. The Department adopts the findings, reasons and conclusions in the Report, and hereby approves the issuance of a final regulation 7 **DE Admin. Code** 1150 as set forth in Appendix A to the Report, to be included as part of Delaware Regulations Governing the Control of Air Pollution based upon the record developed below; and
2. The Department shall have this Order published in the *Delaware Register of Regulations* and in newspapers in the same manner as the notice of the proposed regulation.

Collin P. O'Mara, Secretary

## 1150 Outer Continental Shelf Air Regulations

06/11/2010

### 1.0 Applicability

Upon delegation of authority by the Administrator of the EPA to the Department, this regulation shall apply to the owner or operator of any OCS source for which Delaware is the corresponding onshore area (COA) as authorized under Section 328 of the federal Clean Air Act Amendments (42 U.S.C. 7627) and 40 CFR Part 55 (July 1, 2009 ed.).

06/11/2010

### 2.0 Requirements

The provisions of Part 40 CFR Part 55 (July 1, 2009 ed.) are incorporated herein as 7 **DE Admin. Code** ~~[1149]~~1150. OCS sources shall comply with all requirements of 1100 Air Quality Management Section of Title 7 of the Delaware Administrative Code to the extent that they are incorporated by EPA into 40 CFR Part 55.14.

This rule incorporates the following provisions of 40 CFR Part 55:

#### Outer Continental Shelf Air Regulations

<u>55.1</u>	<u>Statutory authority and scope.</u>
<u>55.2</u>	<u>Definitions.</u>
<u>55.3</u>	<u>Applicability.</u>
<u>55.4</u>	<u>Requirements to submit a notice of intent.</u>
<u>55.6</u>	<u>Permit requirements.</u>
<u>55.7</u>	<u>Exemptions.</u>
<u>55.8</u>	<u>Monitoring, reporting, inspections, and compliance.</u>
<u>55.9</u>	<u>Enforcement.</u>
<u>55.10</u>	<u>Fees.</u>
<u>55.13</u>	<u>Federal requirements that apply to OCS sources.</u>
<u>55.14</u>	<u>Requirements that apply to OCS sources located within 25 miles of states' seaward boundaries, by State.</u>

55.15	Specific designation of corresponding onshore areas.
Appendix A to 40 CFR Part 55	Listing of State and Local Requirements Incorporated by Reference Into Part 55. by State

**DIVISION OF AIR AND WASTE MANAGEMENT  
TANK MANAGEMENT BRANCH**

Statutory Authority: 7 Delaware Code, Chapters 60 and 74 (7 **Del.C.** Ch. 60 & 74)  
**7 DE Admin. Code 1351**

**Secretary's Order No.: 2010-A-0015**

**Date of Issuance: May 18, 2010**

**Effective Date of the Amendment: June 11, 2010**

**1351 Underground Storage Tank Systems**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

**Background and Procedural History**

This Order considers proposed regulatory amendments to **7 DE Admin. Code 1351**, *Delaware Regulations Governing Underground Storage Tank Systems* ("UST Regulations"). The Department's Tank Management Branch of the Division of Air and Waste Management (DAWM) commenced the regulatory development process with Start Action Notices 2008-20 and 2008-23. The Department initially published the proposed regulatory amendments in the April 1, 2009 *Delaware Register of Regulations* and held a public hearing on April 21, 2009. The public hearing record remained open at that time for public comment through April 30, 2009. Subsequent to the public hearing held on April 21, 2009, but prior to April 30, 2009, the Department received voluminous substantive formal comment from the U.S. Environmental Protection Agency ("EPA") regarding these proposed amendments, such that *substantive* revisions to the same were necessary in order to comply with federal requirements as set forth by the EPA. As a result, the Department significantly revised its proposed amendments to **7 DE Admin. Code 1351** over the next several months, in order to fully incorporate all requisite federal requirements, clarify language where needed, and help ensure continued protection of human health, safety and the environment. The Department published its *revised* proposed regulatory amendments in the December 1, 2009 *Delaware Register of Regulations* and held a second public hearing on January 12, 2010. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated April 28, 2010 (Report). The Report recommends certain findings and the adoption of the proposed *revised* Amendments as attached to the Report as Appendix A.

**Findings and Discussion**

I find that the *revised* proposed Amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed *revised* Amendments. Throughout the lengthy regulatory development process regarding this promulgation, the Department received public comment from the regulated community, as noted in the Report, and the same were fully addressed by Department staff in a thorough and balanced manner, accurately reflecting the information as contained in the public hearing record which was developed in this matter.

I find that the Department's experts in the Tank Management Branch of the DAWM fully developed the record to support adoption of these *revised* Amendments. With the adoption of this Order, Delaware will incorporate all

requisite federal requirements for its tank operator training program, as required by the Federal Energy Policy Act of 2005, as well as incorporate new requirements prohibiting installation of new underground storage tanks within specific distances of public, industrial, and domestic wells, to make the UST Regulations consistent with analogous requirements in DNREC Division of Water Resources Regulations, thus ensuring protection of drinking water supplies. Additionally, and specifically as a result of the public comment received by the Department in this matter, language clarifications have been made to specific sections of these regulations, in order to promote a greater understanding of the same to the regulated community here in Delaware. Lastly, corrections and additions are being made to Delaware's UST Regulations in order to (1) conform to the federal requirement that state regulations are at least as stringent as the federal underground storage tank regulations; and (2) correct numerous clerical errors discovered in the last edition of these regulations, which were previously issued on January 11, 2008.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these *revised* proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on both the initial proposed Amendments, as well as the proposed *revised* Amendments, including at the public hearings held on April 21, 2009 and again on January 12, 2010, respectively;
- 3.) The Department held public hearings, initially on April 21, 2009, and then again on January 12, 2010 (on the proposed *revised* Amendments), in order to consider public comments before making any final decision;
- 4) The Department's Hearing Officer's Report, including its recommended record and the recommended *revised* Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended *revised* Amendments do not reflect any substantive changes from the proposed *revised* Amendments as published in the December 1, 2009, *Delaware Register of Regulations*;
- 6.) The recommended *revised* Amendments should be adopted as final regulation Amendments because (1) Delaware will be able to incorporate federal requirements for a Tank Operator training program as required by the Federal Energy Policy Act of 2005; (2) requirements prohibiting installation of new underground storage tanks within specific distances of public, industrial and domestic wells will provide consistency with analogous DNREC Division of Water Resources Regulations to ensure protection of drinking water supplies; (3) clarifications made to specific sections of these regulations in response to public comment received will promote a greater understanding of said regulations for the regulated community; (4) clerical errors found in the previous edition of these regulations will be corrected; (5) Delaware's state regulations will be made at least as stringent as the federal underground storage tank regulations; (6) the amendments are well supported by documents in the record; and that
- 7.) The Department shall submit this Order approving the final regulation 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.

Collin P. O'Mara, Secretary

Regulation Reference	Proposed Change
"Effective Date of Regulations" throughout Regulations	Date these Regulations became effective inserted = January 11, 2008
<b>PART A</b>	
Part A, 1.2.2.	Add 1.2.2.5. " <i>Wastewater treatment tank systems</i> "
Part A, 1.2.2.	Add " <i>with the exception of requirements in Part A, 1.3. and Part E...</i> "
Part A, Definitions, Class A, B, C Operators	Class A,B and C Operator definitions for Operator Training
Part A, Definitions, Containment Sump	Added "Piping" to Containment Sump definition to capture transition sumps in the definition

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Part A, Definitions Heating Fuel UST System	Clarification added to define Heating Fuel UST as one connected directly to heat generating equipment
Part A, Definitions, Domestic, Public and Industrial Wells	Added definition of Public well, Industrial well and Domestic well for new UST citing requirements
Part A, Definitions, Regulated Substance	verbiage in definition of "Petroleum" that was inadvertently deleted in Jan 2008 promulgation added.
Part A, Definitions -Secondary Containment	Deleted "primary containment"
Part A, Definitions, Tank	Clarification added to define a "tank" solely as the stationary storage vessel and not any of the Ancillary equipment
Part A, Definitions Pipe	Added "line" to mean the same as "pipe"
Part A, Definitions, UST System	means an Underground Storage Tank, connected underground product, vent and vapor recovery Piping and its associated Ancillary Equipment, and containment systems <i>and all appurtenances</i> . Appurtenances added to include equipment such as spill containment as part of the UST System.
Part A, definitions	Add " <i>Consumptive Use HF UST System</i> " and " <i>Non-Consumptive Use HF UST System</i> "
Part A, definitions	Delete "Heating Fuel UST"
Part A, Definitions	Modify definition of "Non-Commercial" to remove reference to specific Regulated Substances
Part A, definitions	Tangible net worth ... <i>and all probable future economic</i> benefits
Part A, 4.1.1.	Change "protection" to " <i>Detection</i> "
Part A, 4.1.5.	Add tank registration fee req.for Consumptive Use HF UST systems
Part A, Section 4.1.5.	change "tank fee" to "Tank registration fee" to mirror statute
Part A, Section 4.1.7.	"change in product stored" to defined term "Change in Substance Stored". Added Retrofit and Upgrade to list of changes to the UST System that require notification to the Dept.
Part A, Section 4.4.11.	Added Upgrade and Retrofit records to documentation that must be given to a new Owner
Part A, Section 4.6.10.	Correction of title of the State of Delaware Fire Regulations
Part A, Section 4.6.12., Installation Notification Requirements	changed 'tank' to 'UST System" for clarification
Part A, Section 4.8.1.*	Add "Change in Substance Stored"
Part A, Section 4.8.2.*	Add "Change in Substance Stored"
Part A, 5.1.3.3.	Added requirement that repair records be kept for the life of the UST system to comply with federal requirements
Part A, Section 10	Added Operator Training requirements as required by the federal Energy Policy Act
Part A, Section 10.1.3. *	Add "the Department shall ensure that Department approved training is available beginning August 1, 2010 and shall ensure that Department approved training is available at a minimum of once every forty-five (45) days."
<b>PART B</b>	
Part B	All titles changed to "excluding <i>Consumptive Use Heating Fuel</i> "

All applicable sections	Spill protection and Overfill protection changed to Spill <i>prevention</i> and Overfill <i>prevention</i>
Part B, 1.1.9.*	Add "All product shear valves shall annually be manually opened and loosened to prevent gum deposit build-up and other conditions that may affect the operation of the valve.
Part B, §1.2.4. & §1.2.5.	For UST Systems installed after the revised 2008 Regulations are effective - Added minimum distance requirements from domestic, public and industrial wells to a new UST System to mirror the Delaware Regulations Governing the Construction and Use of Water Wells.
Part B, Section 1.2.3.3.	change "tank location" to "UST System location" for clarification
Part B, Section 1.4.3.3.	Containment sumps installed to meet secondary containment requirements must comply with the testing and maintenance requirements for containment sumps
Part B, Section 1.4.3.4.	Interstitial monitoring installed to meet secondary containment requirements must comply with the preventative maintenance requirements for interstitial monitoring in Section 1.9.4.4.
Part B, Section 1.9.1.3.	change "tank tightness test" to "UST System tightness test"
Part B, 1.9.1.1.4.	Added .... Release Detection on all UST Systems.... " <i>Is operational prior to Regulated Substance being placed in the UST System</i> "
Part B, 1.9.2.1.2	Add ...Automatic tank gauge performing tank tightness testing <i>at a minimum of once every 30 calendar days</i> "
Part B, 1.9.3.1.1.7. and 1.9.3.1.1.8.	Add: For UST systems <i>storing ethanol blended Regulated Substance with a storage capacity ....</i>
Part B, 1.9.3.1.1.9.2.	Change "Regulated Substance" to "calculated daily inventory" ....For any day in which there is a loss of five percent (5%) or more of the <i>calculated daily inventory</i>
Part B, Section 1.9.3.1.1.	Changed "once a week" to "once every 7 calendar days" for clarification
Part B, Section 1.9.3.1.1.9.1.	Inventory reconciliation: Changed "once during each calendar month" to "at the end of each calendar month"
Part B, Section 1.9.3.3.	Automatic systems utilized for performing inventory procedures must comply with preventative maintenance program requirements in Section 1.9.5.3.
Part B, Section 1.9.4.2.	Change "once during each calendar month" to "once every 30 calendar days" for Interstitial monitoring testing when used for tank release detection to meet federal requirements
Part B, Section 1.9.4.3.	Added - interstitial monitoring equipment must be capable of producing are record of Release detection monitoring results.
Part B, Section 1.9.5.1.3.	Change "once during each calendar month" to "once every 30 calendar days" for ATG when used for tank release detection to meet federal requirements
Part B, Section 1.9.5.1.4.	Added - Records of ATG tests must be kept for the life of the UST System
Part B, 1.9.5.3.1.	words added: " <i>Inspection of the ATG console for proper printer operation</i> "

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Part B, 1.17.1.	Add ...Suction Piping shall <i>operate at less than atmospheric pressure</i> and.."
Part B, Section 1.19.1.4.	Line Leak Detector Testing - Deleted "in accordance with manufacturer's test protocols" as not all manufacturer's have a test protocol. Added testing must be done in-line under normal operating conditions. Eliminates "bench testing" of LLD.
Part B, Section 1.19.2.3.	Added language to allow continuous interstitial monitoring of double wall piping in lieu of an annual piping tightness test. Inadvertently omitted in Jan 2008 draft.
Part B, 1.19.3. - 1.19.3.1.6.	Section deleted: "Line Leak Detector & Tightness Test Requirements for Double Wall Piping Systems"
Part B, Section 1.20.3.	Added requirements for D/W Suction Piping systems to utilize to comply with release detection requirements
Part B, 1.21.2.	Delete "one of"
Part B, 1.21.7.	Delete "calendar"
Part B, 1.21.8.	Added: Double wall spill containment with interstitial monitoring are exempt from annual testing if the sensors are tested annually.
Part B, 1.21.8.1. and 1.21.8.2.	Deleted
Part B, Section 1.21.8.	Added specific requirements for interstitial monitoring of double wall spill containment for clarification
Part B, 1.22.3.4.	Deleted "(s)"
Part B, 1.22.2.3.	Deleted "in a container"
Part B, 1.24.2.7.	Section divided into 2 sentences for clarification. No requirements changed.
Part B, Sections 1.24.2.8.	Added requirements: Before a repair can be made to a Sacrificial Anode CP system, results of the 2 most recent CP tests and release detection records must be submitted to the Dept.
Part B, 1.24.2.8.	Add " <i>Repair or replacement</i> "
Part B, Section 1.24.2.9.	Added: No internal assessment will be accepted for the purpose of determining the integrity of an UST System if the tank has an internal lining.
Part B, 1.24.2.10.	Added " <i>Impressed Current Cathodic Protection systems shall not be utilized as a Repair, Upgrade or Replacement for a failed Sacrificial Anode Cathodic Protection system after January 1, 2008.</i> "
Part B, 1.25.2.	Added: Double wall containment sumps with interstitial monitoring are exempt from annual testing if the sensors are tested annually.
Part B, Section 1.25.6	Added: "Owners and Operators shall immediately remove water, Regulated Substance or debris that accumulates in any Containment Sump"
Part B, 1.25.6. and 1.29.7.4.	change "immediately" to " <i>immediately upon discovery</i> "
Part B, 1.27.1.	Added " <i>sensors utilized for Release Detection</i> "
Part B, 1.27.2.	Owners and Operators shall perform a <i>functionality</i> test of all <i>sump and interstitial sensors</i> at a minimum of once every twelve (12) months in accordance with the manufacturer's specifications or as directed by the Department to verify proper sensor operation.

Part B, Section 1.27.3.	All sensors installed in a sump for the purpose of detecting a Release from the UST System shall be installed no more than 1" from the bottom of the sump.
Part B, Section 1.28.	Changed section to include Retrofit and Upgrade requirements in addition to Repair Requirements; added site assessment req. and record documentation
Part B, Section 1.28.2.	Cross referenced requirement to report abnormal operating conditions with Part E, Section 1.2.
Part B, 1.29.2.1.2	ATG performing tank tightness test " <i>at a minimum of once every 30 calendar days</i> "
Part B, Section 1.29.3.3	Added option to use modified inventory control procedures to comply with inventory control req. for Used Oil USTs.
Part B, 1.29.4.3.2.	Add requirement the stick readings for manual tank gauging must be <i>an average of 2 consecutive stick readings</i>
Part B, 1.29.4.3.3.	Added " the change in Tank volume shall be calculated <i>from the difference in the average beginning and average ending liquid level measurements and...</i> "
Part B, 1.29.4.3.4.	change "monthly tank volume" to " <i>4 most recent change in tank volume numbers calculated in 1.29.4.3.3. of this Part shall be averaged and this test average...</i> "
Part B, 1.29.4.3.5.	change "tank volume" to " <i>tank volume test average</i> "
Part B, Section 1.29.5.	Added requirements for modified inventory control for Used Oil USTs.
Part B, 1.29.5.1.2.	Deleted requirement for water removal within 7 days; Added requirement that DNREC be notified if water changes more than 2 inches
Part B, 1.29.6.1.4.	Added " <i>the amount of used oil removed from the UST shall be recorded</i> "
Part B, 1.29.7.7.	Added requirements for exemption from testing for double wall spill prevention devices with interstitial monitoring on Used Oil USTs
Part B, Section 1.30.4.	Added requirement for piping on emergency generator UST Systems that
Part B, 1.30.4.	Added requirement that emergency generators cannot utilize a piping tightness test to comply with piping release detection; must use interstitial monitoring
Part B, Section 1.31	Routine Inspection: Changed 'once every calendar month' to "an interval no less frequently than once every 28-31 calendar days" to accommodate months with days ranging from 28-31 days
Part B, 1.31.1.5.*	Added: manual check of emergency shut off valves to routine inspection requirements DELETED
Part B, Section 1.32.3.3.	Deleted requirement that lined USTs be inspected as lining cannot be used to meet corrosion protection requirements.
Part B, Section 2.1.5.*	Add "All product shear valves shall annually be manually opened and loosened to prevent gum deposit build-up and other conditions that may affect the operation of the valve."
Part B, Section 2.2.3.	change "Tank Facility" to "UST System Facility"
Part B, Section 2.4.2.3.	Change "once during each calendar month" to "once every 30 calendar days" for clarification



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Part B, 2.4.4.	Deleted
Part B, 2.9.1.1.4.	Added .... Release Detection on all UST Systems.... <i>"Is operational prior to Regulated Substance being placed in the UST System"</i>
Part B, 2.9.2.1.2	Add ...Automatic tank gauge performing tank tightness testing at a <i>minimum of once every 30 calendar days</i> "
Part B, Section 2.9.3.1.1.	Changed "once a week" to "once every 7 calendar days" for clarification
Part B, Section 2.9.3.1.1.9.1.	Inventory reconciliation: Changed "once during each calendar month" to "at the end of each calendar month"
Part B, 2.9.3.1.1.9.2.	Change "Regulated Substance" to "calculated daily inventory" ....For any day in which there is a loss of five percent (5%) or more of the <i>calculated daily inventory</i>
Part B, Section 2.9.3.1.1.9.4.	Added requirement that automatic systems utilized for performing inventory must comply with preventative maintenance requirements
Part B, 2.9.5.1.5.1.	words added: "Inspection of the ATG console for <i>proper printer operation</i> "
Part B, Section 2.9.5.1.3.	Change "once during each calendar month" to "once every 30 calendar days" for ATG when used for tank release detection to meet federal requirements
Part B, 2.9.6.5.3. and 2.9.8.5.3.	Change "Free Product" to "LNAPL"
Part B, 2.9.6.6.3.2. and 2.9.8.6.3.2. and 2.9.10.4.3.2.	Add ... <i>"and the results reported to the owner or operator within 21 days"</i>
Part B, 2.9.8.6.2. & 2.9.8.6.3.	Changed "tested" to "testing" and "sampled" to "sampling"
Part B, 2.9.9.9.3.	Change "31" to "30" days
Part B, Section 2.9.9.9.2. And 2.9.9.9.5.	change "Tank system" to "UST System"
Part B, Section 2.9.10.4.3.	Change "once during each calendar month" to "once every 30 calendar days" for clarification
Part B, Section 2.16.1.3.	Changed time frame for repair of cathodic protection systems on metallic piping from 30 to 60 days to be consistent with time frames for repair of cathodic protection on Tanks.
Part B, Section 2.16.1.5.	Clarification language added to define what "restore cathodic protection" requires
Part B, 2.18.1.	Added suction piping shall " <i>operate at less than atmospheric pressure</i> "
Part B, Section 2.20.1.4.	Line Leak Detector Testing - Deleted "in accordance with manufacturer's test protocols" as not all manufacturer's have a test protocol. Added testing must be done in-line under normal operating conditions. Eliminates "bench testing" of LLD.
Part B, Section 2.20.2.3.2.	Changed "automatic tank gauge" to "interstitial monitoring equipment" for clarification
Part B, Section 2.20.2.3.5.	Cross referenced with Section 2.26 for clarification
Part B, Section 2.21.3.	Added requirements for D/W Suction Piping systems to utilize to comply with release detection requirements
Part B, Section 2.22.7.	Added specific requirements for interstitial monitoring of double wall spill containment for clarification

Part B, 2.22.2.	Delete "one of"
Part B, 2.22.7.	Added: Double wall spill containment with interstitial monitoring are exempt from annual testing if the sensors are tested annually.
Part B, 2.22.7.1. and 2.22.7.2.	Deleted
Part B, 2.23.3.4.	Deleted "(s)"
Part B, 2.25.2.7.	Section divided into 2 sentences for clarification. No requirements changed.
Part B, Section 2.25.2.8.	Added requirements: Before a repair can be made to a Sacrificial Anode CP system, results of the 2 most recent CP tests and release detection records must be submitted to the Dept.
Part B, 2.25.2.8.	Add " <i>Repair or replacement</i> "
Part B, 2.25.2.12.	Added "Impressed Current Cathodic Protection systems shall not be utilized as a Repair, Upgrade or Replacement <i>for a failed Sacrificial Anode Cathodic Protection system</i> after January 1, 2008.
Part B, 2.25.3.7.	Section divided into 2 sentences for clarification. No requirements changed.
Part B, 2.25.3.8.	Add " <i>Repair or replacement</i> "
Part B, Section 2.25.2.9. and 2.25.3.9.	Added: No internal assessment will be accepted for the purpose of determining the integrity of an UST System if the tank has an internal lining.
Part B, Section 2.25.3.8.	Added requirement: Before a repair can be made to an impressed current CP system, results of the 2 most recent CP tests, rectifier reading records and release detection records must be submitted to the Dept.
Part B, Section 2.26.1.	Added containment sump testing for sumps with sensors used for compliance with Release Detection requirements for double wall suction piping - necessary after section 2.21.3. was added
Part B, Section 2.26.3.	Added: "Owners and Operators shall immediately remove water, Regulated Substance or debris that accumulates in any Containment Sump"
Part B, 2.26.3. and 2.30.7.4.	change "immediately" to " <i>immediately upon discovery</i> "
Part B, Section 2.28.1.	Added annual testing of sensors used for continuous IM monitoring of DW spill buckets when used instead of annual testing of spill containment
Part B, 2.28.1.	Owners and Operators shall perform a <i>functionality</i> test of all sump and interstitial sensors
Part B, Section 2.28.2.	Added: All sensors installed in a sump for the purpose of detecting a Release from the UST System shall be installed no more than 1" from the bottom of the sump
Part B, Section 2.29.	Changed section to include Retrofit and Upgrade requirements in addition to Repair Requirements. Includes req. for soil sampling and documentation submittal to DNREC.
Part B, Section 2.29.2.	Cross referenced requirement to report abnormal operating conditions with Part E, Section 1.2.
Part B 2.29.4.	Add " <i>Retrofits or Upgrades</i> "

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Part B, Section 2.30.2.1.	Deleted "as prescribed in section 2.9. of this Part" as not all Used Oil Release detection methods are listed in section 2.9.
Part B, 2.30.2.1.3.	Delete tank tightness testing as a method of Release Detection for Used Oil USTs
Part B, Section 2.30.3.3.	Added option to use modified inventory control procedures to comply with inventory control req. for Used Oil USTs.
Part B, Section 2.30.4.	Changed heading to "Manual Tank Gauging Requirements for Used Oil USTs"
Part B, 2.30.4.3.2.	Add requirement that an <i>average of 2 stick readings</i> must be taken for MTG
Part B, 2.30.4.3.3.	Added " the change in Tank volume shall be calculated <i>from the difference in the average beginning and average ending liquid level measurements</i> and..."
Part B, 2.30.4.3.4.	change "monthly tank volume" to " <i>4 most recent change in tank volume numbers calculated in 1.29.4.3.3. of this Part shall be averaged and this test average...</i> "
Part B, 2.30.4.3.5.	change "tank volume" to " <i>tank volume test average</i> "
Part B, Section 2.30.5.	Added requirements for modified inventory control for Used Oil USTs.
Part B, 2.30.5.1.2.	Deleted requirement for water removal within 7 days; Added requirement that DNREC be notified if water changes more than 2 inches
Part B, Section 2.30.6.1.	Correct section reference that is incorrect; Section 1.22. changed to Section 2.23.
Part B, Section 2.30.6.1.3.	Deleted requirement that amount added to Used Oil be measured and recorded; added "2.30.6.1.3. The amount of Used Oil added shall be such that the UST is not more than ninety percent (90%) full"
Part B, Section 2.30.6.1.3.	Added requirement for overfill prevention on Used Oil USTs that amount of Used Oil added cannot be more that 90% of ullage in tank
Part B, 2.30.7.4.	change "immediately" to " <i>immediately upon discovery</i> "
Part B, 2.30.7.7.	Added requirements for exemption from testing for double wall spill prevention devices with interstitial monitoring on Used Oil USTs
Part B, Section 2.31.1.	Added language that emergency generator USTs must comply with all requirements of the Regulations except where modifications are specifically listed in section 2.32.
Part B, Section 2.31.3.	Added option to use tank tightness testing OR any other approved method in section 2.9.
Part B, Section 2.32.1.	Routine Inspection: Changed 'once every calendar month' to "an interval no less frequently than once every 28-31 calendar days" to accommodate months with days ranging from 28-31 days and listed minimal parts of the UST System that must be checked
Part B, 2.32.1.5.*	Added: manual check of emergency shut off valves to routine inspection requirements DELETED
Part B, Section 2.33.3.4.	If an internally lined tank is not inspected on the required schedule and subsequently fails an internal inspection test the tank must be removed or closed in place.
Part B, Section 2.34.2.3.	Added "Internal Lining only" to allowable upgrades for existing tanks. Inadvertently omitted in original

Part B, Section 3.2.4.	Routine inspections are required on an Out Of Service UST System if the system is not empty.
Part B, Section 3.3.1.	Modified requirements for USTs changing from out of service to in service, to require testing of the system only if the UST System has been out of service for 3 months or more
Part B, Section 3.3.1.1.	Added Section 1 to requirements to correct omission from Jan 2008 regulations
Part B, Section 3.3.1.2.	Deleted reference to Section 2.9.7. because this is only tank tightness testing and the requirement is for the entire UST System to be tightness tested as applicable.
Part B, Section 5.5.1.	5.5._____ "Owners and Operators shall comply with the requirements of Part F of these Regulations <i>until the UST System is permanently Removed or Closed In Place in accordance with these Regulations or does not store a Regulated Substance</i> and all requirements of Part E of these Regulations are completed." Italicized wording adding for clarification
<b>PART C</b>	
Part C	All titles changed to " <i>Consumptive Use Heating Fuel UST Systems</i> "
All applicable sections	Spill protection and Overfill protection changed to Spill <i>prevention</i> and Overfill <i>prevention</i>
Part C, Section 1.2.3.3.	change "tank location" to "UST System location" for clarification
Part C, Section 1.2.3.15.	Added Map of UST installation must include Domestic and Industrial Wells within 150 foot radius of the proposed UST location
Part C, Section 1.2.4. and 1.2.5.	For UST Systems installed after the revised 2008 Regulations are effective - Added minimum distance requirements from domestic, public and industrial wells to a new UST System to mirror the Delaware Regulations Governing the Construction and Use of Water Wells.
Part C, Section 1.4.3.3.	Containment sumps installed to meet secondary containment requirements must comply with the testing and maintenance requirements for containment sumps
Part C, Section 1.4.3.4.	Interstitial monitoring installed to meet secondary containment requirements must comply with the preventative maintenance program for interstitial monitoring in Section 1.9.4.3.
Part C, 1.9.1.1.4.	Added .... Release Detection on all UST Systems.... "Is operational prior to Regulated Substance being placed in the UST System"
Part C, 1.9.2.1.2	Add ...Automatic tank gauge performing tank tightness testing <i>at a minimum of once every 30 calendar days</i> "
Part C, 1.9.3.3.	Added: " interstitial monitoring equipment shall be capable of producing a record of release detection monitoring results.
Part C, Section 1.9.3.1.1.6.4.	Added requirement that automatic systems utilized for performing inventory must comply with preventative maintenance requirements
Part C, Section 1.9.4.1.3.	Change "once during each calendar month" to "once every 30 calendar days" for ATG when used for tank release detection
Part C, 1.9.4.3.1.	words added: "Inspection of the ATG console for <i>proper printer operation</i> "

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Part C, 1.17.1	Added suction piping shall "operate at less than atmospheric pressure"
Part C Section 1.19.1.4.	Deleted "in accordance with manufacturer's test protocols" as not all manufacturer's have a test protocol. Added testing must be done in-line under normal operating conditions. Eliminates "bench testing" of LLD.
Part C, Section 1.19.2.3.	Added language to allow continuous interstitial monitoring of double wall piping in lieu of an annual piping tightness test. Inadvertently omitted in Jan 2008 draft.
Part C, 1.19.3. - 1.19.3.1.6.	Section deleted: "Line Leak Detector & Tightness Test Requirements for Double Wall Piping Systems"
Part C, Section 1.20.3.	Added requirements for Double wall Suction Piping systems to utilize to comply with release detection requirements
Part C, 1.21.2.	Delete "one of"
Part C, Section 1.21.8.	Added specific requirements for interstitial monitoring of double wall spill containment for clarification
Part C, 1.21.8.	Added: Double wall spill containment with interstitial monitoring are exempt from annual testing if the sensors are tested annually.
Part C, 1.21.8.1. and 1.21.8.2.	Deleted
Part C, 1.22.3.4.	Deleted "be" and changed "Lines" to "Piping"
Part C, 1.24.2.7.	Section divided into 2 sentences for clarification. No requirements changed.
Part C, Sections 1.24.2.8.	Before a repair can be made to a Sacrificial Anode CP system, results of the 2 most recent CP tests and release detection records must be submitted to the Dept.
Part C, 1.24.2.8.	Add " <i>Repair or replacement</i> "
Part C, Section 1.24.2.9.	Added: No internal assessment will be accepted for the purpose of determining the integrity of an UST System if the tank has an internal lining.
Part C, 1.24.2.10.	Added "Impressed Current Cathodic Protection systems shall not be utilized as a Repair, Upgrade or Replacement <i>for a failed Sacrificial Anode Cathodic Protection system</i> after January 1, 2008.
Part C, 1.25.2.	Added: Double wall containment sumps with interstitial monitoring are exempt from annual testing if the sensors are tested annually.
Part C, Section 1.25.6.	Added: "Owners and Operators shall immediately remove water, Regulated Substance or debris that accumulates in any Containment Sump."
Part C, 1.25.6.	change "immediately" to " <i>immediately upon discovery</i> "
Part C, 1.26.1.	Added " <i>sensors utilized for Release Detection</i> "
Part C, 1.26.2.	Owners and Operators shall perform a <i>functionality</i> test of all <i>sump and interstitial sensors</i> at a minimum of once every twelve (12) months in accordance with the manufacturer's specifications or as directed by the Department to verify proper sensor operation.
Part C, Section 1.26.3.	All sensors installed in a sump for the purpose of detecting a Release from the UST System shall be installed no more than 1" from the bottom of the sump.

Part C, Section 1.27.	Changed section to include Retrofit and Upgrade requirements in addition to Repair Requirements; added requirements for soil sampling and documentation submittal to DNREC.
Part C, Section 1.27.2	Cross referenced requirement to report abnormal operating conditions with Part E, Section 1.2.
Part C, 1.27.4	Add "Retrofits or Upgrades"
Part C, Section 1.27.3.	Added annual testing of sensors used for continuous IM monitoring of DW spill buckets when used instead of annual testing of spill containment
Part C, Section 1.28.1	Routine Inspection: Changed 'once every calendar month' to "an interval no less frequently than once every 28-31 calendar days" to accommodate months with days ranging from 28-31 days
Part C, Section 1.29.3.3.	Deleted requirement that lined USTs be inspected as lining cannot be used to meet corrosion protection requirements.
Part C, Section 2.2.3.	change "Tank Facility" to "UST Facility"
Part C, 2.4.4.	Deleted
Part C, 2.5.2.	Corrected section references
Part C, 2.9.1.1.4.	Added .... Release Detection on all UST Systems.... "Is operational prior to Regulated Substance being placed in the UST System"
Part C, 2.9.2.1.2	Add ...Automatic tank gauge performing tank tightness testing <i>at a minimum of once every 30 calendar days</i> "
Part C, 2.9.4.1.4.1.	words added: "Inspection of the ATG console for <i>proper printer operation</i> "
Part C, Section 2.9.5.6.2.	changed "each calendar month" to "every thirty days"
Part C, 2.9.5.6.3.2.	Add ..." <i>and the results reported to the owner or operator within 21 days</i> "
Part C, Section 2.9.5.7.	Correct incorrect Section reference from 2.9.6.6. to 2.9.5.6.
Part C, 2.9.7.5.3.	Change "Free Product" to "LNAPL"
Part C, 2.9.7.6.2. & 2.9.7.6.3.	Changed "tested" to "testing" and "sampled" to "sampling"
Part C, 2.9.7.6.3.2.	Add ..." <i>and the results reported to the owner or operator within 21 days</i> "
Part C, Section 2.16.1.3.	Changed time frame for repair of cathodic protection systems on metallic piping from 30 to 60 days to be consistent with time frames for repair of cathodic protection on Tanks.
Part C, Section 2.16.1.5.	Clarification language added to define what 'restore cathodic protection' requires
Part C, 2.18.1.	Added suction piping shall "operate at less than atmospheric pressure"
Part C, Section 2.20.1.4.	Deleted "in accordance with manufacturer's test protocols" as not all manufacturer's have a test protocol. Added testing must be done in-line under normal operating conditions. Eliminates "bench testing" of LLD.
Part C, Section 2.20.2.3.5.	Cross referenced with Section 2.26. for clarification
Part C, Section 2.21.3.	Added requirements for Double wall Suction Piping systems to utilize to comply with release detection requirements

## FINAL REGULATIONS

Part C, 2.22.2.	Delete "one of"
Part C, Section 2.22.7.	Added specific requirements for interstitial monitoring of double wall spill containment for clarification
Part C, 2.22.7.	Added: Double wall spill containment with interstitial monitoring are exempt from annual testing if the sensors are tested annually.
Part C, 2.22.7.1. and 2.22.7.2.	Deleted
Part C, 2.23.3.5.	Changed "storage" to "UST" and changed "Lines" to "Piping"
Part C, 2.25.2.7.	Section divided into 2 sentences for clarification. No requirements changed.
Part C, Section 2.25.2.8.	Before a repair can be made to a Sacrificial Anode CP system, results of the 2 most recent CP tests and release detection records must be submitted to the Dept.
Part C, 2.25.2.8.	Add " <i>Repair or replacement</i> "
Part C, Section 2.25.2.9. and 2.25.3.9.	Added: No internal assessment will be accepted for the purpose of determining the integrity of an UST System if the tank has an internal lining.
Part C, Section 2.25.3.8.	Before a repair can be made to an impressed current CP system, results of the 2 most recent CP tests, rectifier reading records and release detection records must be submitted to the Dept.
Part C, 2.25.2.10.	Move last sentence of 2.25.2.7. to create 2.25.2.10.
Part C 2.25.2.12.	Added "Impressed Current Cathodic Protection systems shall not be utilized as a Repair, Upgrade or Replacement <i>for a failed Sacrificial Anode Cathodic Protection system</i> after January 1, 2008.
Part C, 2.25.3.7.	Section divided into 2 sentences for clarification. No requirements changed.
Part C, 2.25.3.8.	Add " <i>Repair or replacement</i> "
Part C, 2.25.3.8.3.	Add "2.25.3.8.3. Records of required rectifier readings from the date of the most recent passed impressed current Cathodic Protection test"
Part C, 2.26.2.	Added requirements for exemption from testing for double wall containment sumps with interstitial monitoring
Part C, 2.26.3.	change "immediately" to " <i>immediately upon discovery</i> "
Part C, Section 2.26.3.	Added: "Owners and Operators shall immediately remove water, Regulated Substance or debris that accumulates in any Containment Sump."
Part C, Section 2.27.1.	Added annual testing of sensors used for continuous IM monitoring of DW spill buckets when used instead of annual testing of spill containment
Part C, 2.27.1.	Owners and Operators shall perform a <i>functionality</i> test of all sump and interstitial sensors
Part C, Section 2.27.2.	All sensors installed in a sump for the purpose of detecting a Release from the UST System shall be installed at the lowest point in the sump

Part C, Section 2.28.	Changed section to include Retrofit and Upgrade requirements in addition to Repair Requirements; added site assessment req. and record documentation
Part C, Section 2.28.2.	Cross referenced requirement to report abnormal operating conditions with Part E, Section 1.2.
Part C, 2.28.4	Add "Retrofits or Upgrades"
Part C, Section 2.29.	Routine Inspection: Changed 'once every calendar month' to "an interval no less frequently than once every 28-31 calendar days" to accommodate months with days ranging from 28-31 days
Part C, Section 2.31.3.4.	If an internally lined HF tank is not inspected on the required schedule and subsequently fails an internal inspection test the tank must be removed or closed in place.
Part C, Section 2.32.	Reworded for clarity and added "internal lining only" to allowable upgrades for existing tanks. Inadvertently omitted in original.
Part C, Section 3.2.3.	Section 3.2.3. is created by splitting 3.2.2. into 2 sections. The verbiage is the same. ____
Part C, Section 3.2.4.	Routine inspections are required on an Out Of Service UST System if the system is not empty.
Part C Section 3.3.1.	Modified requirements for USTs changing from out of service to in service, to require testing of the system only if the UST System has been out of service for 3 months or more
Part C Section 3.3.1.1.	Added Section 1 to requirements to correct omission from Jan 2008 regulations
Part C, Section 3.3.1.2.	Deleted reference to Section 2.9.7. because this is only tank tightness testing and the requirement is for the entire UST System to be tightness tested as applicable.
<b>PART D</b>	
All applicable sections	Spill protection and Overfill protection changed to Spill <i>prevention</i> and Overfill <i>prevention</i>
Part D, 1.1.1.	Add "manufacturing defects"
Part D, Section 1.2.3.3.	change "Tank Facility" to "UST System Facility"
Part D, Sections 1.2.4. and 1.2.5.	For UST Systems installed after the revised 2008 Regulations are effective - Added minimum distance requirements from domestic, public and industrial wells to a new UST System to mirror the Delaware Regulations Governing the Construction and Use of Water Wells.
Part D, Section 1.4.3.3.	Containment sumps installed to meet secondary containment requirements must comply with the testing and maintenance requirements for containment sumps
Part D, Section 1.4.3.4.	Interstitial monitoring installed to meet secondary containment requirements must comply with the preventative maintenance program for interstitial monitoring in Section 1.9.4.3.
Part D, 1.9.1.1.4.	Added .... Release Detection on all UST Systems.... "Is operational prior to Regulated Substance being placed in the UST System"



## FINAL REGULATIONS

Part D, Section 1.9.2.1.2.	Deleted ATG performing a tank tightness test as an option for Release Detection to comply with federal requirements which require interstitial monitoring
Part D, Section 1.9.3.1.1.	Changed "once a week" to "once every 7 calendar days" for clarification
Part D, Section 1.9.3.1.1.3.	Changed drop tube from 6 inches to 5.9 inches from tank bottom to be consistent with Part B and C
Part D, Section 1.9.3.1.1.6.1.	Inventory reconciliation: Changed "once during each calendar month" to "at the end of each calendar month"
Part D, 1.9.3.1.1.7.	Change "Regulated Substance" to "calculated daily inventory" ....For any day in which there is a loss of five percent (5%) or more of the <i>calculated daily inventory</i>
Part D, 1.9.4.4.1.	Add ..."proper printer operation"
Part D, Section 1.9.5.1.	Deleted ATG performing a tank tightness test as an option for Release Detection to comply with federal requirements which require interstitial monitoring
Part D, Section 1.9.5.1.2.	Change "once during each calendar month" to "once every 30 calendar days" for ATG when used for tank release detection to meet federal requirements
Part D, 1.17.1	Added suction piping shall "operate at less than atmospheric pressure"
Part D, Section 1.19.1.4.	Deleted "in accordance with manufacturer's test protocols" as not all manufacturer's have a test protocol. Added testing must be done in-line under normal operating conditions. Eliminates "bench testing" of LLD.
Part D, Section 1.19.2.	Deleted option for annual piping tightness test for Hazardous Substance piping to comply with Federal requirements that require interstitial monitoring
Part D, Section 1.19.2.1.	Added requirements for continuous interstitial monitoring of pressurized Piping systems to comply with federal release detection requirements.
Part D, Section 1.19.3.1.3.	Change "once during each calendar month" to "once every 30 calendar days"
Part D, 1.19.3. - 1.19.3.1.6.	Section deleted: "Line Leak Detector & Tightness Test Requirements for Double Wall Piping Systems"
Part D, Section 1.20.3.	Added requirements for D/W Suction Piping systems to utilize to comply with release detection requirements
Part D, 1.21.2.	Delete "one of"
Part D, 1.21.5.and 1.25.7.	change "immediately" to "immediately upon discovery"
Part D, Section 1.21.8.	Added specific requirements for interstitial monitoring of double wall spill containment for clarification
Part D, 1.21.8.	Added: Double wall spill containment with interstitial monitoring are exempt from annual testing if the sensors are tested annually.
Part D, 1.21.8.1. and 1.21.8.2.	Deleted
Part D,1.22.3.4.	Deleted "(s)"

Part D, 1.24.2.7.	Section divided into 2 sentences for clarification. No requirements changed.
Part D, 1.24.2.8.	Add "Repair or replacement"
Part D, Section 1.24.2.8.	Added: Before a repair can be made to an impressed current CP system, results of the 2 most recent CP tests, rectifier reading records and release detection records must be submitted to the Dept.
Part D, 1.24.2.10.	Added "Impressed Current Cathodic Protection systems shall not be utilized as a Repair, Upgrade or Replacement for a failed Sacrificial Anode Cathodic Protection system after January 1, 2008.
Part D, 1.25.2.	Added: Double wall containment sumps with interstitial monitoring are exempt from annual testing if the sensors are tested annually.
Part D, Section 1.25.7.	Added: "Owners and Operators shall immediately remove water, Regulated Substance or debris that accumulates in any Containment Sump."
Part D, 1.27.1	Added "sensors utilized for Release Detection"
Part D, 1.27.2. & 1.27.3.	Owners and Operators shall perform a <i>functionality</i> test of all <i>sump and interstitial sensors</i> at a minimum of once every twelve (12) months in accordance with the manufacturer's specifications or as directed by the Department to verify proper sensor operation.
Part D, Section 1.27.4.	All sensors installed in a sump for the purpose of detecting a Release from the UST System shall be installed at the lowest point in the sump
Part D, Section 1.28.	Changed section to include Retrofit and Upgrade requirements in addition to Repair Requirements including addition of site assessment req and documentation submittal
Part D, Section 1.28.2.	Cross referenced requirement to report abnormal operating conditions with Part E, Section 1.2.
Part D, 1.28.4.	Add "Retrofits or Upgrades"
Part D, Section 1.29.	Routine Inspection: Changed 'once every calendar month' to "an interval no less frequently than once every 28-31 calendar days" to accommodate months with days ranging from 28-31 days
Part D, Section 1.29.1.2.	Added "intrusion of water" to routine inspection requirements
Part D, Section 1.30.3.4.	If an internally lined Hazardous Substance tank is not inspected on the required schedule and subsequently fails an internal inspection test the tank must be removed or closed in place.
Part D, Section 2.2.3.	Section 2.2.3. is created by splitting 2.2.2. into 2 sections. The verbiage is the same. ____
Part D, Section 2.2.4.	Routine inspections are required on an Out Of Service UST System if the system is not empty.
Part D Section 2.3.1.	Modified requirements for USTs changing from out of service to in service, to require testing of the system only if the UST System has been out of service for 3 months or more
Part D, Section 2.3.1.2.	Deleted reference to Section 2.9.7. because this is only tank tightness testing and the requirement is for the entire UST System to be tightness tested as applicable.
Part D, 3.3.3.	Change "Free Product" to "LNAPL"

## FINAL REGULATIONS

Part D, 4.3.2.	Change "Free Product" to "LNAPL"
Part D, Section 4.5.	4.5._____ "Owners and Operators shall comply with the requirements of Part F of these Regulations <i>until the UST System is permanently Removed or Closed In Place in accordance with these Regulations or does not store a Regulated Substance</i> and all requirements of Part E of these Regulations are completed." Italicized wording adding for clarification
<b>PART E</b>	
Part E, Section 1.1.1.2.	Changed to require notification of the DNREC hotline of an indicated release only when required to do by Chapter 60 statute and regulations
Part E, Section 1.1.1.1. and 1.3.2.1.	Deleted in-state hot line number. 800 number is now nationwide.
Part E, Section 1.1.1.3.	If the phone numbers listed in these Regulations are not valid it is the responsibility of the <i>Person discovering the Release (changed from Responsible Party)</i> to take all reasonable steps to ascertain a valid phone number.
Part E, Section 1.1.3.1.	Added Repair and Upgrade to situations where a site assessment is required.
Part E. 1.1.3.10.	Added "1.1.3.10. Release Detection required under these Regulations indicates a Release may have occurred"
Part E, Section 1.3.2.1., Section 1.4. and Section 1.5.	Corrected phone number for release reporting
Part E, 1.3.2.	"Any Person, including but not limited to environmental consultants or contractors, utility companies, financial institutions or real estate transfer companies, that discovers any Release of Regulated Substance, shall report the discovery within 24 hours to:"
Part E, 1.3.3.	<i>Any Person</i> who discovers a Release of any quantity of a petroleum substance that produces a visible sheen on surface waters shall immediately notify the National Response Center (800-424-8802).
Part E, 1.5.2.	<i>Owners and Operators shall report....</i>
Part E, Section 1.6. Public Notice Requirements for Confirmed Releases	Requires DNREC to inform the public of any confirmed release that requires cleanup; posting on the internet is an appropriate mechanism
Part E, 1.6.2.	Added "1.6.2. <i>The DNREC shall ensure that relevant site release information relating to Remedial Action Plans is available to the public upon request.</i> "
Part E, Section 2.1.1. and 2.2.1.	Changed "Owner and Operator" to "Responsible Party"
Part E, Section 2.2.1.2.1.	Added additional relevant sections; Part C 1.13. and Part D, 1.13.
Part E, 2.2.1.3.	If the abnormal operating condition is the result of an equipment failure or malfunction, Owners and Operators shall Repair or replace all faulty equipment in accordance with <i>all applicable portions</i> of these Regulations.
Part E, Section 2.2.2.	Deleted section in Part E; included in Parts B, C and D in Repair, Retrofit and Upgrade requirements sections
Part E, 2.3.2.	Added " <i>Owners and Operators shall notify the Department....</i> "

Part E, Section 3.1.1.	Added situation where there is an Indicated Release to situations where the Dept can assume control.
Part E, Section 3.2.1.6.	Deleted "Owners and Operators" - redundant as they are included in Responsible Parties
Part E, Section 3.3.4.2.	Added "safety"; typo
Part E, Section 3.3.5.	Added req. that LCSM when updated must be submitted to the Dept.
Part E, Section 4.2.2.	Added path to go directly to a request for a NFA if the results of the investigation do not require remedial action.
Part E, Section 4.2.3.	Investigation reports must be organized in a report form in accordance with Department guidance
Part E, Section 4.4. and 5.4.	Site safety plans must be submitted only if the Department requests.
Part E, Sections 5 & 6	"Site Closure" changed to "No Further Action" throughout the Section
Part E, Section 6.1.3.	Request for NFA must be signed by a PG or PE when required by the Department.
<b>PART F</b>	
Part F, entire section	Added throughout Part F .... Identical to the wording specified in Part F, §.." of the Delaware Regulations Governing Underground Storage Tank Systems"
Part F, entire section	Change "Secretary" to "Department"
Part F, Section 1.11.	Added requirement that Owners/Operators send documentation of current FR mechanism to the Dept within 30 days of confirmation of a Release, as req. by Federal regulations
Part F, Section 1.12.	Any UST System that does not have current FR must immediately empty the UST.
Part F	All Appendices changed to Forms and each Form given a section number to conform with the Del Registrar Style Manual
Part F	"Owner and Operator" changed to "Owner or Operator" - only one must show proof of compliance - are jointly and severally liable
Part F, 2.2.2.3.1.	Deleted "Board of Governors of the Federal Reserve System, the Comptroller of the Currency or the Federal Deposit Insurance Corporation"
Part F, 2.3.6.	Changed citation from 2.16 to 2.15
Part F, 2.4.3.	Added A.M. Best to the list of insurance ratings allowable.
Part F, 2.5.4.	change 2.16. to 2.15.
Part F, 2.6.1.	Add " <i>in the State of Delaware</i> "
Part F, 2.6.3.	change 2.16. to 2.15.
Part F, 2.10.1.	Change "Business" to " <i>Governmental</i> "
Part F, 2.14.2.2.	Add after Owner and Operator: " <i>as required under the terms of the guarantee</i> "
Part F, 2.14.2.3. & 2.14.2.4.	Add language from 40 CFR 280.114
Part F, Form A, Alternative I and II	Added specific types of liability " <u>Amount of <i>corrective action, closure and post-closure care costs, plugging and abandonment costs and other liability coverage covered by a financial test, and/or guarantee</i></u> "
Part F, Form B	Add 2.2.1. to Recital 1 and 4 - "Guarantor meets or exceeds the financial test criteria of Part F, §2.2.1 and either §§2.2.2. or §2.2.3.

# FINAL REGULATIONS

Part F, Form B	Change "business entity organized under the laws of the State of <i>Delaware</i> " to "State of _____".
Part F, Form B	Recital 3 - Add " <i>owner or operator</i> " to blank bracket
Part F, Form B	Recital 7 - change "shall" to " <i>must</i> "
Part F, Form G	Delete Section 2
Part F, Form M	(6) change "shall" to " <i>must</i> "
Part F, Form N	#3 change "Business" to " <i>Governmental</i> "
Part F, Form N	#3 change 2.12. to 2.15.
Part F, Form N	#7 change "shall" to " <i>must</i> "
Part F, Form O	(6) change "shall" to " <i>must</i> "
Part F, Form P	#7 change "shall" to " <i>must</i> "
Part F, Form Q	Change §24 to §2.11.1.3.
<b>PART G</b>	
Part G, Section 1.4.1.7.	Clarified reporting requirements
<b>PART H</b>	
No changes	
NOTE: * Denotes changes after Public Hearing Jan 2010	

## DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

100 Delaware Gaming Control Board

Statutory Authority: 28 Delaware Code, Section 1122 (28 **Del.C.** §1122)

10 **DE Admin. Code** 103 and 104

### FINAL ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on May 6, 2010, at a scheduled meeting of the Delaware Gaming Control Board, to receive comments and to review written comments, if any, regarding proposed amendments to the Board's Rules.

The proposed amendments would prohibit the employment by a third party vendor of an organization's member in charge, or his or her designee, or the member responsible for gross receipts. They would also require that only members of the charitable organization may receive funds at a Texas Hold 'Em Tournament.

The proposed amendments were published in the *Register of Regulations*, Vol. 13, Issue 10, on April 1, 2010.

### SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

No written comments were received. Members of the public appeared at the hearing and any comments were considered.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The public was given notice and an opportunity to provide written comments and testimony on the proposed amendments.

2. The Board finds that the proposed amendments to the rules are necessary and in the public interest.
3. Pursuant to 28 Del.C., Section 1122, the Board has statutory authority to promulgate regulations governing charitable gaming, including bingo and Texas Hold 'Em Tournaments.

## DECISION AND EFFECTIVE DATE

The Board hereby adopts the proposed amendments to its rules in the manner to be published in the *Register of Regulations* on June 1, 2010, to be effective ten days after publication of the Order in the *Register of Regulations*.

## TEXT AND CITATION

The text of the revised rules and regulations remains as published in the *Delaware Register of Regulations*, Volume 13, Issue 10 on April 1, 2010.

**SO ORDERED** this 6th day of May, 2010.

### DELAWARE GAMING CONTROL BOARD

Deborah Messina, Chair

Scott Angelucci, Member

Brad Barrie, Member

James Greene, Member

Sharon McDowell, Member

**103 Regulations Governing Charitable Gambling Other Than Raffles**  
**104 Regulations Governing Texas Hold'em Poker**

**\*Please note that no changes were made to the regulation as originally proposed and published in the April 2010 issue of the *Register* at page 1288 (13 DE Reg. 1288). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

**[Delaware Gaming Control Board Regulations](#)**

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## DIVISION OF PROFESSIONAL REGULATION

**2500 Board of Pharmacy**

Statutory Authority: 24 Delaware Code, Section 2509 (24 Del.C. §2509)  
**24 DE Admin. Code 2500**

## ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on April 21, 2010 to receive comments regarding proposed amendments to the rules and regulations of the Delaware State Board of Pharmacy ("Board"). The Board's proposal amends regulations 1.0 Pharmacist Licensure Requirements, 5.0 Dispensing, Regulation 9.0 Hospital Pharmacy, 10.0 Sterile Pharmaceuticals and Antineoplastic Agents and 19.0 Technicians: Qualifications, Training and Duties.

The proposed regulations were noticed for hearing and published in the *Register of Regulations* and on March 1, 2010 at 13 DE Reg. 1198.

**Summary of the Evidence and Information Submitted**

The hearing notices were marked as **Public Hearing Exhibits 1 and 2**. The Board received written comment that was marked as Public Hearing Exhibit 3.

**Public Hearing Exhibit 3** is a letter from Angelo J. Chiari, Pharmacist. Mr. Chiari raised concerns about Regulations "20.1.2-Certified Techs." (The Board notes that the provision questioned by Mr. Chiari is actually found in regulations 19.1.2.) Specifically, Mr. Chiari wrote expressed concern about allowing the use of the title "certified technician" by individuals who do not have national certification but have only a company sponsored program approved by the Board. He also questioned whether there is "a nationally approved format for company certification standardization? Does one company honor another company's certification? Is there a company differentiation in regards to a PTCB certified tech & company certified tech in regards to responsibilities and/or pay differentiation?" Mr. Chiari suggested changing the "nomenclature" to "company approved certification approved by the BOP" to avoid demeaning the PTCB certification.

**Findings of Fact with Respect to the Evidence and Information Submitted**

1. The Board received no verbal comments with regard to proposed amendments to the regulations.
2. The Board received only one written comment, Board Exhibit 3, from Mr. Chiari regarding regulation 19.1.2.
3. The Board appreciates the issues raised by Mr. Chiari, however, Board believes that Mr. Chiari may misunderstand the application of the proposed regulations. The regulations as proposed do not enable individuals to hold themselves out as certified technicians. Only individuals who have passed the PTCB exam or another national examination may hold themselves out as certified pharmacy technicians. The purpose of the language in regulations 19.1.2 and 19.1.2.1 is to allow someone who has passed an in-house training program approved by the Board to continue to perform the in-house functions of a certified technician only within the facility for which they are approved. The approval is not transferable to any other facility.
4. The Board finds that the changes to regulation 19.1.2 and 19.1.2.1 are necessary for consistency with the changes to the provisions of regulations 9.2.3 and 9.2.4 applicable to hospital pharmacies.
5. The Board finds that all of the changes to the regulations are necessary and serve the interests of public safety.

**The Law**

The Board's rulemaking authority is provided by 24 **Del.C.** §2509.

**Decision and Effective Date**

The Board hereby adopts the proposed amendments to the regulations to be effective 10 days following publication of this Order in the *Register of Regulations*.

**Text and Citation**

The text of the regulations remains as published on March 1, 2010 without any changes or modifications.

**SO ORDERED** this 19th day of May, 2010.

**DELAWARE BOARD OF PHARMACY**

Sandra Robinson, R.Ph, Professional Member President

Joli Martini, R.Ph, Professional Member

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Howard Simon, R.Ph, Professional Member  
Don Holst, R.Ph, Professional Member  
David Bonar, Public Member

## 2500 Board of Pharmacy

\*Please note that no changes were made to the regulation as originally proposed and published in the March 2010 issue of the *Register* at page 1198 (13 DE Reg. 1198). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

**2500 Board of Pharmacy**



**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER****EXECUTIVE ORDER  
NUMBER NINETEEN****TO: HEADS OF ALL STATE DEPARTMENTS AND AGENCIES****RE: PROMOTING HEALTHY LIFESTYLES AND CREATING THE COUNCIL ON HEALTH PROMOTION AND DISEASE PREVENTION**

**WHEREAS**, in the United States, seven of ten deaths and the vast majority of serious illnesses, disabilities, and health care costs are caused by chronic diseases such as obesity, diabetes, and cardiovascular disease; and

**WHEREAS**, more than 75% of health care expenditures in the United States are spent to meet the health needs of persons with chronic conditions; and

**WHEREAS**, key risk factors, such as obesity, lack of physical activity, poor nutrition and tobacco use are major contributors to the nation's leading causes of chronic disease and death; and

**WHEREAS**, 64% of Delawareans are either overweight or obese; and

**WHEREAS**, current estimates indicate that as much as \$207 million in health care expenditures could be saved each year if excessive weight and obesity were eliminated in Delaware; and

**WHEREAS**, employers, including the State of Delaware, bear the financial burden of employee illness and lost productivity due to chronic illness, and a healthy workforce will improve Delaware's ability to remain competitive in a changing economy; and

**WHEREAS**, health promotion is multi-faceted and must include a comprehensive, multi-sector approach in all areas where individuals live, learn, work and play to ensure the health, productivity, and well-being of all Delawareans; and

**WHEREAS**, First Lady Michelle Obama has launched a nationwide "Let's Move" campaign to combat childhood obesity;

**NOW, THEREFORE, I, JACK A. MARKELL**, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby DECLARE and ORDER that:

1. A Council on Health Promotion and Disease Prevention is hereby established and its members are charged to advise the Governor and executive branch state agencies on the development and coordination of strategies, policies, programs and other actions state-wide to promote healthy lifestyles and prevent chronic and lifestyle-related disease. The members of the Council shall represent a diverse state-wide population and include:

(a) The Secretaries of the Department of Agriculture, the Department of Education, the Department of Health and Social Services, the Department of Natural Resources and Environmental Control, the Department of Services for Children, Youth and Their Families, the Department of Transportation, or their designees;

(b) The Director of the Delaware Economic Development Office and the Director of the Office of Management and Budget, or their designees;

(c) The Insurance Commissioner of Delaware, or her designee;

(d) Two representatives of the Delaware House of Representatives, one of whom to be appointed by and serve at the pleasure of the Speaker of the House, and the other of whom to be appointed by and serve at the pleasure of the Minority Leader;

(e) Two representatives of the Delaware State Senate, one of whom to be appointed by and serve at the pleasure of the President Pro Tempore, and the other of whom to be appointed by and serve at the pleasure of the Minority Leader;

(f) The following members to be appointed by and serve at the pleasure of the Governor:

i. One representative from the healthcare community;

ii. One representative from the insurance industry;

iii. One representative from an institution of higher education;

iv. One representative from the employer community; and

v. Three public members with relevant professional experience to provide expertise related to health promotion and disease prevention, especially among vulnerable and under-served populations.

2. The Council shall be led by a chairperson appointed by the Governor. The chairperson of the Council shall report to the Governor on the progress and recommendations of the Council on or before June 1, 2011 and periodically thereafter, but no less than once a year. The Council shall be terminated on December 31, 2015, if not reconstituted by further executive order.

3. Staff support for the Council shall be provided by the Division of Public Health of the Department of Health and Social Services.

4. Members of the Council shall:

(a) Conduct an assessment of the burden of lifestyle-related diseases in the State of Delaware;

(b) Review current health promotion recommendations and activities within state agencies and other organizations, such as the Healthy Delaware Foundation, the Delaware Coalition to Promote Healthy Eating and Active Living, Nemours Health and Prevention Services, the Christiana Care Health Services Obesity Coalition; the Delaware Cancer Consortium, the Delaware Healthy Mothers and Infants Consortium, the IMPACT Tobacco Coalition, the Delaware Bicycle Council, the Office of State Planning Coordination, and other non-profit agencies;

(c) Develop an overarching state-wide strategy on promoting healthy lifestyles and preventing lifestyle-related diseases in Delaware, including identification of any opportunities for grants or other assistance available under federal law or from the non-profit community;

(d) Advise the Governor and executive branch state agencies on policies and strategies that may be effective in the prevention of obesity and other lifestyle diseases in Delaware, with an emphasis on achieving the highest sustainable impact on the greatest number of individuals with the least amount of resources and on eliminating disparities in the incidence of obesity and other diseases; and

(e) Establish and track measurable outcomes for the reduction of obesity and other lifestyle-related diseases in Delaware.

5. In carrying out its charge, the Council shall endeavor to:

(a) Initially focus its efforts on the lifestyle risk factors that are the leading causes of death, disease, and disability, especially poor nutrition, physical inactivity, and tobacco use;

(b) Solicit the input, advice, and recommendations of organizations in the State whose aim is to promote healthy lifestyles. The Council may align efforts with existing committees, councils and organizations currently focused on health promotion and partner with public and private organizations and community leaders that support the goals of the Council;

(c) Coordinate with federal government agencies to maximize resources and information in order to ensure a comprehensive approach to health promotion;

(d) Assure that the State, as an employer, sets the standard for workplace health promotion and disease prevention, including healthy foods in vending machines, physical activity opportunities, and health promotion benefits to state employees and their families;

(e) Improve availability of physical activity opportunities and local, high quality fruits and vegetables for Delaware families, especially low-income families and seniors;

(f) Promote changes in the health care system so that health providers are educated and encouraged to prevent, identify and treat obesity;

(g) Reduce cultural, environmental and socioeconomic barriers to implementing health promotion initiatives in Delaware;

(h) Promote practices and policies in child care and school settings so that children, staff, and parents are educated and have opportunities to make healthy choices;

(i) Promote practices and policies in worksites so that employees are educated and have opportunities to make healthy choices; and

(j) Promote consistent messages through the public and private sector.

**APPROVED** this 20th day of May, 2010

Jack A. Markell, Governor

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**CALENDAR OF EVENTS/HEARING NOTICES**

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**DEPARTMENT OF AGRICULTURE**  
**HARNESS RACING COMMISSION**  
**PUBLIC NOTICE**

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to change its Rule 7.6.6.7.7. The Commission will hold a public hearing on the proposed rule changes on August 17, 2010. Written comments should be sent to Hugh J. Gallagher, Administrator of Harness Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901. Written comments will be accepted for thirty (30) days from the date of publication in the *Register of Regulations* on June 1, 2010.

The proposed changes are for the purpose of updating the Rules to more reflect current policies, practices and procedures. Copies are published online at the *Register of Regulations* website: [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml)

A copy is also available for inspection at the Harness Racing Commission office.

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**DEPARTMENT OF EDUCATION**  
**PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, June 17, 2010 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**  
**PUBLIC NOTICE****Non-Emergency Medical Transportation Services**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend the Delaware Title XIX Medicaid State Plan regarding Non-Emergency Medical Transportation Services.

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 Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by June 30, 2010.

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.

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**  
**DIVISION OF FISH AND WILDLIFE**  
**PUBLIC NOTICE**  
**SAN # 2010-15****TITLE OF THE REGULATIONS:**

Tidal Finfish Regulation: 3541 Atlantic Sharks.

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**BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:**

The Department of Natural Resources and Environmental Control will hold a public hearing regarding proposed modifications to Tidal Finfish Regulation 3541 concerning Atlantic sharks. The purpose of the proposed revision is to bring Delaware into compliance with the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Atlantic Coastal Sharks

The Interstate Fishery Management Plan for Atlantic Coastal Shark specifies which gears that fishermen are authorized to use in state waters on the Atlantic Coast. The gears that are authorized by ASFMC are hook and line, longline, gill net, trawl net, shortline, pound net and weir. At present, Delaware allows the use of hook and line, troll line, dip net, lift net, push net, cast net, spear or harpoon, haul seine, bag net, hoop net, fyke net, fish pot, and gill net for use in state waters to harvest food fish which includes sharks. To meet the requirements of the Interstate Fishery Management Plan, Delaware must restrict the commercial gears that may be used for the harvesting of Atlantic coastal sharks to hook and line, and gill net. Recreational fishermen are restricted to the use of rod and reel and hand line. Fishermen with a federal shark permit who are fishing outside of state waters are not restricted to these gear types and may land sharks using any gear that is in accordance with the rules and regulations established by NOAA Fisheries.

Additionally, the Interstate Fishery Management Plan for Atlantic Coastal Shark specifies that a federal Commercial Shark Dealer Permit is required to buy and sell any shark caught in state waters. At the present time, the State of Delaware does not require seafood dealers to have this permit to buy and sell shark caught in state waters.

**NOTICE OF PUBLIC COMMENT:**

A public hearing on this regulation will be held in the Department of Natural Resources and Environmental Control (DNREC) auditorium located at 89 Kings Highway, Dover DE 19901 on June 21, 2010 at 6:30 PM. Comments for the hearing record should be addressed to Lisa Vest, Hearing Officer, Office of the Secretary, Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, De 19901 or by e-mail to [lisa.vest@state.de.us](mailto:lisa.vest@state.de.us)

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**DEPARTMENT OF STATE**  
**PUBLIC SERVICE COMMISSION**  
**PUBLIC NOTICE****Notice of Further Proposed Rule-making:****Amendment of Rules for Granting, Supervising, and Revoking Certificates of Public Convenience and Necessity for Water Utilities**

Under 26 **Del.C.** §203C, the Public Service Commission ("PSC") holds the authority to grant a Certificate of Public Convenience and Necessity ("CPCN") to authorize an entity to begin water utility operations or allow an existing water utility to expand its operations or business to a new proposed service territory. This CPCN authority encompasses water utilities subject to the PSC's general regulation as well as municipal and other governmental water utilities, districts, or authorities. In 2001, the PSC adopted "Regulations Governing Water Utilities Including the Public Service Commission's Jurisdiction to Grant and Revoke Certificates of Public Convenience and Necessity." See 5 **DE Reg.** 212 (July 1, 2001). Those regulations set forth the process and criteria for reviewing, granting, or denying requests for CPCNs filed by water utilities.

Earlier, the PSC proposed to repeal the 2001 Rules related to water utility CPCNs in favor of a proposed new set of Rules. See 10 **DE Reg.** 1563-1580 and 11 **DE Reg.** 465-484. The Commission has now withdrawn those earlier proposed rules.

Pursuant to 26 **Del.C.** §§203(c) and 209(a), the PSC now proposes to repeal the 2001 rules and replace them with new "Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities." As set forth in PSC Order No. 7774 (May 4, 2010), the PSC believes the new rules will make improvements in the administration of the CPCN process. Initially, the proposed new rules implement the statutory changes made to the criteria for obtaining a CPCN (and the provisions of 26 **Del.C.** §203C) by 76 **Del. Laws** ch. 55 (June 28, 2007). Second, the new rules provide for more detailed requirements for notice to affected landowners,

other interested persons, and the public of the CPCN application and provide specific requirements about the form of notice to be sent to affected landowners to inform them of their options. In addition, the new regulations add provisions placing limitations on the number of Proposed Service Areas that may be included in a CPCN application, and requiring the inclusion of a Plan of Service with the CPCN application.

You can review PSC Order No. 7774 (May 4, 2010) and the proposed new rules in the June 1, 2010 issue of the [Delaware Register of Regulations](#). You can also review the Order and the new regulations at the PSC's Internet website located at <http://dep.sc.delaware.gov>. Written copies of the Order and proposed regulations can be obtained at the PSC's office at the address located below, for \$0.25 per page.

The PSC now solicits comments, suggestions, compilations of data, briefs, or other written materials about the proposed repeal of the 2001 Water Utility CPCN rules and the adoption of the proposed new Water Utility CPCN rules. If you want to file any such materials, you should submit an original and ten copies of such written documents on or before June 30, 2010. You should file such materials with the PSC at the following address:

Public Service Commission  
861 Silver Lake Boulevard  
Cannon Building, Suite 100  
Dover, DE 19904  
Attn: Reg. Dckt. No. 51

If possible, you should accompany such written comments with an electronic version of the submission. Such electronic copy may be filed on a copy-capable CD-Rom disk or sent as an attachment to an Internet e-mail addressed to [alisa.bentley@state.de.us](mailto:alisa.bentley@state.de.us).

The PSC will also conduct a public hearing on the new proposed regulations on Thursday, July 22, 2010. That hearing will begin at 1:00 P.M. and will be held at the PSC's office at the address set forth above. You may also submit comments and materials at such public hearing.

If you are disabled and need assistance or help to participate in the proceedings, please contact the PSC to discuss that assistance. If you want more information or have questions, you can contact the PSC about the matter at (800) 282-8574 (toll-free in Delaware) or (302) 736-7500. Inquiries can also be sent by Internet e-mail addressed to [andrea.maucher@state.de.us](mailto:andrea.maucher@state.de.us).

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