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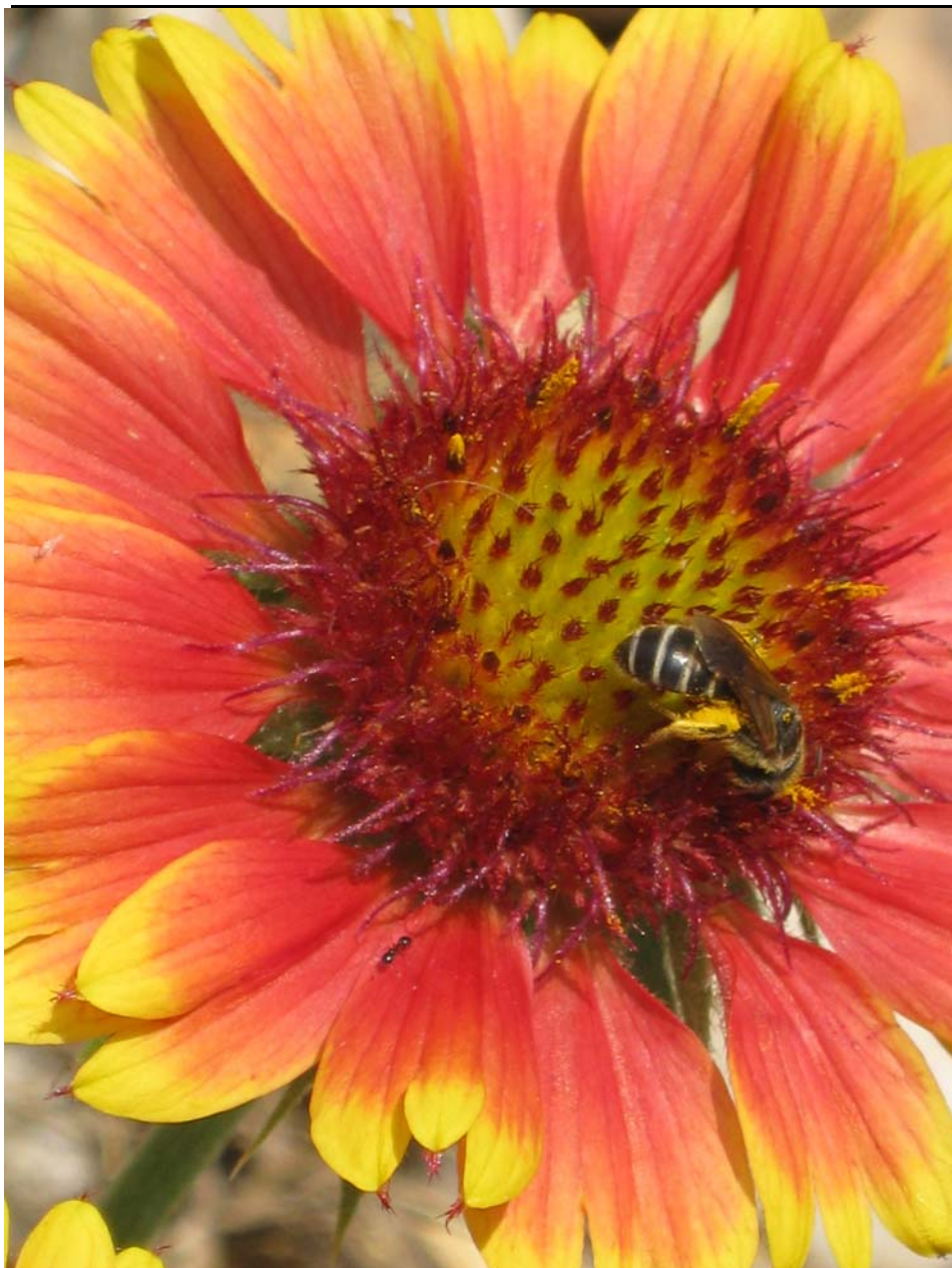
# Delaware Register of Regulations

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Issue Date: September 1, 2009

Volume 13 - Issue 3, Pages 318 - 434

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## IN THIS ISSUE:

Regulations:  
Proposed  
Final

Governor:  
Executive Orders

General Notices  
Calendar of Events &  
Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before August 15, 2009.

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

## CITATION TO THE DELAWARE REGISTER

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

12 **DE Reg.** 761-775 (12/01/08)

Refers to Volume 12, pages 761-775 of the *Delaware Register* issued on December 1, 2008.

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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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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
October 1	September 15	4:30 p.m.
November 1	October 15	4:30 p.m.
December 1	November 16	4:30 p.m.
January 1	December 15	4:30 p.m.
February 1	January 15	4:30 p.m.

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**Symbol Key**

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

**Proposed Regulations**

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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**DELAWARE SOLID WASTE AUTHORITY**

Statutory Authority: 7 Delaware Code, Section 6403 (7 **Del.C.** §6403)

**501 Regulations of the Delaware Solid Waste Authority****PUBLIC NOTICE**

Pursuant to 7 **Delaware Code**, Sections 6403, 6404, 6406 and other pertinent provisions of 7 **Delaware Code**, Chapter 64; the Delaware Solid Waste Authority ("DSWA") is proposing amendments to the Regulations of the Delaware Solid Waste Authority (adopted by DSWA Board January 29, 2009).

**Notice of Hearing:** A public hearing will be held Wednesday, October 7, 2009, immediately following the hearing scheduled at 5:00 p.m. addressing contemporaneous amendments to the Statewide Solid Waste Management Plan, at Delaware Technical Community College, Terry Campus, Corporate Training Center, Room 400, Dover, Delaware 19903. The hearing is to provide an opportunity for public comment on the proposed amendments. The public record will close at the close of the hearing, unless the hearing officer extends the comment period at the close of the hearing.

**Written Comments:** The DSWA will receive written comments, suggestions, briefs or other written material until the close of business, October 2, 2009. Written comments, suggestions, compilations of data, briefs or other written material shall be submitted to Michael D. Parkowski, Manager of Business Services and Governmental Relations, Delaware Solid Waste Authority, 1128 South Bradford Street, PO Box 455, Dover, Delaware 19903. Anyone wishing to obtain a copy of the proposed amendments may obtain a copy from the Delaware Solid Waste Authority, 1128 South Bradford Street, PO Box 455, Dover, Delaware 19903, (302) 739-5361.

**Summary of Proposed Changes:** The proposed amendments will change current provisions dealing with the use of DSWA facilities by both municipalities and persons other than municipalities, and will have the effect of requiring most solid waste generated in the State of Delaware to be delivered to a DSWA facility. The proposed amendments will also require changes to the Statewide Solid Waste Management Plan.

**Background and Purpose:** The Delaware Solid Waste Authority ("DSWA") was established by the Delaware General Assembly in 1975 as a statewide solid waste authority, a body politic and corporate constituting a public instrumentality of the State created to perform essential public and governmental functions. The findings, policies

and purposes of the enabling legislation recognized among other things the need for the people of the state to have a clean and wholesome environment through the statewide management of solid waste generated in Delaware. Such statewide management includes the establishment of programs for collection and disposal of solid waste and the recovery of and reuse of discarded materials through recycling and beneficial use.

In discharging its responsibility, DSWA undertakes planning, research and development functions utilizing professional technical and management employees, and a support staff. The activities of DSWA are subject to the oversight and control of a seven (7) person Board of Directors, each Director being appointed by the Governor and confirmed by the Senate.

DSWA has been granted the authority to adopt regulations and establish a licensing program for collectors of solid waste. Enforcement powers granted to DSWA include the assessment of civil penalties, license suspension or revocation, and injunctive relief.

In order to fund the comprehensive activities authorized by the General Assembly, DSWA has been empowered to establish user fees for the services it provides and to borrow money through bond financing and otherwise. DSWA receives no State or federal funding, and the full faith and credit of the State is not pledged for any of DSWA's debt. To assure the proper management of the solid waste and provide sufficient financial support for its programs, DSWA is authorized to control the collection, transportation, storage and disposal of solid waste throughout the State.

DSWA has been provided extensive authority to utilize services provided by the private sector and to engage in cooperative arrangements with other State entities, counties and municipalities. DSWA has also been charged with establishing an extensive recycling program and a public education program. Included in the recycling initiative is the removal of materials from the solid waste stream which are harmful to the environment, and which cannot be recycled, so that they are disposed in an authorized manner.

In carrying out its broad statewide responsibilities to comprehensively manage solid waste, DSWA has undertaken the following activities:

1. The design, construction and operation of a modern landfill at Cherry Island to serve the needs of New Castle County. The landfill includes environmental protective measures such as a leachate collection system and a landfill gas recovery system. The expansion of the landfill is currently underway and has been financed through an approximate \$100 million bond issuance. With the waste diversion measures currently in place the capacity of the landfill is not expected to be reached until 2039.

2. The acquisition, retrofitting and operation of a landfill gas processing plant at Cherry Island. The processing plant produces commercial quality methane gas which is transported by pipeline and sold to Conectiv Energy Supply, Inc..

3. The design, construction and operation of a solid waste transfer station at Pine Tree Corners in New Castle County. The transfer station serves the Middletown - Odessa - Townsend area and the solid waste delivered to this facility is transferred to the DSWA landfill at Sandtown in order to preserve landfill space at Cherry Island.

4. The design, construction and operation of a modern landfill at Sandtown to serve the needs of Kent County. The landfill includes environmental protective measures such as a leachate collection system and a landfill gas recovery system. The landfill gas is sold to a private company which uses the gas as fuel to operate an electric generating facility. An expansion of the landfill is currently underway and will be financed with approximately \$23 million of the proceeds of an approximate \$40 million bond issuance. The capacity of the landfill with expansions is not expected to be reached until 2050.

5. The design, construction and operation of a solid waste transfer station at Milford. The solid waste delivered to this facility is transferred to the DSWA landfill at Sandtown.

6. The design, construction and operation of a modern landfill at Jones Crossroads to serve the needs of Sussex County. The landfill includes environmental protective measures such as a leachate collection system and a landfill gas recovery system. The landfill gas is sold to a private company which uses the gas as a fuel to operate an electric generating facility. An expansion of the landfill is currently underway and will be financed with approximately \$17 million of the proceeds of an approximate \$40 million bond issuance. The capacity of the landfill with expansions is not expected to be reached until 2048.

7. The design, construction and operation of a solid waste transfer station at Route 5. The transfer station serves the Lewes - Rehoboth - Georgetown area and the solid waste delivered to the facility is transferred to the DSWA landfill at Jones Crossroads.

8. The operation of a drop-off recycling program with 183 drop-off centers statewide. The recyclables collected are deposited in a single stream with the exception of cardboard, household batteries, motor oil, oil filters and textiles which are separated. DSWA collects and transports the recyclables from the drop off centers, and markets the appropriate recovered materials to regional recycling centers, while arranging for the proper disposal of unusable materials.

9. The operation of a statewide single stream subscription curbside collection program for recyclables separated from municipal solid waste. The recyclables collected are in a single stream, except for yard waste which is collected separately. Approximately 45,000 customers subscribe to the service statewide.

10. The operation of a recycling program for electronic goods at twenty four (24) drop off locations throughout the State.

11. The operation of a recycling program at DSWA transfer stations and landfills which involves the separation and recycling of tires, white goods, drywall, textiles, used oil, oil filters, construction and demolition materials, and yard wastes.

12. The design, construction and operation of yard waste composting systems at the Cherry Island and Jones Crossroads landfills, and the operation of yard waste mulching systems at all DSWA landfills.

13. The establishment and operation of a public education and public outreach program which includes school and community presentations, distribution of books and educational materials, participation in public events, use of slogans and themes, use of a mascot, and public advertising.

14. The collection and proper disposal of household hazardous wastes at eight (8) scheduled events conducted throughout the State.

15. Coordination and participation in solid waste and recycling activities with State, county, municipal, local and civic organizations throughout the State.

The proposed amendments to the Regulations will allow DSWA to better control and manage the collection of solid waste in Delaware, assure the usage of the facilities provided by DSWA, and provide the means of financially supporting the referenced activities conducted under the authority and dictates of DSWA's enabling legislation. The proposed amendments will enhance DSWA's ability to monitor, evaluate and police the system of solid waste management in Delaware, including such issues as proper waste disposal, waste volume reduction, use of recycling programs and the full capture of those recyclables in the future.

## 501 Regulations of the Delaware Solid Waste Authority

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

#### 4.0 Use of DSWA Facilities ~~by Municipalities and Their Contractors~~

- 4.1 Any solid waste, including but not limited to dry waste, that is generated in the State of Delaware, and collected, or transported by any municipality, or by a person pursuant to an agreement with any municipality licensee or by a person on behalf of a licensee, shall be disposed of at a DSWA facility, unless it is a solid waste listed in Section 4.2 or Section 4.3. Any municipality licensee or other person that enters into an agreement for the collection or transportation of such solid waste that is required to be delivered to a DSWA facility pursuant to this section shall include in such agreement a requirement that the such solid waste shall be disposed at a DSWA facility. Every person required by agreement to deliver solid waste generated in Delaware to a DSWA facility shall comply with such requirement.
- 4.2 The following solid wastes shall not be delivered to a DSWA facility:
- 4.2.1 Hazardous wastes
  - 4.2.2 Explosives
  - 4.2.3 Pathological and infectious wastes
  - 4.2.4 Radioactive wastes
  - 4.2.5 Solid wastes, ~~as determined by the CEO or his designee, which will, because of their quantity, physical properties, or chemical composition, to have an unacceptable adverse effect impact on the a~~ DSWA facility or facilities, or the operation of the ~~DSWA facility, or if an effective means of~~

~~risk and cost allocation cannot be achieved thereof, because of its quantity, physical properties, chemical composition, risk, cost, or other relevant factor. The CEO or his designee may determine that a particular solid waste, such as dry waste, shall not be delivered to a particular DSWA facility but may be delivered to another DSWA facility or facilities.~~

4.2.6 Wastes which are prohibited by the DSWA facility(s) DNREC permit.

4.2.7 Solid wastes, except recyclable materials, generated outside the State of Delaware.

4.3 The following solid waste may but is not required to be delivered to a DSWA facility for disposal or recycling, upon payment of the appropriate fee or user charge, provided that delivery of such solid waste is not otherwise proscribed by §4.2:

4.3.1 Yard waste, unless the CEO or his designee determines such waste would have an adverse effect on the DSWA facility, in which case Yard Waste shall not be delivered to the DSWA facility.

4.3.2 Dry waste that is generated in New Castle County.

4.3.23 Non-hazardous waste resulting from emergency clean-up actions of DNREC.

4.3.34 Any special solid waste allowed at a DSWA facility pursuant to Article VI of these regulations.

4.3.45 Asbestos.

4.3.56 Recyclable materials

**5 DE Reg. 100 (7/1/01)**

## **5.0 ~~Use of DSWA Facilities by Persons Other Than Municipalities and Their Contractors~~ Reserved**

5.1 ~~Except as provided in Section 5.2, any person, other than a municipality and any person under an agreement with a municipality with respect to solid waste that must be delivered to a DSWA facility pursuant to Section 4.1, may dispose of the following at a DSWA facility (unless the CEO or his designee determines such waste would have an adverse effect in the DSWA facility) or other facility authorized to receive such waste: solid waste, including, but not limited to yard waste, dry waste, and recyclable materials.~~

5.2 ~~Every person shall deliver solid waste to a DSWA facility to the extent so required by any agreement between such person, or its assignee, and DSWA.~~

5.3 ~~No person shall deliver to a DSWA facility any waste listed in Section 4.2 of these regulations.~~

## **6.0 Special Solid Waste**

*(Break in Continuity Within Section)*

6.46 Any person aggrieved by a determination of the CEO or his designee, under this Article or Sections 4.2 and 4.3, may seek review thereof by the Directors of DSWA in accordance with the Act, and these Regulations.

**5 DE Reg. 100 (7/1/01)**

*(Break in Continuity of Sections)*

**Attachment A**

To: Delaware Solid Waste Authority  
P.O. Box 455  
Dover, DE 19903-0455

I hereby apply for a Solid Waste Collectors License for the period of July1, 20\_\_ through June 30, 20\_\_ in accordance with the Regulations of the Delaware Solid Waste Authority. Accordingly, the following is submitted:  
*Note: This application will not be processed unless all requested information is provided including;*

# PROPOSED REGULATIONS

Proof of insurance as required by section 3.04;  
 Minimum Bond or Surety, as required by Section 3.10; and,  
 A copy of your Delaware Business License.

1. Applicant: (Individual or Firm Name) \_\_\_\_\_
2. Doing business as: (name to appear on license) \_\_\_\_\_
3. Business Office Information: (one phone number must be a Delaware number) OFFICE A:

<i>Street</i>	<i>Area code - Phone number</i>		
City	State	Zip Code	
<i>Name of Individual having administrative responsibility at this location</i>			

OFFICE B:

<i>Street</i>	<i>Area code - Phone number</i>		
City	State	Zip Code	
<i>Name of Individual having administrative responsibility at this location</i>			

4. Answering service if applicable:

<i>Name of service</i>			
<i>Street</i>	<i>Area code - Phone number</i>		
City	State	Zip Code	
<i>Name of Individual having administrative responsibility at this location</i>			

5. Registered Agents or Authorized Representatives:

A: \_\_\_\_\_  
*Name*

<i>Street</i>	<i>Area code - Phone number</i>		
City	State	Zip Code	

B: \_\_\_\_\_  
*Name*

<i>Street</i>	<i>Area code - Phone number</i>		
City	State	Zip Code	

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6. Type of business:  Sole Proprietorship  Partnership  Municipality  Corporation\*

\* *If Non-Delaware Corporation, provide proof of Delaware Registration*

7. Date business was established: \_\_\_\_\_

8. Delaware Business License number: *(contact Division of Revenue)* \_\_\_\_\_

9. DNREC Waste Haulers License number: \_\_\_\_\_

10. Federal Taxpayer Identification number: \_\_\_\_\_

11. Owners or partners in unincorporated business. Indicate percentage of ownership:

A: \_\_\_\_\_

<i>Name</i>	<i>Percentage</i>
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Street	City	State	Zip Code
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B: \_\_\_\_\_

<i>Name</i>	<i>Percentage</i>
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Street	City	State	Zip Code
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C: \_\_\_\_\_

<i>Name</i>	<i>Percentage</i>
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Street	City	State	Zip Code
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12. *Officers, Directors, Shareholders holding in excess of 10% of issued Stock in incorporated business:*

A: \_\_\_\_\_

<i>Name</i>	<i>Percentage</i>
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Street	City	State	Zip Code
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B: \_\_\_\_\_

<i>Name</i>	<i>Percentage</i>
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Street	City	State	Zip Code
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C: \_\_\_\_\_

<i>Name</i>	<i>Percentage</i>
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Street	City	State	Zip Code
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13. Indicate if any partnership or corporation other than applicant has any interest, direct or indirect, in the license applied for, or in the business conducted under such license. *(If so, state names, addresses, and interest of the partnerships, corporations, and principals involved, indicating the nature and extent of the interest.)*

Not applicable  Applicable, *provide details:*

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14. Indicate if any individual, partnership or corporation other than applicant receives or will receive (by way of rent, salary, or otherwise) all or any portion of percentage of the gross or net profits or income derived from business conducted under license applied for:

*Not applicable*  *Applicable, provide details:*

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# PROPOSED REGULATIONS

15. Indicate if your company or parent company has ever been convicted of civil or criminal offences concerning waste transporting, processing, or disposal.

- No
- Yes (Provide details: Use the back of this sheet or separate sheet if necessary)

16. Indicate if the applicant, any person mentioned in this application, or any person having a beneficial interest in the application has ever been denied a license to collect solid waste.

- Not applicable
- Applicable, provide details:

17. State general area served by applicant:

18. Indicate days of the week collections are made:

- Mon
- Tue
- Wed
- Thu
- Fri
- Sat
- Sun

19. Daily average weight of Household solid waste collected: \_\_\_\_\_ Tons

20. Daily average weight of Municipal solid waste collected: \_\_\_\_\_ Tons

21. Daily average weight of Commercial/Industrial solid waste collected: \_\_\_\_\_ Tons

22. Indicate location(s) where solid waste is being or will be delivered:

Type of Waste	Location Delivered

Statement of experience in solid waste collection, transportation, and/or disposal:

24. Consent to Inspections:

The applicant hereby agrees and consents to the inspection at any time or place, by any employee of the Delaware Solid Waste Authority who presents identification of his/her status as an employee of DSWA, of any vehicle owned or operated on behalf of the applicant which displays a license permit issued by DSWA. Unless otherwise prohibited by law, the applicant also hereby agrees and consents to the inspection, by any employee of DSWA, of any container used for the deposit of any material which the applicant may transport with a vehicle which displays a license permit issued by DSWA.

I HEREBY CERTIFY THAT THE INFORMATION PROVIDED HEREIN AND ATTACHED HERETO IS TRUE AND CORRECT AND THAT I HAVE READ AND AM FAMILIAR WITH THE REQUIREMENTS OF THE REGULATIONS OF THE DELAWARE SOLID WASTE AUTHORITY.

~~I SPECIFICALLY UNDERSTAND AND AGREE TO BE BOUND BY SECTION 4.01, IF APPLICABLE, WHICH REQUIRES CONTRACTORS WHO COLLECT OR HAUL SOLID WASTE PURSUANT TO A CONTRACT WITH A MUNICIPALITY (INCLUDING TOWNS, CITIES, COUNTIES, STATE AGENCIES, ETC.) TO DELIVER SUCH SOLID WASTE TO A DSWA FACILITY OF SUCH REGULATIONS.~~

\_\_\_\_\_

Date
Signature of Applicant
Title

Printed or typed name of Applicant \_\_\_\_\_  
STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_  
Before me appeared \_\_\_\_\_, who under oath certifies that the information  
*Print Name*  
provided in this application is true and correct.

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Date

Notary Public

12 DE Reg. 1192 (03/01/09)

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

<http://regulations.delaware.gov/register/september2009/proposed/13 DE Reg 326 09-01-09.htm>

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## DELAWARE SOLID WASTE AUTHORITY

Statutory Authority: 7 Delaware Code, Section 6403 (7 Del.C. §6403)

### 502 Statewide Solid Waste Management Plan

#### PUBLIC NOTICE

Pursuant to 7 **Delaware Code**, Sections 6403, 6404, 6406 and other pertinent provisions of 7 **Delaware Code**, Chapter 64; the Delaware Solid Waste Authority ("DSWA") is proposing amendments to the Statewide Solid Waste Management Plan (adopted May 26, 1994).

**Notice of Hearing:** A public hearing will be held Wednesday, October 7, 2009, at 5:00 p.m., at Delaware Technical Community College, Terry Campus, Corporate Training Center, Room 400, Dover, Delaware 19903. The hearing is to provide an opportunity for public comment on the proposed amendments. The public record will close at the close of the hearing, unless the hearing officer extends the comment period at the close of the hearing.

**Written Comments:** The DSWA will receive written comments, suggestions, briefs or other written material until the close of business, October 2, 2009. Written comments, suggestions, compilations of data, briefs or other written material shall be submitted to Michael D. Parkowski, Manager of Business Services and Governmental Relations, Delaware Solid Waste Authority, 1128 South Bradford Street, PO Box 455, Dover, Delaware 19903. Anyone wishing to obtain a copy of the proposed amendments may obtain a copy from the Delaware Solid Waste Authority, 1128 South Bradford Street, PO Box 455, Dover, Delaware 19903, (302) 739-5361.

**Summary of Proposed Changes:** The proposed amendments will address the purposes and impact of changes to DSWA regulations, proposed contemporaneously herewith, that will have the effect of requiring most solid waste generated in the State of Delaware to be delivered to a DSWA facility.

**Background and Purpose:** The Delaware Solid Waste Authority ("DSWA") was established by the Delaware General Assembly in 1975 as a statewide solid waste authority, a body politic and corporate constituting a public instrumentality of the State created to perform essential public and governmental functions. The findings, policies and purposes of the enabling legislation recognized among other things the need for the people of the state to have a clean and wholesome environment through the statewide management of solid waste generated in Delaware. Such statewide management includes the establishment of programs for collection and disposal of solid waste and the recovery of and reuse of discarded materials through recycling and beneficial use.

In discharging its responsibility, DSWA undertakes planning, research and development functions utilizing professional technical and management employees, and a support staff. The activities of DSWA are subject to the



oversight and control of a seven (7) person Board of Directors, each Director being appointed by the Governor and confirmed by the Senate.

DSWA has been granted the authority to adopt regulations and establish a licensing program for collectors of solid waste. Enforcement powers granted to DSWA include the assessment of civil penalties, license suspension or revocation, and injunctive relief.

In order to fund the comprehensive activities authorized by the General Assembly, DSWA has been empowered to establish user fees for the services it provides and to borrow money through bond financing and otherwise. DSWA receives no State or federal funding, and the full faith and credit of the State is not pledged for any of DSWA's debt. To assure the proper management of the solid waste and provide sufficient financial support for its programs, DSWA is authorized to control the collection, transportation, storage and disposal of solid waste throughout the State.

DSWA has been provided extensive authority to utilize services provided by the private sector and to engage in cooperative arrangements with other State entities, counties and municipalities. DSWA has also been charged with establishing an extensive recycling program and a public education program. Included in the recycling initiative is the removal of materials from the solid waste stream which are harmful to the environment, and which cannot be recycled, so that they are disposed in an authorized manner.

In carrying out its broad statewide responsibilities to comprehensively manage solid waste, DSWA has undertaken the following activities:

1. The design, construction and operation of a modern landfill at Cherry Island to serve the needs of New Castle County. The landfill includes environmental protective measures such as a leachate collection system and a landfill gas recovery system. The expansion of the landfill is currently underway and has been financed through an approximate \$100 million bond issuance. With the waste diversion measures currently in place the capacity of the landfill is not expected to be reached until 2039.

2. The acquisition, retrofitting and operation of a landfill gas processing plant at Cherry Island. The processing plant produces commercial quality methane gas which is transported by pipeline and sold to Conectiv Energy Supply, Inc.

3. The design, construction and operation of a solid waste transfer station at Pine Tree Corners in New Castle County. The transfer station serves the Middletown - Odessa - Townsend area and the solid waste delivered to this facility is transferred to the DSWA landfill at Sandtown in order to preserve landfill space at Cherry Island.

4. The design, construction and operation of a modern landfill at Sandtown to serve the needs of Kent County. The landfill includes environmental protective measures such as a leachate collection system and a landfill gas recovery system. The landfill gas is sold to a private company which uses the gas as fuel to operate an electric generating facility. An expansion of the landfill is currently underway and will be financed with approximately \$23 million of the proceeds of an approximate \$40 million bond issuance. The capacity of the landfill with expansions is not expected to be reached until 2050.

5. The design, construction and operation of a solid waste transfer station at Milford. The solid waste delivered to this facility is transferred to the DSWA landfill at Sandtown.

6. The design, construction and operation of a modern landfill at Jones Crossroads to serve the needs of Sussex County. The landfill includes environmental protective measures such as a leachate collection system and a landfill gas recovery system. The landfill gas is sold to a private company which uses the gas as a fuel to operate an electric generating facility. An expansion of the landfill is currently underway and will be financed with approximately \$17 million of the proceeds of an approximate \$40 million bond issuance. The capacity of the landfill with expansions is not expected to be reached until 2048.

7. The design, construction and operation of a solid waste transfer station at Route 5. The transfer station serves the Lewes - Rehoboth - Georgetown area and the solid waste delivered to the facility is transferred to the DSWA landfill at Jones Crossroads.

8. The operation of a drop-off recycling program with 183 drop-off centers statewide. The recyclables collected are deposited in a single stream with the exception of cardboard, household batteries, motor oil, oil filters and textiles which are separated. DSWA collects and transports the recyclables from the drop off centers, and markets the appropriate recovered materials to regional recycling centers, while arranging for the proper disposal of unusable materials.

9. The operation of a statewide single stream subscription curbside collection program for recyclables separated from municipal solid waste. The recyclables collected are in a single stream, except for yard waste which is collected separately. Approximately 45,000 customers subscribe to the service statewide.

10. The operation of a recycling program for electronic goods at twenty four (24) drop off locations throughout the State.

11. The operation of a recycling program at DSWA transfer stations and landfills which involves the separation and recycling of tires, white goods, drywall, textiles, used oil, oil filters, construction and demolition materials, and yard wastes.

12. The design, construction and operation of yard waste composting systems at the Cherry Island and Jones Crossroads landfills, and the operation of yard waste mulching systems at all DSWA landfills.

13. The establishment and operation of a public education and public outreach program which includes school and community presentations, distribution of books and educational materials, participation in public events, use of slogans and themes, use of a mascot, and public advertising.

14. The collection and proper disposal of household hazardous wastes at eight (8) scheduled events conducted throughout the State.

15. Coordination and participation in solid waste and recycling activities with State, county, municipal, local and civic organizations throughout the State.

The proposed amendments to the SSWMP, and the contemporaneous proposed amendments to the Regulations of the DSWA, will allow DSWA to better control and manage the collection of solid waste in Delaware, assure the usage of the facilities provided by DSWA, and provide the means of financially supporting the referenced activities conducted under the authority and dictates of DSWA's enabling legislation. The proposed amendments will enhance DSWA's ability to monitor, evaluate and police the system of solid waste management in Delaware, including such issues as proper waste disposal, waste volume reduction, use of recycling programs and the full capture of those recyclables in the future.

## **502 Statewide Solid Waste Management Plan**

*(Break in Continuity of Sections)*

### **CHAPTER III - CURRENT PROJECTS**

*(Break in Continuity of Sections)*

#### **C. STATEWIDE PROGRAMS**

*(Break in Continuity of Sections)*

##### Statewide Disposal of Solid Waste at DSWA Facilities

In carrying out its broad statutory responsibilities to comprehensively manage solid waste on a statewide basis for the benefit of the people of the State of Delaware, the DSWA has undertaken the following activities:

1. The design, construction and operation of a modern landfill at Cherry Island to serve the needs of New Castle County;

2. The acquisition, retrofitting and operation of a landfill gas processing plant at Cherry Island;

3. The design, construction and operation through contract with an out of state company, of a solid waste transfer station at Pine Tree Corners in New Castle County;

4. The design, construction and operation of a modern landfill at Sandtown to serve the needs of Kent County;

5. The design, construction and operation of a solid waste transfer station at Milford, Delaware;

6. The design, construction and operation of a modern landfill at Jones Crossroads to serve the needs of Sussex County;

7. The design, construction and operation of a solid waste transfer station at Route 5, Sussex County Delaware;

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# PROPOSED REGULATIONS

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8. The operation of a source separated drop-off recycling program with 183 drop-off centers statewide;
9. The operation of a statewide single stream subscription curbside collection program for recyclables separated from municipal solid waste;
10. Special separation and recycling processes for electronics, tires, white goods, drywall, textiles, used oil, oil filters, construction and demolition wastes and yard wastes;
11. Public education and outreach programs, including school and community presentations, distribution of educational materials, participation in public events and other forms of public outreach;
12. Special collection and disposal of household hazardous wastes; and
13. Coordination and participation in waste management and recycling activities with state, county and municipal local and civic organizations throughout the state

In order to fund these comprehensive activities, DSWA charges user fees for the services it provides and borrows money through bond financing and otherwise. DSWA receives no State or federal funding, and the full faith and credit of the State is not pledged for any of DSWA's debt. To assure the proper management of the solid waste and provide sufficient financial support for its programs, DSWA is authorized to control the collection, transportation, storage and disposal of solid waste throughout the State, and is expressly authorized, pursuant to 7 Del.C. §6406 (a)(31) to "control through regulation or otherwise, the collection, transportation, storage and disposal of solid waste, including the diversion of solid waste within specified geographic areas to facilities owned, operated or controlled by the Authority". Also, 7 Del.C. § 6422(b) authorizes DSWA, by rule or regulation, to "require the owners and occupants of all lands, buildings and premises [in Delaware] to use the services and facilities of the Authority under such rules and regulations as the Authority shall fix and establish."

User fees have been and will continue to be the basic source of revenue to fund DSWA operations and debt service. As noted, in order to assure a consistent and reliable revenue stream, the DSWA is entitled to adopt amendments to its regulations, implementing the provisions of 7 Del.C. §6406 (a)(31) and §6422(b), that require specified solid waste generated in Delaware to be delivered to a DSWA facility. Certain wastes that are not appropriate for landfill disposal would be excluded from any such amendments, including recyclables, hazardous waste, infectious waste, explosives, radioactive wastes and wastes not permitted to be disposed due to DNREC permit conditions. Additionally, dry waste collected in New Castle County would also be subject to exception due to the desire to conserve landfill space at the Cherry Island landfill. It would be difficult to site a new landfill in New Castle County under current requirements.

Beyond assuring a steady and consistent source of revenue, the DSWA has also determined that maximizing disposal of Delaware-generated solid waste in DSWA facilities will better assist DSWA in its efforts to monitor, evaluate and police the system of solid waste management in Delaware, including such issues as proper waste disposal, waste volume reduction, use of recycling programs and the full capture of those recyclables that may become available in the future.

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## DEPARTMENT OF AGRICULTURE HARNES RACING COMMISSION

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

### PUBLIC NOTICE

The Delaware Harness Racing Commission, pursuant to 3 Del.C. §10005, proposes to change its Rules 7 and 10. The Commission will hold a public hearing on the proposed rule changes on October 13, 2009. 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 September 1, 2009.

The proposed changes are for the purpose of updating Rule 7 and 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

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

#### 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.

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

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## PROPOSED REGULATIONS

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- 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 ~~Drivers will be allowed whips not to exceed 4 feet, plus a snapper not longer than 6 inches. Provided further that the following actions shall be considered as excessive or an indiscriminate use of the whip: a) Causing visible injury. b) Whipping a horse after a race. c) Whipping under the arch or shafts of the sulky. The use of the whip shall be confined to an area above and between the sulky shafts, to include the sulky shafts and the outside wheel discs. Drivers shall keep a line in each hand from the start of the race until the quarter pole. 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. The Judges shall have the authority to order and/or conduct such visual inspections at their discretion.~~

### 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 Brutal or excessive or indiscriminate use of a whip, or striking a horse with the butt end of a whip, or striking a wheel disc of a sulky with a whip, shall be a violation. At extended pari-mutuel meetings, under the supervision of the judges, there may be a mandatory visual 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 visual inspections at their discretion.~~

~~7.6.13.19 Whipping a horse by using the whip below the level of the shafts or the seat of the sulky or between the legs of the horse shall be a violation.~~

7.6.13.20~~18~~When a horse breaks from its gait, it shall be considered a violation on the part of the driver for:

7.6.13.20~~18~~.1 Failure to take the horse to the outside of other horses where clearance exists.

7.6.13.20~~18~~.2 Failure to properly attempt to pull the horse to its gait.

7.6.13.20~~18~~.3 Failure to lose ground while on a break.

7.6.13.20~~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.

7.6.13.20~~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.

7.6.13.24~~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.

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## PROPOSED REGULATIONS

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- 7.6.13.2220 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.
- 7.6.13.2321 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.
- 7.6.13.2422 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.
- 7.6.13.2523 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.
- 7.6.13.2624 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, 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)**

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

**10.0 Due Process and Disciplinary Action**

10.1 General Provisions

This chapter contains the rules of procedure for judges' hearings, and for Commission proceedings.

10.2 Proceedings by Presiding Judge or Judges

10.2.1 Rights of the Licensee

A person who is the subject of the disciplinary hearing conducted by the judges is entitled to:

10.2.1.1 Proper notice of all charges;

10.2.1.2 Confront the evidence presented, including:

10.2.1.2.1 the right to counsel at the person's expense;

10.2.1.2.2 the right to examine all evidence to be presented against him;

10.2.1.2.3 the right to present a defense;

10.2.1.2.4 the right to call witnesses; and

10.2.1.2.5 the right to cross examine witnesses.

10.2.1.3 Waive any of the above rights.

10.2.2 Complaints

10.2.2.1 A complaint must be in writing and filed with the Presiding Judge or judges within 30 days after the action that is the subject of the complaint.

10.2.2.2 On their own motion or on receipt of a complaint from an official or other person regarding the actions of a licensee, the Presiding Judge or judges may conduct an inquiry and disciplinary hearing regarding a licensee's actions.

10.2.3 Summary Suspension

10.2.3.1 If the Board of Judges determine that a licensee's actions, other than those of a licensed association, constitute an immediate danger to the public health, safety or welfare, the Board of Judges ~~the Commission Investigator~~, may summarily suspend the license pending a hearing.

10.2.3.2 A licensee whose license has been summarily suspended is entitled to a hearing on the summary suspension not later than the third racing day after the license was summarily suspended. The licensee may waive his right to a hearing on the summary suspension within the three-day limit.



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## PROPOSED REGULATIONS

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- 10.2.3.3 The Board of Judges shall conduct a hearing on a summary suspension in the same manner as other disciplinary hearings. At a hearing on a summary suspension, the sole issue is whether the licensee's license should remain suspended pending a final disciplinary hearing and ruling.
- 10.2.4 Notice
- 10.2.4.1 Except as provided by these rules regarding summary suspensions, the Board of Judges shall provide written notice at least 24 hours before the hearing to a person who is the subject of a disciplinary hearing. The person may waive his right to 24-hour notice by executing a written waiver.
- 10.2.4.2 Notice given under this section must include:
- 10.2.4.2.1 a statement of the time, place and nature of the hearing;
- 10.2.4.2.2 a reference to the particular sections of the statutes or rules involved; and
- 10.2.4.2.3 a short, plain description of the alleged conduct that has given rise to the disciplinary hearing.
- 10.2.4.3 If possible, the Board of Judges or their designee, shall hand deliver the written notice of the disciplinary hearing to the person who is the subject of the hearing. If hand delivery is not possible, the Board of Judges shall mail the notice to the person's last known address, as found in the Commission's licensing files, by regular mail and by certified mail, return receipt requested. If the disciplinary hearing involves an alleged medication violation that could result in the disqualification of a horse, the Board of Judges shall provide written or oral notice of the hearing to the owner, managing owner or lessee of the horse. Oral notice of any hearing shall suffice upon attestation by the Board of Judges that such notice was given the person who is the subject of the hearing.
- 10.2.4.4 Nonappearance of a summoned party after adequate notice shall be construed as a waiver of the right to a hearing before the Board of Judges. The Board of Judges or judges may suspend the license of a person who fails to appear at a disciplinary hearing after written or oral notice of the hearing has been sent or delivered in compliance with this subsection.
- 10.2.5 Continuances
- 10.2.5.1 Upon receipt of a notice, a person may request a continuance of the hearing.
- 10.2.5.2 The Board of Judges may grant a continuance of any hearing for good cause shown.
- 10.2.5.3 The Board of Judges may at any time order a continuance on their own motion.
- 10.2.6 Evidence
- 10.2.6.1 Each witness at a disciplinary hearing conducted by the Board of Judges must be sworn by the presiding judge.
- 10.2.6.2 The Board of Judges shall allow a full presentation of evidence and are not bound by the technical rules of evidence. However, the Board of Judges may disallow evidence that is irrelevant or unduly repetitive of other evidence. The Board of Judges shall have the authority to determine, in their sole discretion, the weight and credibility of any evidence and/or testimony. The Board of Judges may admit hearsay evidence if it determines the evidence is of a type that is commonly relied on by reasonably prudent people. The rules of privilege recognized by Delaware law apply in hearings before the Board of Judges.
- 10.2.6.3 The burden of proof is on the person bringing the complaint to show, by a preponderance of the evidence, that the licensee has violated or is responsible for a violation of the Act or a Commission rule.
- 10.2.6.4 The Board of Judges shall may make a tape recording of a disciplinary hearing. A copy or a transcript of the recording may be made available at the expense of the requesting person.

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

- 10.3.6 Nature of Hearings

- 10.3.6.1 An appeal from a decision of the Board of Judges shall be "de novo" (a new hearing shall be held with all evidence, testimony and argument to be presented at the new hearing.).

*(Break in Continuity Within Section)*

- 1 DE Reg. 507 (11/01/97)
- 2 DE Reg. 1243 (01/01/99)
- 5 DE Reg. 1903 (4/1/02)
- 12 DE Reg. 1074 (02/01/09)
- 12 DE Reg. 1513 (06/01/09)

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

<http://regulations.delaware.gov/register/september2009/proposed/13 DE Reg 336 09-01-09.htm>

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### **THOROUGHBRED RACING COMMISSION**

Section 4815(b)(3)(c)(3) (3 Del.C. §10005; 29 Del.C. §4815(b)(3)(c)(3))  
**3 DE Admin. Code 1001**

#### **PUBLIC NOTICE**

The Thoroughbred Racing Commission, in accordance with 3 **Del.C.** §10103(c) proposes changes to its rules and regulations. The proposal amends Section 11 of the rules and regulations by amending existing Rule 11.4.1 by striking the last sentence. A public hearing will be held on September 22, 2009 at 10:00 AM, in the Horsemen's Office at Delaware Park, 777 Delaware Park Blvd., Wilm., DE, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed regulations may obtain a copy from the Thoroughbred Racing Commission, 777 Delaware Park Blvd., Wilm., DE. Copies are also published online at the Register of Regulations website: [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml). Persons wishing to submit written comments may forward these to the attention of Mr. John F. Wayne, Executive Director, at the above address. The final date to receive comments will be at 10:00 AM on September 22, 2009.

#### **1001 Thoroughbred Racing Rules and Regulations**

*(Break in Continuity of Sections)*

#### **11.0 Entries, Subscriptions, Delegations**

- 11.1 Entering and Eligibility Required:
  - 11.1.1 No horse shall be qualified to start in any race unless such horse has been and continues to be duly entered therein. Entries or subscriptions for any horse, or the transfer of same, may be refused or cancelled by the Licensee without notice or reason given therefore.
  - 11.1.2 A horse must be eligible at the time of entry.
  - 11.1.3 A horse must be eligible at the time of starting.
- 11.2 Procedure for Making Entries:
  - 11.2.1 It shall be the absolute responsibility of the Trainer to report bleeders from other jurisdictions to the Commission's Veterinarian or Stewards on official forms from that State prior to entry.
  - 11.2.2 All entries, subscriptions, declarations and scratches shall be lodged with the Racing Secretary and shall not be considered as having been made until received by the Racing Secretary who shall maintain a record of time of receipt of same.

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## PROPOSED REGULATIONS

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- 11.2.3 Every entry must be in the name of such horse's registered Owner, as completely disclosed and registered with the Racing Secretary under these Rules and made by the Owner, Trainer or a person deputized by such Owner or Trainer.
- 11.2.4 Every entry must be in writing, or by telegraph promptly confirmed in writing, except that an entry may be made by telephone to the Racing Secretary but must be confirmed in writing should the Stewards, the Racing Secretary or an assistant to the Racing Secretary so request.
- 11.2.5 Every entry shall clearly designate the horse so entered. When entered for the first time during a meeting, every horse shall be designated by name, age color, sex, sire, dam and broodmare sire, as reflected by such horse's registration certificate.
- 11.2.6 No horse may race unless correctly identified to the satisfaction of the Stewards as being the horse duly entered;
- 11.2.7 In establishing the identity of a horse, responsibility shall be borne by any person attempting to identify such horse as well as the Owner of such horse, all such persons being subject to appropriate disciplinary action for incorrect identification.
- 11.2.8 At the time of entering a horse, the Trainer of such horse or his representative, must declare to the Racing Secretary or his representative, whether the horse will race on any medication permitted by these Rules and shall not deviate from such declaration.
- 11.2.9 Within the discretion of the Stewards, a list of horses so declared to race on medication may, in whole or in part, be announced, released for publication or otherwise made public without liability for the accuracy thereof.
- 11.2.10 In order to claim an apprentice allowance at the time of entry, an Apprentice Jockey must be designated by name.
- 11.2.11 No alteration may be made in any entry after the closing of entries, except that an error may be corrected.
- 11.2.12 No horse may be entered in two races to be run on the same day.
- 11.3 Limitation as to Spouses:  
Repealed 1/6/92.
- 11.4 Mutuel Entries:
- 11.4.1 All horses entered in the same race and owned wholly or in part by the same owner or spouse thereof shall be joined as a mutuel entry and a single betting interest. Horses shall be regarded as having a common owner when an owner of one horse, either as an individual or as a licensed member of a partnership or as a licensed shareholder of a corporation, has an ownership interest in another horse, either as an individual or as a licensed shareholder of a partnership or as a licensed shareholder of a corporation. ~~No trainer of any horse shall have any ownership interest in any other horse in the same race unless such horses are coupled as a single wagering interest.~~

*(Break in Continuity of Sections)*

4 DE Reg. 179 (07/01/00)

8 DE Reg. 1289 (03/01/05)

10 DE Reg. 1581 (04/01/07)

12 DE Reg. 667 (11/01/08)

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

<http://regulations.delaware.gov/register/september2009/proposed/13 DE Reg 343 09-01-09.htm>

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## DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 260

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

#### 260 General Administrative Review Procedures for the Child and Adult Care Food Programs of the United States Department of Agriculture CACFP/USDA

##### A. Type of Regulatory Action Required

Reauthorization of Existing Regulation

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

The Secretary of Education intends to readopt 14 DE Admin. Code 260 General Administrative Review Procedures for the Child and Adult Food Programs of the United States Department of Agriculture CACFP/USDA without changes. This regulation is part of the five year review cycle. The regulation is in place pursuant to the Child Nutrition and WIC Reauthorization Act of 2004, a reauthorization of the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before October 2, 2009 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 readopted regulation addresses administrative review procedures for Child and Adult Care Food Program not student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The readopted regulation addresses administrative review procedures for Child and Adult Care Food Program and not specifically education equity issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The readopted regulation addresses administrative review procedures for Child and Adult Care Food Program which does address student health.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The readopted regulation addresses administrative review procedures for Child and Adult Care Food Program which may affect students' legal rights.

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

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

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 for addressing the subject to be regulated will remain in the same entity.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic

subjects of mathematics, science, language arts and social studies? The readopted regulations will 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.

9. Is there a less burdensome method for addressing the purpose of the regulation? The Child and Adult Care Food Program is federally mandated and this amended regulation follows federal regulations.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no additional cost to the local school boards of compliance with the amended regulation.

## **260 General Administrative Review Procedures for the Child and Adult Care Food Programs of the United States Department of Agriculture CACFP/USDA**

### **1.0 Institutions Participating in the Delaware CACFP May Request an Administrative Review of the Following Actions**

- 1.1 Denial of a new or renewing institution's application for participation;
- 1.2 Denial of an application submitted by a sponsoring organization on behalf of a facility;
- 1.3 Proposed termination of an institution's agreement;
- 1.4 Proposed disqualification of a responsible principal or responsible individual;
- 1.5 Suspension of an institution's participation;
- 1.6 Denial of an institution's application for start up or expansion payments;
- 1.7 Denial of all or a part of an institution's claim for reimbursement except for a denial based on a late submission under 7 CFR §226.10(e);
- 1.8 Demand for the remittance of an overpayment; and
- 1.9 Any other action of the State agency affecting an institution's participation or its claim for reimbursement.

### **2.0 Notwithstanding the Provisions of Section 1.0 Above, Institutions Participating in the Delaware CACFP May Not Request an Administrative Review of the Following Actions**

- 2.1 A determination that an institution is seriously deficient;
- 2.2 Disqualification of an institution or a responsible principal or responsible individual, and the subsequent placement on the State agency list and the National disqualified list; or
- 2.3 Termination of a participating institution's agreement, including termination of a participating institution's agreement based on the disqualification of the institution by any publicly funded program.

### **3.0 Except Where the Abbreviated Administrative Review Procedures Apply as Set Forth Below, Administrative Reviews will be Conducted as Follows**

- 3.1 The Department of Education ("Department") must give notice of the action being taken or proposed, the basis for the action, and the procedures under which the institution and the responsible principals or responsible individuals may request an administrative review of the action. Notice shall be given to the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals by U. S. Mail postage prepaid. As used herein, "Petitioner" means a participating institution or agency, or its responsible principals or responsible individuals, as appropriate under the circumstances.
- 3.2 A request for administrative review must be submitted to the Department in writing not later than 15 days after the date the notice of action is received.
- 3.3 The petitioner may retain legal counsel or may be represented by another person if permitted by law.
- 3.4 Any information on which the Department's action was based will be available to the petitioner for inspection from the date of receipt by the Department of the request for an administrative review.

- 3.5 The petitioner may refute the findings contained in the notice of action in person or by submitting written documentation to the Department's review official. In order to be considered, written documentation must be submitted to and received by the review official not later than 30 days after the petitioner received the notice of action.
- 3.6 A hearing must be held by the administrative review official in addition to, or in lieu of, a review of written information only if the petitioner requests a hearing in the written request for an administrative review. If the petitioner fails to appear at a scheduled hearing, the petitioner waives the right to a personal appearance before the administrative review official, unless the administrative review official agrees to reschedule the hearing. A representative of the Department may, but is not required, to attend the hearing to respond to the petitioner's testimony and to answer questions posed by the administrative review official. If a hearing is requested, the petitioner and the Department must be provided with at least 10 days notice of the time and place of the hearing.
- 3.7 The administrative review official shall be independent and impartial. The administrative review official may be an employee of the Department, but must not have been involved in the action that is the subject of the administrative review, or have a direct personal or financial interest in the outcome of the administrative review. The petitioner may contact the administrative review official directly, but all such contacts must include the participation of a representative of the Department if the Department chooses to participate.
- 3.8 The administrative review official shall make a determination based solely on the information provided by the Department, the petitioner, and based upon federal and Delaware laws, regulations, policies and procedures governing the CACFP/USDA.
- 3.9 The decision of the administrative review official shall be issued to the Department and petitioner within 60 days of the Department's receipt of the written request for an administrative review. If the last day on which the decision is to be issued shall fall on a Saturday, Sunday, legal state holiday, or day when the Department is closed due to adverse weather conditions, the decision shall be issued on the next regular work day of the Department. The failure to issue a timely decision shall not, solely in itself, constitute grounds for reversing the Department's action. The decision of the administrative review official is the final administrative determination to be afforded to the petitioner.
- 3.10 The Department shall maintain a searchable record of all administrative reviews and the dispositions of the same.
- 3.11 The Department shall conduct the administrative review of the proposed disqualification of the responsible principals and responsible individuals as part of the administrative review of the application denial, proposed termination or proposed disqualification of the institution with which the responsible principals or responsible individuals are associated. However, at the discretion of the administrative review official, separate administrative reviews may be held if the institution does not request an administrative review or if either the institution or the responsible principal or responsible individual demonstrates that their interests conflict.

#### **4.0 Administrative Review**

Notwithstanding any of the foregoing to the contrary, administrative review will be limited to a review of written submissions concerning the accuracy of the Department's determination if the application was denied or the Department proposes to terminate the institution's agreement because:

- 4.1 The information submitted on the application was false; or
- 4.2 The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is
- 4.2.1 On the National Disqualified List; or
  - 4.2.2 Ineligible to participate in any other publicly funded program by reason of violation of the requirements of the program; or
  - 4.2.3 Has been convicted for any activity that indicates a lack of business integrity.

**5.0 The Department's Administrative Responsibilities to a Participating Institution Shall Remain in Effect During the Administrative Review**

- 5.1 Overpayment demand. During the period of the administrative review, the Department is prohibited from taking action to collect or offset the overpayment. However, the Department must assess interest beginning with the initial demand for remittance of the overpayment and continuing through the period of administrative review unless the administrative review official overturns the Department's action.
- 5.2 Program payments. The availability of Program payments during an administrative review of the denial of a new institution's application, denial of a renewing institution's application, proposed termination of a participating institution's agreement, and suspension of an institution shall be treated in accordance with the provisions of 7 CFR §226.6 (c)(1)(iii)(D), (c)(2)(iii)(D), (c)(3)(iii)(D), (c)(5)(i)(D), and (c)(5)(ii)(E), respectively.

**5 DE Reg. 461 (8/1/01)**

**8 DE Reg. 537 (10/1/04)**

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**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
**14 DE Admin. Code 705**

**Education Impact Analysis Pursuant To 14 Del.C. Section 122(D)****705 Leave for Training Camp or Special Duty in the National Guard or the Military Reserves of the United States****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 705** Leave for Training Camp or Special Duty in the National Guard or the Military Reserves of the United States to add a citation to the non regulatory note and to revise to the appropriate formatting. This regulation was reviewed pursuant to the five 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 October 2, 2009 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 amended regulation addresses leave of absences for training camp or special duty in the National Guard or military and does not specifically address student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses leave of absences for training camp or special duty in the National Guard or military and does not specifically address equitable education for all students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses leave of absences for training camp or special duty in the National Guard or military and does not specifically address health and safety of students.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses leave of absences for training camp or special duty in the National Guard or military and does not specifically address student legal rights, but rather educator rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation addresses leave of absences for training camp or special duty in the National Guard or military and preserves the necessary authority and flexibility of decision making at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation addresses leave of absences for training camp or special duty in the National Guard or military and does not place unnecessary reporting or administrative requirements upon decision makers at the local board or school levels.

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

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation addresses leave of absences for training camp or special duty in the National Guard or military and does not specifically address the core academic areas.

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no addition costs because of the amendment to this regulation.

### **705 Leave for Training Camp or Special Duty in the National Guard or the Military Reserves of the United States**

#### **1.0 Leave for Training or Special Duty**

1.1 Any permanent and full time employee shall be excused from work with pay to attend training camp or special duty on orders as a member of the military reserves of the United States or the National Guard, not to exceed fifteen (15) days or the equivalent hours as required by the **Delaware Code**, on a prorated basis in any calendar year.

1.1.1 Such training or special duty leave shall not be deducted from their annual leave or in any other way result in loss of privileges or compensation to said employee.

1.1.2 Any permanent or full time employee shall file a request for military leave with their employer at least two weeks prior to their leave, along with a copy of their official orders.

(Non regulatory Note: See 29 **Del.C.** §5105 Leave of Absence for Military Service, Pension Right; Terms of Successor Appointees and 14 **Del.C.** §1327 Leave of Absence for Person in Military Service)

**3 DE Reg. 631 (11/1/99)**

**8 DE Reg. 700 (11/1/04)**

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#### **OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))  
14 **DE Admin. Code** 706

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

### **706 Credit for Experience for Full Time Active Duty Service in the Armed Forces of the United States**

#### **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** 706 Credit for Experience for Full time Active Duty Service in the Armed Forces of the United States to revise the formatting. There are no substantive changes to this regulation. This regulation was reviewed pursuant to the five 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 October 2, 2009 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 amended regulation addresses credit for experience for full time active duty service in the Armed Forces and does not specifically address student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses credit for experience for full time active duty service in the Armed Forces and does not specifically address equitable education for all students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses credit for experience for full time active duty service in the Armed Forces and does not specifically address health and safety of students.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses leave of absences for training camp or special duty in the National Guard or military and does not specifically address student legal rights, but rather educator rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation addresses credit for experience for full time active duty service in the Armed Forces and preserves the necessary authority and flexibility of decision making at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation addresses credit for experience for full time active duty service in the Armed Forces and does not place unnecessary reporting or administrative requirements upon decision makers at the local board or school levels.

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

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation addresses credit for experience for full time active duty service in the Armed Forces and does not specifically address the core academic areas.

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no addition costs because of the amendment to this regulation.

**706 Credit for Experience for Full Time Active Duty Service in the Armed Forces of the United States****1.0 Credit for Experience**

1.1 Credit for Experience for full time active duty service, not in excess of six (6) years in the armed services of the United States, shall be granted provided the individual became a teacher, principal, superintendent, or other employee in a Delaware public school:

1.1.1 Within five (5) years after completion of a tour of duty; or

- 1.1.2 Within five (5) years after completion of a course of professional or vocational training, if such course was begun within five (5) years after completion of the individual's tour of duty.

## 2.0 Instruction

Any instruction in Military Science given during years of enlistment shall be included in the six (6) years in the armed services of the United States.

## 3.0 Calculation of Service Time

- 3.1 Credit for service in the armed forces of the United States shall be calculated as follows:
- 3.1.1 One year of experience shall be allowed for each creditable year of full time active duty service.
- 3.1.2 In the case of a teacher, principal, superintendent or other administrative employee a combined total of ninety one (91) days of service and employment in any of these positions during any one school year will count as a year of experience.
- 3.1.3 No more than one (1) year of experience may be credited for any one (1) calendar year.

(Non regulatory Note: See 14 Del.C. §1312(a) and §1327 Leave of Absence for Persons in Military Service).

**3 DE Reg. 631 (11/1/99)**

**8 DE Reg. 701 (11/1/04)**

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### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 718

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

#### 718 Health Examinations for Employees of School Districts, Charter Schools, and Alternative Programs

##### 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 718 Health Examinations for Employees of School Districts, Charter Schools, and Alternative Programs. There is a minor formatting change for additional clarity and an amendment that requires medical information on employees to be maintained in accordance with any Health Insurance Portability and Accountability (HIPAA) requirements and separated from the individual's personnel file.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before October 2, 2009 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 amended regulation addresses health examinations for employees of school districts, charter schools, and alternative programs and does not specifically address student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses health examinations for employees of school districts, charter schools, and alternative programs and does not specifically address equitable education for all students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses health examinations for employees of school districts, charter schools, and alternative programs and does not specifically address health and safety of students.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses health examinations for employees of school districts, charter schools, and alternative programs and does not specifically address student legal rights, but rather educator rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation addresses health examinations for employees of school districts, charter schools, and alternative programs and preserves the necessary authority and flexibility of decision making at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation addresses health examinations for employees of school districts, charter schools, and alternative programs and does not place the unnecessary reporting or administrative requirements upon decision makers at the local board or school levels.

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

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation addresses health examinations for employees of school districts, charter schools, and alternative programs and does not specifically address the core academic areas.

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

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no additional costs because of the amendment to this regulation.

## **718 Health Examinations for Employees of School Districts, Charter Schools, and Alternative Programs**

### **1.0 Required Physician's Certification**

At initial employment, all employees of school districts, charter schools and alternative programs shall provide a physician's certification that he or she is free (a) from any medical condition which would prevent the applicant from performing the essential functions of the applicant's job and (b) free from any medical condition which cannot be remedied through reasonable accommodations. The physician's certification, along with any other medical information, shall be retained in an individual's file kept in accordance with any Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirement and separate from the individual's personnel file.

Non regulatory note: See 14 **Admin. Code** 805 The School Health Tuberculosis Control Program for TB screening and testing. Also, see 21 **Del.C.** §2708 and 14 **DE Admin. Code** 1105 for requirements for school bus drivers.

**3 DE Reg. 526 (10/1/99)**

**8 DE Reg. 702 (11/1/04)**

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))  
14 DE Admin. Code 852

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

#### 852 Child Nutrition

#### 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 852 Child Nutrition to add a provision that the district or charter school must provide a copy of its child nutrition policy electronically to the Department. This regulation has been reviewed as part of the regular 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 October 2, 2009 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 and the amendments address child nutrition and to the extent child nutrition supports achievement, this regulation supports improvement of student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses student nutrition and not necessarily equitable education.

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses child nutrition and the legal rights as required under the federal law related to child nutrition for districts and charter schools participating in these federal programs.

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.

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

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 for addressing the subject to be regulated will remain in the same entity.

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

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

# PROPOSED REGULATIONS

10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no additional cost to the State and to the local school boards of compliance with the regulation.

## 852 Child Nutrition

### 1.0 Required Policy

- 1.1 Each school district shall have a Child Nutrition Policy which at a minimum shall provide that:
- 1.1.1 Meals served to children are nutritious and well balanced as defined by USDA 7CFR Part 210.10 Nutrition Standards for Lunches and Menu Planning Methods and USDA 7CFR Part 220.8 Nutrition Standards for Breakfast and Menu Planning Alternatives.
  - 1.1.2 The foods sold in addition to meals be selected to promote healthful eating habits and exclude those foods of minimal nutritional value as defined by the Food and Nutrition Service, USDA 7 CFR Part 210, Appendix B.
  - 1.1.3 Purchasing practices ensure the use of quality products.
  - 1.1.4 Students have adequate time to eat breakfast and lunch.
  - 1.1.5 Nutrition education be an integral part of the curriculum from preschool to twelfth grade.
  - 1.1.6 Food service personnel use training and resource materials developed by the Department of Education and the United States Department of Agriculture to motivate children in selecting healthy diets.

### 2.0 Reporting Requirements and Timelines

- 2.1 Each local school district and charter school shall have an electronic copy of its current Child Nutrition Policy on file with the Department of Education.
- 2.2 When a local school district or charter school revises its Child Nutrition Policy, it shall provide an electronic copy of the revised policy to the Department within thirty (30) days of the revision, even if the revision was made because of changes in Federal, state or local law, regulations, guidance or policies.

3 DE Reg. 524 (10/1/99)

8 DE Reg. 540 (10/1/04)

## PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b)  
14 **DE Admin. Code**1507

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

### 1507 Alternative Routes to Teacher Licensure and Certification Program

#### A. Type of Regulatory Action Requested

Amendment to Existing Regulation

#### B. Synopsis Of Subject Matter Of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1507 Alternative Routes to Teacher Licensure and Certification Program. With changes by the General Assembly in 14 **Del.C.** §1260 during the spring of 2009, it was imperative to amend the regulation to reflect current language in Code.

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Persons wishing to present their views regarding this matter may do so in writing by the close of business on Thursday, October 1, 2009 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.

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

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

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

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 **Del. C.** requires that we promulgate this regulation.

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no additional cost to local school boards for compliance with the regulation.

**1507 Alternative Routes to Teacher Licensure and Certification Program****1.0 Content**

This regulation shall apply to the Alternative Routes for Teacher Licensure and Certification Program, pursuant to 14 **Del.C.** §§1260 through 1264.

**2.0 Definitions**

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

“**Coherent Major**” means a major in an area appropriate to the instructional field.

# PROPOSED REGULATIONS

**"Department"** means the Delaware Department of Education.

**"Educator"** means a person licensed and certified by the State under Chapter 12 of 14 **Del.C.** to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board and approved by the State Board, ~~but~~ For purposes of 14 **Del.C.** Chapter 12, the term 'educator' does not include substitute teachers.

**"Emergency Certificate"** means ~~a certificate issued to an educator who holds a valid Delaware Initial, Continuing, or Advanced License, but lacks necessary skills and knowledge to meet certification requirements in a specific content area~~ a temporary credential issued pursuant to 14 **DE Admin. Code** 1506 Emergency Certificate.

**"Examination of Content Knowledge"** means a standardized State test of subject matter knowledge which measures knowledge in a specific content area, such as PRAXIS™ II.

**"Examination of General Knowledge"** means a standardized test which measures general knowledge and essential skills in mathematics or quantitative and verbal skills, including reading and writing, such as PRAXIS™ I, which for the purposes of this regulation, means the State Basic Skills Test.

**"Initial License"** means the first license issued to an educator that allows an educator to work in a position requiring a license in a Delaware public school.

**"Major or Its Equivalent"** means no fewer than thirty (30) credit hours in a content area.

**"Secretary"** means the Secretary of the Delaware Department of Education.

**"Standard Certificate"** means a credential issued to verify that an educator has the prescribed knowledge, skill or education to practice in a particular area, teach a particular subject, or teach a category of students.

**"Standards Board"** means the Professional Standards Board established pursuant to 14 **Del.C.** §1201.

**"State Board"** means the State Board of Education of the State pursuant to 14 **Del.C.** §104.

**"Teach For America"** means the nationally established program consisting of recent college graduates and professionals of all academic majors and career interests who commit to a minimum of two (2) consecutive years of classroom teaching in either a low-income urban or rural public school.

**"Teacher Residency Program"** means a teacher preparation program meeting the minimum criteria of this regulation and approved pursuant to this regulation and any Department regulation. Such a program is typically sponsored by a regionally accredited college or university in partnership with one or more State Education Agencies and/or an established Organization/Foundation, where the participant is paired with a mentor and veteran teacher in a classroom for their initial school year experience.

## 3.0 Alternative Routes to Teacher Licensure and Certification

Qualified Candidates meeting all conditions and seeking participation in the an Alternative Routes to Teacher Licensure and Certification program shall be issued an Initial License of no more than three (3) years duration conditioned on continued enrollment in the an Alternative Routes for Teacher Licensure and Certification Program and an Emergency Certificate or certificates of no more than three years duration. Candidates must shall meet the following minimum qualifications:

### 3.1 Successfully completed one of the following education requirements:

- 3.1.1 Hold a bachelor's degree from a regionally accredited college or university in a coherent major, or its equivalent, in appropriate to the instructional field they desire to will teach; or
- 3.1.2 Hold a Bachelor's Degree from a regionally accredited college or university in any content area and are enrolled in the Teach For America program and have completed all pre-service requirements for such program; or
- 3.1.3 Hold a Bachelor's Degree from a regionally accredited college or university in any content area and are enrolled in an approved teacher residency program and have completed all pre-service requirements for such program; and

- 3.2 Pass an examination of general knowledge, such as PRAXIS™ I, or provide an acceptable alternative to the PRAXIS™ I test scores, as set forth in 14 **DE Admin.** §1510, within the period of time from the date of hire to the end of the next consecutive fiscal year; and
- 3.3 Obtain acceptance into an approved alternative routes to licensure and certification program.
  - 3.3.1 Notwithstanding any other provisions to the contrary, candidates enrolled in the Teach For America program shall not be limited to teaching in areas identified as critical curricular areas.
  - 3.3.2 Notwithstanding any other provisions to the contrary, candidates enrolled in an approved teacher residency program shall not be limited to teaching in areas identified as critical curricular areas; and
- 3.34 Demonstrate the prescribed knowledge and skills for a particular content area by completing the following:
  - 3.4.1 Pass an examination of content knowledge, such as PRAXIS™ II, in the instructional field they desire to teach, if applicable and available, within the period of time from the date of hire to the end of the next fiscal year.
  - 3.4.2 Notwithstanding any other provisions to the contrary, candidates enrolled in the Teach For America program shall, where applicable and available, have achieved a passing score on an examination of content knowledge, such as Praxis II, for the area in which such candidate will be teaching, prior to taking full responsibility for teaching a classroom; or
  - 3.4.3 Notwithstanding any other provisions to the contrary, candidates enrolled in a teacher residency program shall, where applicable and available, have achieved a passing score on an examination of content knowledge, such as Praxis II, for the area in which such candidate will be teaching, prior to taking full responsibility for teaching a classroom; and
- 3.45 Obtain an acceptable health clearance and an acceptable criminal background check clearance; and
- 3.56 Obtain a teaching position by one of the following:
  - 3.6.1 Obtain and accept an offer of employment in a position that requires licensure and certification; or
  - 3.6.2 In the case of a teacher residency program, obtain and accept an offer for a position that if paid would require licensure and certification.

#### **4.0 Components of the Program**

The An Alternative Routes for Teacher Licensure and Certification Program shall ~~consist of~~ be approved by the Secretary of Education and meet the following minimum criteria:

- 4.1 Incorporate one of the following prerequisite options:
  - 4.1.1 A summer institute of approximately 120 instructional (clock) hours completed by the candidate prior to the beginning of his/her teaching assignment. This includes an orientation to the policies, organization and curriculum of the employing school district or charter school, instructional strategies and classroom management and child or adolescent development.
    - 4.1.1.1 Candidates employed too late to participate in the summer institute will complete the practicum experience and seminars on teaching during the first school year and will participate in the summer institute following their first year of teaching; or
  - 4.1.2 A teacher entering a Delaware public school through the Teach For America program shall complete the two hundred (200) hours of pre-service training provided by Teach for America; or
  - 4.1.3 A teacher entering a Delaware public school through a teacher residency program shall complete a minimum of one hundred and twenty (120) hours of pre-service training provided by the approved teacher residency program; and
- 4.2 A Require a one year, full time practicum experience which includes a period of intensive on-the-job mentoring and supervision beginning the first day in which the candidate assumes full responsibility for a classroom and continuing for a period of thirty (30) weeks.
- 4.3 Require ~~S~~seminars on teaching that provide Alternative Routes to Licensure and Certification teachers with approximately 200 instructional (clock) hours or equivalent professional development during the first year of their teaching assignment and during an intensive seminar the following summer. Content



shall include curriculum, student development and learning, and the classroom and the school, as required in 14 Del.C. §1261.

- 4.4 Receive any required approvals under the Department's regulation 14 DE Admin. Code 290 Approval of Educator Preparation Programs.

#### **5.0 Mentoring Support**

Mentoring support shall be carried out in accordance with 14 DE Admin. Code 1503. No mentor shall participate in any way in decisions which might have a bearing on the licensure, certification or employment of teachers participating in ~~the~~ an Alternative Routes for Teacher Licensure and Certification Program.

#### **6.0 Supervision and Evaluation**

Teachers enrolled in ~~the~~ an Alternative Routes for Teacher Licensure and Certification Program shall be observed and formally evaluated by a certified evaluator using the state approved evaluation system at least once during the first ten (10) weeks in the classroom, and a minimum of two (2) additional times within the next twenty (20) weeks. Evaluations shall be no more than two (2) months apart.

#### **7.0 Recommendation for Licensure and Certification**

Upon completion of ~~the~~ an Alternative Routes for Teacher Licensure and Certification Program, the certified evaluator shall prepare a summative evaluation report for the teacher participating in the Program. The evaluation report shall include a recommendation as to whether or not a license shall be issued. The evaluation report and license recommendation shall be submitted to the Department. A copy of the evaluation report and license recommendation should be issued to the candidate twenty (20) days before submission to the Department.

#### **8.0 Issuance of License**

If the evaluation report recommends approval of the candidate for licensure, provided the candidate is otherwise qualified, the Department shall issue an Initial License valid for the balance of the three (3) year term, if the participant has completed the Program in less than three (3) years, or a Continuing License, if the three (3) year term of the Initial License has expired, and shall issue the appropriate Standard Certificate or Certificates.

Candidates who receive a recommendation of 'disapproved' shall not be issued an Initial License and Standard Certificate by the Department, and may not continue in ~~the~~ an Alternative Routes for Licensure and Certification Program.

#### **9.0 Recommendation of "Disapproved"**

Candidates who receive a recommendation of "disapproved" may petition the Department for approval of additional opportunities to participate in ~~the~~ an Alternative Routes for Teacher Licensure and Certification Program. Within fifteen (15) days of receipt of the evaluation report and the certification recommendation, a candidate disagreeing with the recommendation may submit to the evaluator written materials documenting the reasons that the candidate believes a license should be awarded. The evaluator shall forward all documentation submitted by the candidate, along with the evaluation report and recommendation concerning licensure and certification to the Secretary of Education. The Secretary or his or her designee shall review the evaluation report, the licensure and certification recommendation, and any documentation supplied by the candidate and make a determination with respect to licensure and certification.

**10.0 Right to a Hearing**

A teacher participating in the an Alternative Routes for Teacher Licensure and Certification Program who is denied a license and certificate may appeal the decision, and is entitled to a full and fair hearing before the Standards Board. Hearings shall be conducted in accordance with the Standard Board's Hearing Procedures and Rules.

**11.0 Program Evaluation**

Those responsible for Alternative Routes to Certification Programs approved by the Standards Board and the State Board shall develop a program evaluation process. The focus of the program evaluation ~~must~~ shall be to demonstrate the degree to which teachers who complete the program are effective in the classroom.

**7 DE Reg. 161 (8/1/03)**

**12.0 ~~Other~~ Approval of Alternative Routes Programs**

The Secretary may approve for implementation ~~other~~ Alternative Routes to Teacher Licensure and Certification Programs, provided the programs meet the minimum criteria set forth in this regulation and in any applicable laws.

**7 DE Reg. 161 (8/01/03)**

**9 DE Reg. 971 (12/01/05)**

**Renumbered effective 6/1/07 - see Conversion Table**

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**PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b)  
14 **DE Admin. Code**1512

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

**1512 Issuance and Renewal of Advanced License****A. Type of Regulatory Action Requested**

Amendment to Existing Regulation

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1512 Issuance and Renewal of Advanced License. Upon review, the Board has amended a few sections of the regulation for clarity and accuracy, and to meet current formatting.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Thursday, October 1, 2009 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice

in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.

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

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

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

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 **Del.C.** requires that we promulgate this regulation.

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no additional cost to local school boards for compliance with the regulation.

## 1512 Issuance and Renewal of Advanced License

### 1.0 Content

This regulation shall apply to the issuance and renewal of an Advanced License for educators, pursuant to 14 **Del.C.** §1213 and §1214.

### 2.0 Definitions

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

**"Department"** means the Delaware Department of Education.

**"Educator"** means ~~an employee paid under 14 **Del.C.** §1305~~ a person licensed and certified by the State under 14 **Del.C.**, Chapter 12, to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board and approved by the State Board. For purposes of 14 **Del.C.** Chapter 12, the term 'educator' does not include substitute teachers.

**"Exigent Circumstances"** means ~~unanticipated circumstance or circumstances beyond the educator's control, including, but not limited to serious illness of the educator or a member of his/her immediate family, activation to active military duty, and other serious emergencies which necessitate the educator's temporarily leaving active service.~~ The expiration of an educator's license before the

end of the school year shall be considered an exigent circumstance, however the educator's license may only be extended to the end of that current school year.

"Immorality" means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of his or her unfitness or otherwise.

"**Maintenance of Proficiency**" means evidence of valid renewal of National Board for Professional Teaching Standards certification.

"**National Board Certified Teacher**" means an educator who holds National Board for Professional Teaching Standards certification.

"**National Board Certification**" means certification of an educator by the National Board for Professional Teaching Standards.

"**Standards Board**" means the Professional Standards Board established pursuant to 14 **Del.C.** §104 Chapter 12.

"**State**" means State of Delaware.

### 3.0 Advanced License

In accordance with 14 **Del.C.** §1213, the Department, upon receipt of the list of successful candidates provided annually by the National Board for Professional Teaching Standards, shall issue an Advanced License to any educator who receives National Board for Professional Teaching Standards certification. An Advanced License is valid for up to 10 years unless extended pursuant to 14 **Del.C.** §1216 or revoked for cause, as defined in 14 **Del.C.** §1218.

3.1 The Department shall issue, upon application, an Advanced License to an educator licensed in another jurisdiction who provides verification of receipt of National Board certification.

3.2 The Department shall not act on an application for licensure if the applicant is under official investigation by any state or local authority with the power to issue educator licenses or certifications, where the alleged conduct involves allegations of immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials, until the applicant provides evidence of the investigation's resolution.

~~3.2.1 "Immorality" means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of his or her unfitness.~~

### 4.0 RESERVED (For Equivalent Program)

### 5.0 Renewal of Advanced License

In accordance with 14 **Del.C.** §1214, the Department shall renew an Advanced License, valid for an additional 10 years, to an educator who has maintained proficiency through the National Board for Professional Teaching Standards. Proficiency for National Board certification shall be deemed to have been maintained if the educator provides evidence of valid renewal of National Board for Professional Teaching Standards certification.

5.1 The Department shall renew an Advanced License upon receipt of a list of successful Delaware candidates for renewal provided annually by the National Board for Professional Teaching Standards.

5.2 An applicant who elects not to renew with the National Board for Professional Teaching standards or who fails to meet the recertification requirements set forth by the National Board ~~will~~ shall be issued a Continuing License.

### 6.0 Extension for Exigent Circumstances

The Department may extend an Advanced License for a period not to exceed one year, exigent circumstances warranting the necessity of such extension.

**7.0 Leave of Absence**

An educator may take a leave of absence of up to three years with no effect upon the validity or expiration of the Advanced License.

**8.0 Criminal Conviction History**

An applicant shall disclose his or her criminal conviction history upon application for an Advanced License, the renewal of an Advanced License, or upon the issuance of a Continuing License pursuant to section 5.2. Failure to disclose a criminal conviction history is grounds for denial or revocation of an advanced license or a Continuing License and criminal prosecution as specified in 14 Del.C. §1219.

6 DE Reg. 77 (7/1/02)

7 DE Reg. 956 (1/1/04)

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**PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))

14 DE Admin. Code 1590

**Educational Impact Analysis Pursuant To 14 Del.C. Section 122(D)****1590 Delaware Administrator Standards****A. Type of Regulatory Action Requested**

Amendment to Existing Regulation

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

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 DE Admin. Code 1590 Delaware Administrator Standards. The regulation concerns the nationally recognized standards that describe leadership behaviors and skills established for Delaware school leaders, and serves as the foundation for the preparation and appraisal of school leaders.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Thursday, October 1, 2009 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator certification, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator certification, not students' legal rights.

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

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

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

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

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 **Del.C.** requires that we promulgate this regulation.

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no additional cost to local school boards for compliance with the regulation.

## 1590 Delaware Administrator Standards

### 1.0 Interstate School Leaders Licensure Consortium

The Interstate School Leaders Licensure Consortium (ISLLC) standards<sup>1</sup> for school leaders establish a common set of knowledge, skills and attributes expected of school leaders.

These nationally recognized standards describe ~~standards~~ leadership behaviors and skills established for Delaware School Leaders, and serve as the foundation for preparation and appraisal of school leaders. In accordance with 14 **Del.C.** §1205, this regulation shall be applied to all school administrators employed within the public schools and charter schools of the State of Delaware.

### 2.0 Definitions

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

**"Administrator"** means an educator who is licensed and certified as an administrator and is employed in an instructional role in a school district or charter school.

**"Education Leader"** means a district or charter school building level or central office administrator.

### 3.0 Standard 1

~~A school administrator is an educational leader who promotes the success of all students by facilitating the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by the school community.~~

~~3.1 The administrator has knowledge and understanding of:~~

~~3.1.1 Learning goals in a pluralistic society.~~

~~3.1.2 The principles of developing and implementing strategic plans.~~

~~3.1.3 Systems theory.~~

~~3.1.4 Information sources, data collection, and data analysis strategies.~~

1 The Interstate School Leaders Licensure Consortium Standards for School Leaders. Washington, D.C.: Council of Chief State School Officers, 1996 2008.

- ~~3.1.5 Effective communication.~~
- ~~3.1.6 Effective consensus building and negotiation skills.~~
- 3.2 The administrator believes in, values, and is committed to:
  - ~~3.2.1 The educability of all.~~
  - ~~3.2.2 A school vision of high standards of learning.~~
  - ~~3.2.3 Continuous school improvement.~~
  - ~~3.2.4 The inclusion of all members of the school community.~~
  - ~~3.2.5 Ensuring that students have the knowledge, skills, and values needed to become successful adults.~~
  - ~~3.2.6 A willingness to continuously examine one's own assumptions, beliefs, and practices.~~
  - ~~3.2.7 Doing the work required for high levels of personal and organizational performance.~~
- 3.3 The administrator facilitates processes and engages in activities ensuring that:
  - 3.3.1 The vision and mission of the school are effectively communicated to staff, parents, students, and community members.
  - 3.3.2 The vision and mission are communicated through the use of symbols, ceremonies, stories, and similar activities.
  - 3.3.3 The core beliefs of the school vision are modeled for all stakeholders.
  - 3.3.4 The vision is developed with and among stakeholders.
  - 3.3.5 The contributions of school community members to the realization of the vision are recognized and celebrated.
  - 3.3.6 Progress toward the vision and mission is communicated to all stakeholders.
  - 3.3.7 The school community is involved in school improvement efforts.
  - 3.3.8 The vision shapes the educational programs, plans, and actions.
  - 3.3.9 An implementation plan is developed in which objectives and strategies to achieve the vision and goals are clearly articulated.
  - 3.3.10 Assessment data related to student learning are used to develop the school vision and goals.
  - 3.3.11 Relevant demographic data pertaining to students and their families are used in developing the school mission and goals.
  - 3.3.12 Barriers to achieving the vision are identified, clarified, and addressed.
  - 3.3.13 Needed resources are sought and obtained to support the implementation of the school mission and goals.
  - 3.3.14 Existing resources are used in support of the school vision and goals.
  - 3.3.15 The vision, mission, and implementation plans are regularly monitored, evaluated, and revised.
- 3.1 An education leader promotes the success of every student by facilitating the development, articulation, implementation and stewardship of a vision of learning that is shared and supported by all stakeholders.
- 3.2 The education leader shall engage in and be responsible for the following leadership behaviors and skills:
  - 3.2.1 Collaboratively develop and implement a shared vision and mission;
  - 3.2.2 Collect and use data to identify goals, assess organizational effectiveness, and promote organizational learning;
  - 3.2.3 Create and implement plans to achieve goals;
  - 3.2.4 Promote continuous and sustainable improvement; and
  - 3.2.5 Monitor and evaluate progress and revise plans.

**4.0 Standard 2**

A school administrator is an educational leader who promotes the success of all students by advocating, nurturing, and sustaining a school culture and instructional program conducive to student learning and staff professional growth.

**4.1 The administrator has knowledge and understanding of:**

- 4.1.1 Student growth and development.
- 4.1.2 Applied learning theories.
- 4.1.3 Applied motivational theories.
- 4.1.4 Curriculum design, implementation, evaluation, and refinement.
- 4.1.5 Principles of effective instruction.
- 4.1.6 Measurement, evaluation, and assessment strategies.
- 4.1.7 Diversity and its meaning for educational programs.
- 4.1.8 Adult learning and professional development models.
- 4.1.9 The change process for systems, organizations, and individuals.
- 4.1.10 The role of technology in promoting student learning and professional growth.
- 4.1.11 School cultures.

**4.2 The administrator believes in, values, and is committed to:**

- 4.2.1 Student learning as the fundamental purpose of schooling.
- 4.2.2 The proposition that all students can learn.
- 4.2.3 The variety of ways in which students can learn.
- 4.2.4 Life long learning for self and others.
- 4.2.5 Professional development as an integral part of school improvement.
- 4.2.6 The benefits that diversity brings to the school community.
- 4.2.7 A safe and supportive learning environment.
- 4.2.8 Preparing students to be contributing members of society.

**4.3 The administrator facilitates processes and engages in activities ensuring that:**

- 4.3.1 All individuals are treated with fairness, dignity, and respect.
- 4.3.2 Professional development promotes a focus on student learning consistent with the school vision and goals.
- 4.3.3 Students and staff feel valued and important.
- 4.3.4 The responsibilities and contributions of each individual are acknowledged.
- 4.3.5 Barriers to student learning are identified, clarified, and addressed.
- 4.3.6 Diversity is considered in developing learning experiences.
- 4.3.7 Life long learning is encouraged and modeled.
- 4.3.8 There is a culture of high expectations for self, student, and staff performance.
- 4.3.9 Technologies are used in teaching and learning.
- 4.3.10 Student and staff accomplishments are recognized and celebrated.
- 4.3.11 Multiple opportunities to learn are available to all students.
- 4.3.12 The school is organized and aligned for success.
- 4.3.13 Curricular, cocurricular, and extracurricular programs are designed, implemented, evaluated, and refined.
- 4.3.14 Curriculum decisions are based on research, expertise of teachers, and the recommendations of learned societies.
- 4.3.15 The school culture and climate are assessed on a regular basis.
- 4.3.16 A variety of sources of information is used to make decisions.
- 4.3.17 Student learning is assessed using a variety of techniques.
- 4.3.18 Multiple sources of information regarding performance are used by staff and students.



# PROPOSED REGULATIONS

- 4.3.19 ~~A variety of supervisory and evaluation models is employed.~~
- 4.3.20 ~~Pupil personnel programs are developed to meet the needs of students and their families.~~
- 4.1 An education leader promotes the success of every student by advocating, nurturing, and sustaining a school culture and instructional program conducive to student learning and staff professional growth.
- 4.2 The education leader shall engage in and be responsible for the following leadership behaviors and skills:
- 4.2.1 Nurture and sustain a culture of collaboration, trust, learning, and high expectations;
- 4.2.2 Create a comprehensive, rigorous, and coherent curricular program;
- 4.2.3 Create a personalized and motivating learning environment for students;
- 4.2.4 Supervise instruction;
- 4.2.5 Develop assessment and accountability systems to monitor student progress;
- 4.2.6 Develop the instructional and leadership capacity of staff;
- 4.2.7 Maximize time spent on quality instruction;
- 4.2.8 Promote the use of the most effective and appropriate technologies to support teaching and learning; and
- 4.2.9 Monitor and evaluate the impact of the instructional program.

## 5.0 Standard 3

~~A school administrator is an educational leader who promotes the success of all students by ensuring management of the organization, operations, and resources for a safe, efficient, and effective learning environment.~~

- 5.1 ~~The administrator has knowledge and understanding of:~~
- 5.1.1 ~~Theories and models of organizations and the principles of organizational development.~~
- 5.1.2 ~~Operational procedures at the school and district level.~~
- 5.1.3 ~~Principles and issues relating to school safety and security.~~
- 5.1.4 ~~Human resources management and development.~~
- 5.1.5 ~~Principles and issues relating to fiscal operations of school management.~~
- 5.1.6 ~~Principles and issues relating to school facilities and use of space.~~
- 5.1.7 ~~Legal issues impacting school operations.~~
- 5.1.8 ~~Current technologies that support management functions.~~
- 5.2 ~~The administrator believes in, values, and is committed to:~~
- 5.2.1 ~~Making management decisions to enhance learning and teaching.~~
- 5.2.2 ~~Taking risks to improve schools.~~
- 5.2.3 ~~Trusting people and their judgments.~~
- 5.2.4 ~~Accepting responsibility.~~
- 5.2.5 ~~High quality standards, expectations, and performances.~~
- 5.2.6 ~~Involving stakeholders in management processes.~~
- 5.2.7 ~~A safe environment.~~
- 5.3 ~~The administrator facilitates processes and engages in activities ensuring that:~~
- 5.3.1 ~~Knowledge of learning, teaching, and student development is used to inform management decisions.~~
- 5.3.2 ~~Operational procedures are designed and managed to maximize opportunities for successful learning.~~
- 5.3.3 ~~Emerging trends are recognized, studied, and applied as appropriate.~~
- 5.3.4 ~~Operational plans and procedures to achieve the vision and goals of the school are in place.~~
- 5.3.5 ~~Collective bargaining and other contractual agreements related to the school are effectively managed.~~

- ~~5.3.6 The school plan, equipment, and support systems operate safely, efficiently, and effectively.~~
- ~~5.3.7 Time is managed to maximize attainment of organizational goals.~~
- ~~5.3.8 Potential problems and opportunities are identified.~~
- ~~5.3.9 Problems are confronted and resolved in a timely manner.~~
- ~~5.3.10 Financial, human, and material resources are aligned to the goals of schools.~~
- ~~5.3.11 The school acts entrepreneurially to support continuous improvement.~~
- ~~5.3.12 Organizational systems are regularly monitored and modified as needed.~~
- ~~5.3.13 Stakeholders are involved in decisions affecting schools.~~
- ~~5.3.14 Responsibility is shared to maximize ownership and accountability.~~
- ~~5.3.15 Effective problem framing and problem solving skills are used.~~
- ~~5.3.16 Effective conflict resolution skills are used.~~
- ~~5.3.17 Effective group process and consensus building skills are used.~~
- ~~5.3.18 Effective communication skills are used.~~
- ~~5.3.19 There is effective use of technology to manage school operations.~~
- ~~5.3.20 Fiscal resources of the school are managed responsibly, efficiently, and effectively.~~
- ~~5.3.21 A safe, clean, and aesthetically pleasing school environment is created and maintained.~~
- ~~5.3.22 Human resource functions support the attainment of school goals.~~
- ~~5.3.23 Confidentiality and privacy of school records are maintained.~~

5.1 An education leader promotes the success of every student by ensuring management of the organization, operation and resources for a safe, efficient, and effective learning environment.

5.2 The education leader shall engage in and be responsible for the following leadership behaviors and skills:

- 5.2.1 Monitor and evaluate the management and operational systems;
- 5.2.2 Obtain, allocate, align, and efficiently utilize human, fiscal, and technological resources;
- 5.2.3 Promote and protect the welfare and safety of students and staff;
- 5.2.4 Develop the capacity for distributed leadership; and
- 5.2.5 Ensure teacher and organizational time is focused to support quality instruction and student learning.

## 6.0 Standard 4

~~A school administrator is an educational leader who promotes the success of all students by collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources.~~

- ~~6.1 The administrator has knowledge and understanding of:
  - ~~6.1.1 Emerging issues and trends that potentially impact the school community.~~
  - ~~6.1.2 The conditions and dynamics of the diverse school community.~~
  - ~~6.1.3 Community resources.~~
  - ~~6.1.4 Community relations and marketing strategies and processes.~~
  - ~~6.1.5 Successful models of school, family, business, community, government and higher education partnerships.~~~~
- ~~6.2 The administrator believes in, values, and is committed to:
  - ~~6.2.1 Schools operating as an integral part of the larger community.~~
  - ~~6.2.2 Collaboration and communication with families.~~
  - ~~6.2.3 Involvement of families and other stakeholders in school decision-making processes.~~
  - ~~6.2.4 The proposition that diversity enriches the school.~~
  - ~~6.2.5 Families as partners in the education of their children.~~
  - ~~6.2.6 The proposition that families have the best interests of their children in mind.~~~~

# PROPOSED REGULATIONS

- ~~6.2.7 Resources of the family and community needing to be brought to bear on the education of students.~~
- ~~6.2.8 An informed public.~~
- 6.3 The administrator facilitates processes and engages in activities ensuring that:
  - ~~6.3.1 High visibility, active involvement, and communication with the larger community is a priority.~~
  - ~~6.3.2 Relationships with community leaders are identified and nurtured.~~
  - ~~6.3.3 Information about family and community concerns, expectations, and needs is used regularly.~~
  - ~~6.3.4 There is outreach to different business, religious, political, and service agencies and organizations.~~
  - ~~6.3.5 Credence is given to individuals and groups whose values and opinions may conflict.~~
  - ~~6.3.6 The school and community serve one another as resources.~~
  - ~~6.3.7 Available community resources are secured to help the school solve problems and achieve goals.~~
  - ~~6.3.8 Partnerships are established with area businesses, institutions of higher education, and community groups to strengthen programs and support school goals.~~
  - ~~6.3.9 Community youth family services are integrated with school programs.~~
  - ~~6.3.10 Community stakeholders are treated equitably.~~
  - ~~6.3.11 Diversity is recognized and valued.~~
  - ~~6.3.12 Effective media relations are developed and maintained.~~
  - ~~6.3.13 A comprehensive program of community relations is established.~~
  - ~~6.3.14 Public resources and funds are used appropriately and wisely.~~
  - ~~6.3.15 Community collaboration is modeled for staff.~~
  - ~~6.3.16 Opportunities for staff to develop collaborative skills are provided.~~
- 6.1 An education leader promotes the success of every student by collaborating with faculty and community members, responding to diverse community interests and needs and mobilizing community resources.
- 6.2 The education leader shall engage in and be responsible for the following leadership behaviors and skills:
  - 6.2.1 Collect and analyze data and information pertinent to the educational environment;
  - 6.2.2 Promote understanding, appreciation, and use of the community's diverse cultural, social, and intellectual resources;
  - 6.2.3 Build and sustain positive relationships with families and caregivers; and
  - 6.2.4 Build and sustain productive relationships with community partners.

## 7.0 Standard 5

~~A school administrator is an educational leader who promotes the success of all students by acting with integrity, with fairness, and in an ethical manner.~~

- 7.1 The administrator has knowledge and understanding of:
  - 7.1.1 The purpose of education and the role of leadership in modern society.
  - 7.1.2 Various ethical frameworks and perspectives on ethics.
  - 7.1.3 The values of the diverse school community.
  - 7.1.4 Professional codes of ethics.
  - 7.1.5 The philosophy and history of education.
- 7.2 The administrator believes in, values, and is committed to:
  - 7.2.1 The ideal of the common good.
  - 7.2.2 The principles in the Bill of Rights.
  - 7.2.3 The right of every student to a free, quality education.
  - 7.2.4 Bringing ethical principles to the decision-making process.

- ~~7.2.5 Subordinating one's own interest to the good of the school community.~~
- ~~7.2.6 Accepting the consequences for upholding one's principles and actions.~~
- ~~7.2.7 Using the influence of one's office constructively and productively in the service of all students and their families.~~
- ~~7.2.8 Development of a caring school community.~~
- ~~7.3 The administrator:~~
  - ~~7.3.1 Examines personal and professional values.~~
  - ~~7.3.2 Demonstrates a personal and professional code of ethics.~~
  - ~~7.3.3 Demonstrates values, beliefs, and attitudes that inspire others to higher levels of performance.~~
  - ~~7.3.4 Serves as a role model.~~
  - ~~7.3.5 Accepts responsibility for school operations.~~
  - ~~7.3.6 Considers the impact of one's administrative practices on others.~~
  - ~~7.3.7 Uses the influence of the office to enhance the educational program rather than for personal gain.~~
  - ~~7.3.8 Treats people fairly, equitably, and with dignity and respect.~~
  - ~~7.3.9 Protects the rights and confidentiality of students and staff.~~
  - ~~7.3.10 Demonstrates appreciation for and sensitivity to the diversity in the school community.~~
  - ~~7.3.11 Recognizes and respects the legitimate authority of others.~~
  - ~~7.3.12 Examines and considers the prevailing values of the diverse school community.~~
  - ~~7.3.13 Expects that others in the school community will demonstrate integrity and exercise ethical behavior.~~
  - ~~7.3.14 Opens the school to public scrutiny.~~
  - ~~7.3.15 Fulfills legal and contractual obligations.~~
  - ~~7.3.16 Applies laws and procedures fairly, wisely, and considerately.~~
- 7.1 An education leader promotes the success of every student by acting with integrity, fairness and in an ethical manner.
- 7.2 The education leader shall engage in and be responsible for the following leadership behaviors and skills:
  - 7.2.1 Ensure a system of accountability for every student's academic and social success;
  - 7.2.2 Model principles of self-awareness, reflective practice, transparency, and ethical behavior;
  - 7.2.3 Safeguard the values of democracy, equity, and diversity;
  - 7.2.4 Consider and evaluate the potential moral and legal consequences of decision-making; and
  - 7.2.5 Promote social justice and ensure that individual student needs inform all aspects of schooling.

**8.0 Standard 6**

~~A school administrator is an educational leader who promotes the success of all students by understanding, responding to, and influencing the larger political, social, economic, legal, and cultural contexts.~~

- ~~8.1 The administrator has knowledge and understanding of:~~
  - ~~8.1.1 Principles of representative governance that undergird the system of American schools.~~
  - ~~8.1.2 The role of public education in developing and renewing a democratic society and an economically productive nation.~~
  - ~~8.1.3 The law as related to education and schooling.~~
  - ~~8.1.4 The political, social, cultural and economic systems and processes that impact schools.~~
  - ~~8.1.5 Models and strategies of change and conflict resolution as applied to the larger political, social, cultural and economic contexts of schooling.~~
  - ~~8.1.6 Global issues and forces affecting teaching and learning.~~
  - ~~8.1.7 The dynamics of policy development and advocacy under our democratic political system.~~

# PROPOSED REGULATIONS

- ~~8.1.8 The importance of diversity and equity in a democratic society.~~
- ~~8.2 The administrator believes in, values, and is committed to:~~
  - ~~8.2.1 Education as a key to opportunity and social mobility.~~
  - ~~8.2.2 Recognizes a variety of ideas, values, and cultures.~~
  - ~~8.2.3 Importance of a continuing dialogue with other decision makers affecting education.~~
  - ~~8.2.4 Actively participating in the political and policy making context in the service of education.~~
  - ~~8.2.5 Using legal systems to protect student rights and improve student opportunities.~~
- ~~8.3 The administrator facilitates processes and engages in activities ensuring that:~~
  - ~~8.3.1 The environment in which schools operate is influenced on behalf of students and their families.~~
  - ~~8.3.2 Communication occurs among the school community concerning trends, issues, and potential changes in the environment in which schools operate.~~
  - ~~8.3.3 There is ongoing dialogue with representatives of diverse community groups.~~
  - ~~8.3.4 The school community works within the framework of policies, laws, and regulations enacted by local, state, and federal authorities.~~
  - ~~8.3.5 Public policy is shaped to provide quality education for students.~~
  - ~~8.3.6 Lines of communication are developed with decision makers outside the school community.~~
- 8.1 An education leader promotes the success of every student by understanding, responding to, and influencing the political, social, economic, legal and cultural context.
- 8.2 The education leader shall engage in and be responsible for the following leadership behaviors and skills:
  - 8.2.1 Advocate for children, families, and caregivers;
  - 8.2.2 Act to influence local, district, state, and national decisions affecting student learning; and
  - 8.2.3 Assess, analyze, and anticipate emerging trends and initiatives in order to adapt leadership strategies.

1 The Interstate School Leaders Licensure Consortium Standards for School Leaders. Washington, D.C.: Council of Chief State School Officers, 1996 2008.

**6 DE Reg. 322 (9/1/02)**

**Renumbered effective 6/1/07 - see Conversion Table**

**11 DE Reg. 311 (09/01/07)**

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

#### PUBLIC NOTICE

#### **Diamond State Health Plan 1115 Demonstration Waiver**

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) intends to submit an application to the Centers for Medicare and Medicaid Services (CMS) to renew Delaware's Section 115 demonstration waiver, entitled "Diamond State Health Plan" for an additional three years.

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

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Castle, Delaware 19720-0906 or by fax to 302-255-4425 by September 30, 2009. The draft Diamond State Health Plan 1115 waiver application is available upon request.

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

## SUMMARY OF PROPOSAL

### Statutory Authority

- 42 U.S.C. §1315, Demonstration projects
- Social Security Act §1115, Demonstration projects

### Background

Under a waiver of Section 1115(a) of the Social Security Act, the Diamond State Health Plan (DSHP) implemented a mandatory Medicaid managed care demonstration program statewide on January 1, 1996. Using savings achieved under managed care, Delaware expanded Medicaid health coverage to additional low-income adults in the State with incomes less than 100% of the Federal Poverty Level (FPL).

Goals of the DSHP are to improve and expand access to health care to more adults and children throughout the State, create and maintain a managed care delivery system emphasizing primary care, and to strive to control the growth of health care expenditures for the Medicaid population.

The current demonstration project #11-W-0063/4 is scheduled to expire on December 31, 2009. In order to continue the significant progress towards achieving the DSHP's goals, Delaware is preparing a request to extend the DSHP for an additional three years from **January 1, 2010 through December 31, 2012**.

### Summary of Proposal

The Division of Medicaid and Medical Assistance (DMMA) plans to request federal approval for a three-year extension of its 1115 Demonstration Waiver Project, entitled "Diamond State Health Plan". As such, DMMA is announcing a thirty-day comment period on this request for extension. The application to renew documents how the State has met its goals of improving access to services, expanding coverage to additional populations and substantially improving quality of care for eligible individuals enrolled in the Diamond State Health Plan (DSHP). The State intends to submit the waiver renewal with no changes to the DSHP during the renewal period.

The provisions of this waiver are subject to approval by the Centers for Medicare and Medicaid Services (CMS).

### Fiscal Impact Statement

This waiver renewal maintains cost neutrality for each year in the three-year renewal period covering January 1, 2010 through December 31, 2012. A function of this waiver is to assure that coverage of the expanded population will be budget neutral. In other words, the cost of covering this population, as well as the Medicaid eligible population, will be no more than if the DHSS had continued covering only its Medicaid population under the traditional fee-for-service program.

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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### Medicaid for Workers with Disabilities

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 Division of Social Services Manual (DSSM) related to the implementation of the Medicaid Buy-In program for the working disabled.

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 September 30, 2009.

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

### **SUMMARY OF PROPOSED AMENDMENT**

The proposed amends the Division of Social Services Manual (DSSM) to update the rules that describe the eligibility criteria for participation in the Medicaid for Workers with Disabilities (MWD) Program. Final Rules were published in the October 2008 Register. However, budget constraints prevented implementation of the program. These amendments will establish a new implementation date of October 1, 2009 and revise the unearned income exclusion to reflect an inflationary adjustment.

#### **Statutory Authority**

- 1902(a)(10)(A)(ii)(XV) of the Social Security Act, Working disabled individuals who buy into Medicaid under TWWIIA (Ticket to Work and Work Incentives Improvement Act of 1999) Basic Coverage Group;
- 1916(g) of the Social Security Act, Premiums - Working Disabled Individuals.

#### **Summary of Proposed Amendment**

- DSSM 17900, Medicaid for Workers with Disabilities provides a general description of the Medicaid for Workers with Disabilities (MWD) program. This revision changes the eligibility effective date from October 1, 2008 to October 1, 2009.
- DSSM 17908, Unearned Income Exclusion updates what income is considered as well as what is excluded. Unearned income is excluded up to \$956.00 per month for the individual.
- DSSM 17911, Financial Eligibility Determination updates the description of the income tests used to determine financial eligibility.

#### **Fiscal Impact Statement**

The projected estimate for Fiscal Year (FY) 2010 cost is \$1.4 million total funds.

#### **DMMA PROPOSED REGULATION #09-32**

##### **REVISIONS:**

#### **17900 Medicaid for Workers with Disabilities**

The Ticket to Work and Work Incentives Improvement Act of 1999 established an optional categorically needy eligibility group under Section 1902(a)(10)(A)(ii)(XV) of the Social Security Act. This eligibility group provides Medicaid coverage to certain employed individuals with disabilities. The rules in this section set forth the eligibility requirements under this group entitled Medicaid for Workers with Disabilities (MWD). The effective date for MWD is October 1, ~~2008~~ 2009.

**12 DE Reg. 446 (10/01/08)**

*(Break in Continuity of Sections)*

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## 17908 Unearned Income Exclusion

Unearned income is excluded up to ~~\$904.00~~ 956.00 per month for the individual. There is no ~~\$904.00~~ 956.00 per month unearned income exclusion for a spouse who is not applying for MWD. This unearned income exclusion will be increased annually by the Cost of Living Adjustment (COLA) announced by the SSA in the Federal Register.

*(Break in Continuity of Sections)*

## 17911 Financial Eligibility Determination

There are two income tests used to determine financial eligibility:

1. If the monthly unearned income of the individual exceeds ~~\$904.00~~ 956.00, the individual is ineligible. This unearned income limit will be increased annually by the Cost of Living Adjustment (COLA) announced by the SSA in the Federal Register.
2. Countable income must be at or below 275% of the Federal Poverty Level for the appropriate family size (individual or couple).

## 17912 Retroactive Eligibility

The individual may be found eligible for up to three months prior to the month of application as described at DSSM 14920-14920.6 provided the premium requirements under MWD are met. Eligibility cannot be retroactive prior to October 1, ~~2008~~ 2009.

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### DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### Reimbursement Methodology for Inpatient Hospital Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) with 42 CFR §447.205, 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 amending the Title XIX Medicaid State Plan to revise the reimbursement methodology for inpatient hospital 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) 255-4454 by September 30, 2009.

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

### SUMMARY OF PROPOSED AMENDMENT

The purpose of this proposal is to amend the Title XIX Medicaid State Plan to revise the hospital outlier reimbursement methodology.

#### Statutory Authority

- 42 CFR §440.205, Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates;
- 42 CFR §447, Subpart C - Payment for Inpatient Hospital and Long-Term Care Facility Services



**Summary of Proposed Amendment**

The proposed amendment is intended to revise the calculation of high cost outlier payments. Currently, high cost outliers will be identified when the cost of the discharge exceeds the threshold of three times the hospital operating rate per discharge. Effective October 1, 2009, the proposal changes the threshold to four times the hospital operating rate per discharge.

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

**Fiscal Impact Statement**

The proposal will result in reduced spending of \$4.9 million in total funds.

**DMMA PROPOSED REGULATION #09-35****REVISIONS:****ATTACHMENT 4.19-A****PAGE 3****METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES - INPATIENT HOSPITAL CARE  
(Continued)**

Rate Setting Methods - Development of Implementation Year Operating Rates, Updates and Rebasing  
(Continued)

The implementation year rates will be updated in FY96 using published TEFRA inflation indices. Rates will be rebased using fiscal year 1994 claims and cost report data for implementation in State FY97.

Effective for admission dates on or after April 1, 2009, payment rates for inpatient hospital care will be adjusted to the rates that were in effect on December 31, 2008. Future rate adjustments will be suspended until further notice.

**Other Related Inpatient Reimbursement Policies**

Outliers - High cost outliers will be identified when the cost of the discharge exceeds the threshold of ~~three~~ four times the hospital operating rate per discharge. Outlier cases will be reimbursed at the discharge rate plus ~~79~~ 70 percent of the difference between the outlier threshold and the total cost of the case. Costs of the case will be determined by applying the hospital-specific cost to charge ratio to the allowed charges reported on the claim for discharge.

Effective January 1, 2006, any provider with a high cost client case (outlier) will receive an interim payment; that is, a payment prior to the discharge of that patient when the charge amount reaches the designated level. An interim payment will be made for that inpatient stay when the client's charges have reached twenty-five (25) times the general discharge rate of that facility, or when the client's stay is greater than sixty (60) days. Additional interim payments will be made when either of the outlier conditions for an interim payment is met again. The interim payment amount is based on the current reimbursement methodology used to pay outliers. Upon the discharge of the client, the facility will receive the balance of the payment that would have been paid if the case were paid in full at the time of discharge.

**6 DE Reg. 885 (1/1/03)**

**9 DE Reg. 783 (11/01/05)**

**13 DE Reg. 259 (8/1/09)**

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## DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

### Reimbursement Methodology for Medicaid Services

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**), with 42 CFR §447.205, 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 amending the Title XIX Medicaid State Plan to revise the reimbursement methodology for certain Medicaid 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) 255-4454 by September 30, 2009.

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

### SUMMARY OF PROPOSED AMENDMENT

The purpose and effect of this proposal is to amend the Title XIX Medicaid State Plan to revise the reimbursement methodology for certain provider services.

#### Statutory Authority

- 42 CFR §440, Subpart A, Definitions;
- 42 CFR §447.205, Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates; and,
- 42 CFR §447, Payments for Services.

#### Background

In accordance with 42 CFR §447.205 and Section 1902(a)(13)(A) of the Social Security Act, Delaware Health and Social Services (DHSS), Division of Medicaid and Medicaid Assistance (DMMA) is required to give public notice of any significant proposed change in its methods and standards for setting payment rates for services.

#### Summary of Proposed Amendments

Effective July 1, 2009, DHSS/DMMA amends the applicable provisions of the Title XIX Medicaid State Plan governing the reimbursement methodology for certain services. In accordance with 42 CFR §440.205, public notice was published before the proposed effective date of the change on June 29, 2009 and June 30, 2009 in the two newspapers of widest circulation in the State, the News Journal (New Castle County, Kent County, Sussex County) and, the Delaware State News (Kent County).

The following significant changes are proposed:

#### 1) Reimbursement Methodology for Pharmaceutical Services

Effective for dates of service on and after July 1, 2009 and subject to payment at fee for service rates, DHSS, DMMA will implement a new reimbursement methodology for pharmaceutical services.

#### Community Pharmacies:

Effective for dates of service July 1, 2009 and after, claims for drug ingredient costs reimbursed based on a percentage of the Average Wholesale Price (AWP) shall be reimbursed at AWP minus 15%. DMMA adjusted reimbursement to AWP minus 16% effective April 1, 2009. This change was one component of a comprehensive

package of provider rate adjustments. DMMA asserts that the April 1, 2009 rate is sufficient and supported by available data. However, DMMA is proposing to increase the rate to AWP minus 15% in response to comments received. Medicaid State Plan Attachment 4.19-b, Page 14 has been amended to reflect this change.

## 2) Reimbursement Methodology for Renal Dialysis Facility Services

Effective for dates of service on and after July 1, 2009 for "fee for service" claims, DHSS, DMMA will apply the payment methodology for renal dialysis facility services as follows:

### Renal Dialysis Facility Services:

Effective for dates of service on and after July 1, 2009, renal dialysis facilities shall be paid using the lesser of the facility's usual and customary (U & C) charges or 100% of the Medicare rate.

Currently, DMMA pays providers based on their U & C charges for each procedure and different providers can charge different rates for the same service. The purpose of this methodology is to promote predictability of payments, equity and consistency of those payments among providers while maintaining access to quality care. The Centers for Medicare and Medicaid Services (CMS) may issue and require a Medicaid state plan preprint page to capture and implement the reimbursement methodology for Renal Dialysis Facility Services.

The provisions of this amendment are contingent upon approval of CMS.

### Fiscal Impact Statement

#### 1) Community Pharmacies:

The change will result in an increase in annual aggregate expenditures (state and federal funds) of approximately \$980,000 for Medicaid and \$39,000 for the non-Medicaid programs for the 12 month period after implementation over what the projected expenditures would have been based on the reimbursement methodology that was in effect immediately prior to July 1, 2009. The reimbursement methodology that was in place for the period April 1, 2009 - June 30, 2009 was expected to generate savings of \$2.3 million which will now be reduced as specified above.

#### 2) Renal Dialysis Facility Services:

The change will result in a decrease in annual aggregate expenditures (state and federal funds) of approximately \$460,000 for the 12 month period after implementation.

## DMMA PROPOSED REGULATION #09-31

### REVISION:

ATTACHMENT 4.19-B

PAGE 14

State/Territory DELAWARE

## Reimbursement for Pharmaceuticals:

### Overview

The Delaware Medical Assistance (DMAP) program will reimburse pharmaceuticals using the lower of

- The usual and customary charge to the general public for the product,
- The Estimated Acquisition Cost (EAC) which is defined for both brand name and generic drugs as follows:
  - For Traditional Pharmacies: AWP minus ~~46%~~ 15% plus dispensing fee per prescription, effective for dates of service on or after April 1, 2009
  - For Non-Traditional Pharmacies: AWP minus 18% plus dispensing fee per prescription, effective for dates of service on or after ~~April~~ July 1, 2009

- A State-specific maximum allowable cost (DMAC) and, in some cases, the Federally defined Federal Upper Limit (FUL) prices plus a dispensing fee.

Entities that qualify for special purchasing under Section 602 of the Veterans Health Care Act of 1992, Public Health Service covered entities, selected disproportionate share hospitals and entities exempt from the Robinson-Patman Price Discrimination Act of 1936 must charge the DMAP no more than an estimated acquisition cost (EAC) plus a professional dispensing fee. The EAC must be supported by invoice and payment documentation.

#### Dispensing Fee:

The dispensing fee rate is \$3.65. There is one dispensing fee per 30-day period unless the class of drugs is routinely prescribed for a limited number of days.

#### Definitions:

Delaware Maximum Allowable Cost (DMAC) - a maximum price set for reimbursement:

- for generics available from three (3) or more approved sources, or
- when a single source product has Average Selling Prices provided by the manufacturer that indicates the AWP is exaggerated, or
- if a single provider agrees to a special price.

Any willing provider can dispense the product.

**13 DE Reg. 259 (8/1/09)**

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## DIVISION OF SOCIAL SERVICES

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

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 Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding redeterminations.

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, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by September 30, 2009.

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

### SUMMARY OF PROPOSED CHANGE

The purpose of the proposed change is to align current case processing policy with Delaware's Temporary Assistance for Needy Families (TANF) State Plan and the Food Supplement Program (FSP) recertification period.

#### Statutory Authority

- Social Security Act §402, Eligible States; State Plan
- 31 **Del.C.** §509, Continuing Eligibility
- Delaware TANF State Plan, Redeterminations

#### Summary of Proposed Change

**DSSM 2001.1**, Redetermination: Eligibility Review Periods: The proposed regulation increases the maximum redetermination period for General Assistance (GA) and TANF cash assistance from 11 month to 12 months.

## DSS PROPOSED REGULATION #09-30

### REVISION:

#### 2001.1 Redetermination: Eligibility Review Periods

Eligibility periods means the period of time within which a family ~~shall be~~ is eligible to receive benefits. At the expiration of each eligibility period cash assistance benefits end. Further eligibility ~~will be~~ is established based upon a newly completed application, an interview and verification of information. Under no circumstance will benefits continue beyond the end of an eligibility period without a new determination of eligibility. The first month of the eligibility period ~~will be~~ is the first month for which the household is eligible to participate.

A redetermination is due when the eligibility period is expiring. The recipient ~~is required to~~ must complete a new DSS application form and ~~either appear for an interview in person or have a mail in application with a telephone an interview.~~ The interview may be in person or over the phone. When the client says he/she cannot get a requested document, the worker will assist him/her in obtaining an acceptable verification. A redetermination is complete when all eligibility factors are examined and a decision regarding eligibility is reached. ~~When the client says she cannot get a requested document, the worker will assist the client in obtaining an acceptable verification to establish continuing eligibility. At that point, a new review period is given for eligible families. The worker sets a new review period for eligible families.~~

The eligibility review periods for cash assistance cases will ~~normally be set at not exceed 6~~ 12 months. ~~But if there is~~ are also Food Stamps to review, the cash assistance eligibility period will be adjusted to come due at the same time as the Food Stamp review ~~so that the family does not experience any undue hardship in the review process.~~ That means, the cash assistance redetermination will be due done at the same time as the ~~open~~ Food Stamp case because the eligibility period for the cash assistance case will be adjusted to the same date as the ~~open Food Stamps certification period~~ Benefit recertification.

If there ~~was no previously~~ is no open Food Stamp Benefit case but there ~~was~~ is an open cash assistance group, the eligibility period of the new cash assistance group ~~would have been~~ is adjusted to come due at the same time as the existing cash assistance group.

~~Therefore, the eligibility review period will be at 6 months or when the Food Stamps assistance groups are due for review but no later than 11 months.~~

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### DIVISION OF SOCIAL SERVICES

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

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 Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding available resources, excluded resources and disposal of real property.

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, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by September 30, 2009.

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

### SUMMARY OF PROPOSED CHANGE

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding resources. The purpose of the proposed change is to increase the resource limit for Delaware's Temporary

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Assistance for Needy Families (TANF) program from \$1,000 to \$10,000. Exclude from the resource limit, value of automobiles owned by members of TANF and General Assistance (GA) households.

## Statutory Authority

- Social Security Act §402, Eligible States; State Plan
- 31 **Del.C.** §503, Eligibility for assistance; amount; method of payment
- Delaware TANF State Plan, Definition of Needy Families

## Summary of Proposed Change

**DSSM 4002.2, Available Resources; DSSM 4002.5, Excluded Resources; and, DSSM 4002.6, Disposal of Real Property:** The proposed regulations: 1) widens the availability of the TANF and GA program to a larger number of low income families in Delaware; 2) allows TANF participants to accumulate assets thus improving their ability to maintain self-sufficiency at times of financial crisis/hardship and to decrease the likelihood of returning to the TANF program; and, 3) reduces the administrative burden of researching and verifying automobile ownership and calculating automobile equity value.

## DSS PROPOSED REGULATION #09-29

### REVISIONS:

#### 4002.2 Available Resources

Any income or resource which a client actually has on hand for immediate use is an available resource. Examples are, cash on hand, checking accounts, any form of savings or bank accounts, State and Federal Income Tax Refunds.

Savings:

The special Education and Business Investment Accounts are not counted as available resources unless withdrawals are made for non-approved purposes. See DSSM 4002.5 #14.

A family budget group is not eligible for ~~cash assistance~~ General Assistance if its available resources exceed \$1,000.00.

A family budget group is not eligible for TANF if its available resources exceed \$10,000.00.

Available resources must be documented in the case record.

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

#### 4002.5 Excluded Resources

The equity value of real and personal property owned by a family budget group cannot exceed ~~\$1,000.00~~ \$10,000.00 for TANF cases or \$1,000.00 for General Assistance cases. Resources excluded from the ~~\$1,000.00~~ resource limitation are:

1. The home which is the usual residence of the family budget group.

#### ~~FOR DELAWARE'S TEMPORARY ASSISTANCE TO NEEDY FAMILIES PROGRAM~~

2. ~~Exclude the equity value of a primary automobile, up to the annually adjusted Food Stamp program's fair market value of vehicles which is excluded in determining the household resources. The excluded amount effective October 1996 is \$4,650. The equity value is the difference between the automobile's fair market value and the amount still owed for it. The equity value in excess of \$4,650.00 is counted towards the \$1,000.00 resource limitation. The entire equity value of other automobiles owned by the individual is counted as a resource.~~

~~NOTE: The fair market value of an automobile is determined by finding the car's trade-in value in the NADA Used Car Guide. If the client disagrees with this valuation, he/she may obtain a statement of the car's value from a automobile dealer.~~

## FOR GENERAL ASSISTANCE

~~One automobile, the equity value of which does not exceed \$1,500.00. The equity value is the difference between the automobile's fair market value and the amount still owed on it. The equity value in excess of \$1,500.00 is counted towards the \$1,000.00 resource limitation. The entire equity value of other automobiles owned by the individual is counted as a resource.~~

~~The increased value of a motor vehicle specially equipped with devices for the handicapped is not counted. Farm vehicles that are used to produce income are excluded from consideration as a resource.~~

### 2. Automobiles:

The automobiles owned by members of a cash assistance household are disregarded

3. One burial plot for each member of the assistance unit.

4. Bona fide funeral agreements (e.g., pre paid burial contracts) up to a total of \$1,500.00 for each member of the budget group.

NOTE: If a funeral agreement valued in excess of \$1,500.00 includes both prepaid burial expenses and a burial plot, the worker will require that the client provide an itemized statement of the estimated value of the plot and the expenses. The value of the burial plot is an excluded resource and will be considered separately from the value of the prepaid expenses.

5. Basic maintenance items essential for day-to-day living such as clothes, furniture, and other similarly essential items.

6. For a period not to exceed six months, real property that is not used as a residence (see DSSM 4002.6).

7. Tools and equipment necessary to produce income in a self employment enterprise, even if the owner is not engaged in business currently, but plans to continue it at a future date.

8. Federal major disaster and emergency assistance provided to individuals and families and comparable disaster assistance provided by State, local governments, and disaster assistance organizations under P.L. 100 707.

"**Emergency**" means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

"**Major Disaster**" means any natural catastrophe...which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance to supplement the efforts of available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

9. Restitution made to United States' citizens and permanent resident aliens of Japanese ancestry who were interned during World War II pursuant to Title I of P.L. 100 383.

10. Restitution made by any Aleut who was relocated by authority of the United States from his or her home village on the Pribilof Islands or the Aleutian Islands during World War II pursuant to Title II of P.L. 100 383.

11. Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.).

12. Earned Income Tax Credits (EITC), including Advance EITC.

Applicants:

Disregard as a resource EITC payments received in the month of application or in the month preceding the month of application. Any remaining EITC amounts received before this period are a resource.

Recipients:

Disregard as a resource for the month in which the EITC is received and the following month. After this period, any remaining amounts are a resource.

13. Cash Value of Life Insurance Policies

14. The designated Education and Business Investment Account (EBIA) is excluded up to the \$5,000.00 maximum. In addition to the current resource limit, Delaware's Temporary Assistance For Needy Families Program (TANF" and General Assistance (GA) Program families will be allowed to establish special Education and Business Investment Accounts (EBIA) of up to \$5000.00, including interest.

Do not consider funds in such accounts as a resource for TANF, GA or Food Stamp purposes. Withdrawals from such accounts must be for approved purposes. If funds are withdrawn for non-approved purposes, count the money as a resource in the month received. Approved reasons for withdrawal of funds for self-sufficiency needs include education expenses, employment start-up needs, entrepreneurship, and to purchase a vehicle or home. If staff are is unsure if the withdrawal meets an approved purpose, contact the policy unit for clarification.

Furthermore, a Saving for Education, Entrepreneurship and Downpayment (SEED) accounts is considered an EBIA account and is excluded up to the \$5000.00 limit.

**9 DE Reg. 1374 (03/01/06)**

**4002.6 Disposal of Real Property**

Real property that is not used as a residence is excluded as a resource for a period not to exceed six months if the following conditions are met:

1. The family is making a good faith effort to sell the property. This effort must be documented in the case record. Examples of acceptable documentation include a current newspaper sales advertisement, or a current sales contract with a real estate firm; and
2. The family signs Form 212, an agreement to dispose of the property and to repay the assistance received during the exemption period.

The amount of assistance that must be repaid after the property is sold is determined as follows:

1. Compare the net proceeds of the sale plus the value of other countable resources available at the time the exemption period began to the \$1,000 program resource limit.
2. If the amount is less than \$1,000 for GA, or \$10,000.00 for TANE, there is no overpayment.
3. If the amount is more than \$1,000 the program resource limit, the amount of the proceeds that is in excess of \$1,000 the resource limit is recovered as an overpayment. Note: The amount recovered cannot exceed the assistance that was received. Any proceeds in excess of the amount to be recovered are considered as an available resource to the family.
4. If the property is not sold within six months, the assistance case must be closed. All the assistance payments are overpayments.
5. If the assistance case is closed for some other reason during the six month exemption period and the property has not been sold, all payments are overpayments.

NOTE: The exemption period runs for six calendar months. If the assistance case closes and the client reapplies during this period, the exemption will continue for the remainder of the initial six month period.

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**DEPARTMENT OF JUSTICE**  
**DIVISION OF SECURITIES**

Statutory Authority: 6 Delaware Code, Section 7325 (6 Del.C. §7325)

**PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA-Title 29, Chapter 101 of the Delaware Code) and section 7325(b) of Title 6 of the Delaware Code, the Division of Securities of the Delaware Department of Justice hereby publishes notice of a proposed revision to the Rules and Regulations Pursuant to the Delaware Securities Act. The Division hereby proposes numerous changes to the rules and regulations governing administrative proceedings before the Securities Commissioner for the State of Delaware.

Persons wishing to comment on the proposed revision may submit their comments in writing to:

James B. Ropp  
Securities Commissioner



Department of Justice  
State Office Building, 5th Floor  
820 N. French Street  
Wilmington, DE 19801

The comment period on the proposed revision will be held open for a period of thirty days from the date of the publication of this notice in the *Delaware Register of Regulations*.

### Summary of the Proposed Revision

The proposed revision, in pertinent part, makes the following changes to the Rules and Regulations Pursuant to the Delaware Securities Act:

(1) The existing rule providing for the designation of a single administrative hearing officer is being repealed, and a new rule is being proposed that requires the Commissioner to maintain a Register of Administrative Hearing Officers from which the Attorney General can designate a hearing officer in a given case.

(2) The existing rules that delegate the Commissioner's full authority to the hearing officer and that authorize the hearing officer to issue a final decision that is to be deemed the decision of the Commissioner are being repealed, and new rules are being proposed that establish a procedure by which the administrative hearing officer, in a case that goes to a hearing, is required to submit a proposed decision to the Commissioner and the final decision is made by the Commissioner.

(3) The rules that allow summary orders (i.e., orders issued without a hearing) to be issued by a hearing officer are being amended to return that jurisdiction exclusively to the Commissioner. However, a hearing on a summary order, where a hearing is requested, will still be held before a hearing officer, who will issue a proposed decision to the Commissioner.

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

<http://regulations.delaware.gov/register/september2009/proposed/13 DE Reg 381 09-01-09.htm>

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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)  
7 DE Admin. Code 1142

### REGISTER NOTICE

#### 1. Title of the Regulation:

Repromulgation and revision of 7 DE Admin. Code 1142 Section 2: Control of NOx Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries and submittal of the re-promulgated regulation to the US Environmental Protection Agency (EPA) as a revision to Delaware State Implementation Plan (SIP).

#### 2. Brief Synopsis of the Subject, Substance and Issues:

The Clean Air Act Amendments of 1990 (CAA) requires Delaware, as part of the Philadelphia-Wilmington-Atlantic City non-attainment area, to attain the 8-hour ozone National Ambient Air Quality Standard (NAAQS) of 0.08 ppm by 2010. Since nitrogen oxides (NOx) are a major precursor to the formation of ozone in the lower atmosphere, Delaware must reduce NOx emissions in order to reduce ambient ozone concentrations, and thus

attain the NAAQS. As a part of the overall effort towards attainment, in July 2007, the Delaware Department of Natural Resources and Environmental Control (DNREC) promulgated 7 **DE Admin. Code** 1142 Section 2, which required large industrial boilers and process heaters with heat input capacities equal to or greater than 200 million British thermal units per hour (mmBTU/hour) at Delaware petroleum refineries to meet certain NOx emission limits.

DNREC is proposing to repromulgate the regulation and revise the emission limits for 3 boilers in the Premcor Refinery at Delaware City and to submit the regulation to EPA as a revision to Delaware's SIP. DNREC believes that the new limits are adequate for achieving necessary and timely NOx emission reductions from the subject sources. The revisions are being proposed pursuant to a settlement of an appeal to the Environmental Appeals Board by the Premcor Refinery on 7 **DE Admin. Code** 1142 Section 2 as promulgated in July 2007.

**3. Possible Terms of the Agency Action:**

None.

**4. Statutory Basis or Legal Authority to Act:**

7 Del.C., Chapter 60, Environmental Control

**5. Other Regulations That May Be Affected By The Proposal:**

None

**6. Notice of Public Comment:**

A public hearing will be held on September 30, 2009, beginning at 6:00 pm, in DNREC Conference Room A, 391 Lukens Drive, New Castle, DE 19720.

**7. Prepared By:**

Frank F. Gao

Phone: (302) 323-4542

Date: August 7, 2009

E-Mail: Frank.Gao@state.de.us

**1142 Specific Emission Control Requirements**

*(Break in Continuity of Sections)*

07/11/2007 xx/xx/2009

**2.0 Control of NOx Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries**

2.1 Purpose

2.1.1 The purpose of Section 2.0 of this regulation is to reduce NOx emissions from Delaware's large industrial boilers and process heaters that are located at petroleum refineries.

2.1.2 Under the 8-hour ozone national ambient air quality standard (NAAQS), the state of Delaware is part of the Philadelphia-Wilmington-Atlantic City, PA-DE-MD-NJ moderate non-attainment area (NAA). The entire NAA, including Delaware, is required by the Clean Air Act (CAA) to attain the 8-hour ozone NAAQS by 2010. After attainment, the area must maintain compliance with the NAAQS. By implementing Section 2.0 of this regulation, NOx emission reductions from the affected boilers and heaters shall contribute to (1) attainment and maintenance of the 8-hour ozone standard, and (2) improvement of the ambient air quality, in both Delaware and the entire NAA.

2.1.3 Additionally, New Castle County of Delaware is a part of the Philadelphia-Wilmington-Camden, PA-DE-NJ NAA for the annual fine particulate matter (PM2.5) NAAQS, and is required by the CAA to attain the NAAQS by 2010. Since NOx is a significant precursor to PM2.5 formation, reducing NOx emissions will also assist in attainment and maintenance of the PM2.5 standard.

2.2 Applicability and Compliance Dates

# PROPOSED REGULATIONS

- 2.2.1 Section 2.0 of this regulation applies to any industrial boiler or process heater with a maximum heat input capacity of equal to or greater than 200 million BTUs per hour (mmBTU/Hour) (except for any Fluid Catalytic Cracking Unit carbon monoxide (CO) boiler), which is operated or permitted to operate within a petroleum refinery facility on the effective date of this section. This comprises the following nine (9) units at the Delaware City refinery:
- 2.2.1.1 Crude Unit Vacuum Heater (Unit 21-H-2);
  - 2.2.1.2 Crude Unit Atmospheric Heater (Unit 21-H-701);
  - 2.2.1.3 Fluid Coking Unit Carbon Monoxide boiler (Unit 22-H-3);
  - 2.2.1.4 Steam Methane Reformer Heater (Unit 37-H-1);
  - 2.2.1.5 Continuous Catalyst Regenerator Reformer Heater (Unit 42-H-1,2,3);
  - 2.2.1.6 Boiler 1 (Unit 80-1);
  - 2.2.1.7 Boiler 2 (Unit 80-2);
  - 2.2.1.8 Boiler 3 (Unit 80-3);
  - 2.2.1.9 Boiler 4 (Unit 80-4).
- 2.2.2 The requirements of Section 2.0 of this regulation are in addition to all other state and federal requirements.
- 2.2.3 The following units shall be in compliance with the requirements of Section 2.0 of this regulation on and after July 11, 2007: Crude Unit Atmospheric Heater (Unit 21-H-701), Steam Methane Reformer Heater (Unit 37-H-1) and Boiler 2 (Unit 80-2).
- 2.2.4 The following units shall be in compliance with the requirements of Section 2.0 of this regulation as soon as practicable, but not later than:
- 2.2.4.1 December 31, 2008: Boiler 1 (Unit 80-1) and Crude Unit vacuum Heater (Unit 21-H-2).
  - 2.2.4.2 May 1, 2011: Boiler 3 (Unit 80-3) and Boiler 4 (Unit 80-4).
  - 2.2.4.3 December 31, 2012: Continuous Catalyst Regenerator Reformer Heater (Unit 42-H-1, 2, 3).
- 2.3 Standards.
- The owner or operator of any industrial boiler or process heater identified in Section 2.2.1 of this regulation shall ~~not allow NO<sub>x</sub> to be emitted at a rate that exceeds the following~~ meet the applicable NO<sub>x</sub> emission limitation identified in the following sections:
- 2.3.1 For the Fluid Coking Unit Carbon Monoxide boiler (Unit 22-H-3), Reserved.
  - 2.3.2 For the Steam Methane Reformer (SMR) Heater (Unit 37-H-1), Reserved.
  - 2.3.3 ~~For Boiler 1 (Unit 80-1), Boiler 3 (Unit 80-3) and Boiler 4 (Unit 80-4), shall not operate after May 1, 2011. On or before May 1, 2011 the owner or operator of Boiler 3 and Boiler 4 shall request that any operating permit issued by the Department be cancelled. 0.015 lb/mmBTU, on a 24-hour rolling average basis.~~
  - 2.3.4 For any unit not covered by 2.3.1, 2.3.2, or 2.3.3, 0.04 lb/mmBTU, on a 24-hour rolling average basis.
  - 2.3.5 The standards set out in 2.3 of this regulation shall not apply to the start-up and shutdown of equipment when emissions from such equipment during a start-up and shutdown are addressed in an operation permit issued pursuant to the provisions of §2 of Regulation 1102.
- 2.4 Monitoring Requirements. Compliance with the NO<sub>x</sub> emission standards specified in 2.3.1, 2.3.2, and 2.3.4 of this regulation shall be determined based on CEM data collected in accordance with the appropriate requirements set forth in 40 CFR, Part 60, Appendix B, Performance Specification 2, and the QA/QC requirements in 40 CFR Part 60, Appendix F.
- 2.5 Recordkeeping and Reporting Requirements
- 2.5.1 Not later than 180 days after the effective date of Section 2.0 of this regulation, any person subject to Section 2.0 of this regulation shall develop, and submit to the Department, a schedule for bringing the affected emission unit(s), identified in Section 2.2.4, into compliance with the requirements of Section 2.3 of this regulation. Such schedule shall include, at a minimum, all of the following:

- 2.5.1.1 The method by which compliance will be achieved.
- 2.5.1.2 The dates by which the affected person plans to complete the following major increments of progress, as applicable:
  - 2.5.1.2.1 Completion of engineering;
  - 2.5.1.2.2 Submission of permit applications;
  - 2.5.1.2.3 Awarding of contracts for construction and/or installation;
  - 2.5.1.2.4 Initiation of construction;
  - 2.5.1.2.5 Completion of construction;
  - 2.5.1.2.6 Commencement of trial operation;
  - 2.5.1.2.7 Initial compliance testing;
  - 2.5.1.2.8 Submission of compliance testing reports;
  - 2.5.1.2.9 Commencement of normal operations (in full compliance).
- 2.5.2 Any person subject to Section 2.0 of this regulation shall submit to the Department an initial compliance certification by September 10, 2007 for units identified in Section 2.2.3 of this regulation and, for units identified in Section 2.2.4, by the compliance date specified in Section 2.2.4. The initial compliance certification shall include, at a minimum, all of the following information:
  - 2.5.2.1 The name and the location of the facility;
  - 2.5.2.2 The name, address and telephone number of the person responsible for the facility;
  - 2.5.2.3 Identification of the subject source(s);
  - 2.5.2.4 The applicable standard;
  - 2.5.2.5 The method of compliance;
  - 2.5.2.6 Certification that each subject source is in compliance with the applicable standard.
- 2.5.3 Any person subject to Section 2.0 of this regulation shall, for each occurrence of excess emissions above the standards of Section 2.3 of this regulation, within thirty (30) calendar days of becoming aware of such occurrence, supply the Department with the following information:
  - 2.5.3.1 The name and location of the facility;
  - 2.5.3.2 The subject source(s) that caused the excess emissions;
  - 2.5.3.3 The time and date of first observation of the excess emissions;
  - 2.5.3.4 The cause and expected duration of the excess emissions;
  - 2.5.3.5 The estimated rate of emissions (expressed in the units of the applicable emission limitation) and the operating data and calculations used in determining the magnitude of the excess emissions;
  - 2.5.3.6 The proposed corrective actions and schedule to correct the conditions causing the excess emissions.
- 2.5.4 Any person subject to Section 2.0 of this regulation shall maintain all information necessary to determine and demonstrate compliance with the requirements of this section for a minimum period of five (5) years. Such information shall be immediately made available to the Department upon verbal and written request.

**5 DE Reg. 1299 (12/01/01)**

**11 DE Reg. 75 (07/01/07)**

**12 DE Reg. 347 (09/01/08)**

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

**<http://regulations.delaware.gov/register/september2009/proposed/13 DE Reg 382 09-01-09.htm>**

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# PROPOSED REGULATIONS

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## DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(e)(2)a.(3) (7 Del.C. §1903(e)(2)a.(3))  
7 DE Admin. Code 3512

### REGISTER NOTICE

SAN #2009-14

**1. Title of the Regulation:**

Tidal Finfish Regulation No. 3512, Winter Flounder Size Limit; Possession Limit; Seasons

**2. Brief Synopsis of the Subject, Substance and Issues:**

In order to come into compliance with Addendum 1 to Amendment 1 of the Interstate Fishery Management Plan for Inshore Stocks of Winter Flounder as administered by the Atlantic States Marine Fisheries Commission, Delaware must decrease its daily recreational harvest limit and cap daily commercial landings. Specifically, Delaware must reduce its recreational daily harvest limit to two winter flounder per person per day and the daily commercial harvest limit for any commercial fishermen is capped at 50 pounds. No other changes are proposed to the minimum size of winter flounder that may be taken during the open season, or to the allowable recreational harvest season. These changes are considered necessary because the Southern New England/Mid-Atlantic winter flounder stocks are considered to be overfished, and overfishing is still occurring. Winter flounder stocks taken in federal waters or those taken by commercial fishermen in possession of a federal permit are subject to the catch restrictions currently in place for federal waters.

**3. Possible Terms of the Agency Action:**

These changes would go into effect in November, 2009 and remain in effect indefinitely unless changed.

**4. Statutory Basis or Legal Authority to Act:**

§ 903(e)(2)a.(3), 7 Delaware Code

**5. Other Regulations That May Be Affected By The Proposal:**

This would represent an amendment to the existing Tidal Finfish Regulation (No.3512). No other regulations are affected.

**6. Notice of Public Comment:**

Individuals may address questions to the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901 or phone (302)-739-9914. A public hearing on these proposed regulations will be held in the Department of Natural Resources and Environmental Control auditorium at 6:00 PM on Wednesday, September 30, 2009. Individuals may present their opinions and evidence either at the hearing or in writing to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901, or via email to Lisa.Vest@state.de.us.

**7. Prepared By:**

Craig A. Shirey                      302-739-9914                      August 4, 2009

**3512 Winter Flounder Size Limit; Possession Limit; Seasons**

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 It shall be unlawful for any person to possess any winter flounder, (*Pseudopleuronectes americanus*), that measure less than twelve (12) inches, total length.

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- 2.0 It shall be unlawful for any recreational fisherman to have in possession more than ~~ten (10)~~ two (2) winter flounder per day (a day being 24 hours) at or between the place where said winter flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.
- 3.0 It shall be unlawful for any recreational fisherman to take and reduce to possession any winter flounder before 12:01 AM February 11 or after midnight April 10 in any given calendar year.
- 4.0 It shall be unlawful for any non-federally licensed commercial fishermen to harvest, land or possess more than 50 pounds of winter flounder per day. Federally licensed commercial fishermen are subject to current federal winter flounder harvest, landing, and possession limits.

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

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## DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 1902(a)(5) and 2804  
(7 Del.C. §§1902(a)(5) and 2804)  
7 DE Admin. Code 3711

### REGISTER NOTICE

SAN #2009-15

**1. Title of the Regulation:**

Shellfish Regulation 3711 Conch Minimum Size Limits (Formerly S-48)

**2. Brief Synopsis of the Subject, Substance and Issues:**

Revised regulation 3711 will establish a tolerance for undersize knobbed whelks (knobbed conchs) in the dredge and pot commercial fisheries similar to the existing tolerance established in Regulation 3711 2.0 for the channeled or smooth whelks (conchs). The purpose of the proposed regulation is to allow the retention of up to five (5) undersized knobbed whelks (that is conchs that are less than the applicable minimum length or diameter measurement in effect during the year in question) per 60 pound bag or basket of whelks per day. The allowance of a few undersized knobbed whelks during the course of normal harvesting operations will be a convenience for harvesters who have to pay crews of widely varying experience to cull undersize conchs from the harvest. Also such a tolerance is in recognition that occasionally conch shells are partially broken off either during or prior to harvesting. This proposed regulation should ease the burden on Department enforcement staff who during the course of checking the harvest for compliance with applicable minimum size limits.

**3. Possible Terms of the Agency Action:**

These changes would go into effect in November, 2009 and remain in effect indefinitely unless changed.

**4. Statutory Basis or Legal Authority To Act:**

§1902(a)(5) and §2804 of 7 Delaware Code

**5. Other Regulations That May Be Affected By The Proposal:**

This would represent an amendment to the existing Tidal Shellfish Regulation (No. 3711). No other regulations are affected.

**6. Notice of Public Comment:**

Individuals may address questions to the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901 or phone (302)-739-9914. A public hearing on these proposed regulations will be held in the Department of Natural Resources and Environmental Control auditorium at 6:00 PM on Wednesday, September 30, 2009. Individuals may present their opinions and evidence either at the hearing or in writing to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901, or via email to Lisa.Vest@state.de.us.

**7. Prepared By:**

Craig A. Shirey, 302-739-9914, August 4, 2009

**3711 Conch Minimum Size Limits**

(Penalty Section 7 **Del.C.** §1912)

- 1.0 It shall be unlawful for any person to possess any channeled conch, *Busycotypus canaliculatum*, that measures less than six (6) inches in length or 3 1/8 inches in diameter at the whorl.
- 2.0 Notwithstanding the provisions of paragraph 1.0, a person may possess no more than five (5) channeled conchs per 60 pounds that are less than six (6) inches in length or 3 1/8 inches in diameter at the whorl.
- 3.0 It shall be unlawful for any person to possess any knobbed conch, *Busycon carica*, that measures less than five 5/4 inches in 2007, 5 1/2 inches in 2008, 5 3/4 inches in 2009, and six (6) inches in length in 2010. Beginning in 2010, the minimum length shall remain 6 inches thereafter until changed by regulation. The minimum diameter at the whorl shall be no less than 3 inches in 2007, 3 1/4 inches in 2008, 3 1/2 inches in 2009 and 3 1/2 inches in 2010 and shall remain 3 1/2 inches thereafter until changed by regulation.
- 4.0 Notwithstanding the provisions of paragraph 3.0, a person may possess no more than five (5) knobbed conchs per 60 pounds that are less than the allowable minimum length limit or the minimum diameter at the whorl.

**1 DE Reg. 250 (9/1/97)**

**1 DE Reg. 835 (1/1/98)**

**10 DE Reg. 1034 (12/01/06)**

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**DEPARTMENT OF SAFETY AND HOMELAND SECURITY**  
**DIVISION OF STATE POLICE****2400 BOARD OF EXAMINERS OF CONSTABLES**

Statutory Authority: 10 Delaware Code, Chapter 27 (10 **Del.C.** Ch. 27)

**PUBLIC NOTICE**

Notice is hereby given that the Board of Examiners of Constables, in accordance with Del. Code Title 10 Chapter 27 proposes to amend Rule 3.0 – Law Enforcement Exemption and Rule 4.0 – Employment. These amendments give the Board of Examiners the authority to oversee all training for Constables. If you wish to view this adoption, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by September 30, 2009, to Delaware State Police, Detective Licensing, P.O. Box 430, Dover, DE 19903. The Board will hold their regular meeting in May 2010, at the Delaware State Police Headquarters Conference Room, 1441 North DuPont Highway in Dover, Delaware.

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## 2400 Constables

### 1.0 Experience

- 1.1 A constable must meet the minimum training standards as established by the ~~Council on Police Training Board~~.

Adopted 09/10/86

Amended 05/16/00

Amended 01/11/09

### 2.0 Appeal

- 2.1 Any applicant who is rejected for a commission as a constable may, within 30 days of such notice of rejection, submit a written notice of appeal.
- 2.2 A hearing date, to be determined by the Board, will be convened to take relevant evidence on the appeal.
- 2.3 Such proceedings shall be conducted in accordance with the administrative procedures act (Title 29).
- 2.4 The Board decision, in writing, will be mailed to the applicant within ten working days after the hearing.

Adopted 09/10/86

### 3.0 Law Enforcement Exemption

- 3.1 Applicants, who were prior law enforcement officers in any jurisdiction and have been away from police work for not more than five (5) years, will be considered for commissions on a case-by-case basis.
- 3.2 Applicants, who have been law enforcement officers in the past but have been away from active law enforcement for more than five (5) years, will be required to take either the MMPI (Minnesota Multiphasic Personality Inventory) or the PAI (Personal Assessment Inventory), under the conditions noted in Rule 4.0, and a comprehensive, multiple-choice examination, ~~equivalent to the C.O.P.T. exam to identify weaknesses in their knowledge of law enforcement~~ of the minimum standards established by the Board to identify weaknesses in their knowledge of the duties of a Constable. Once those shortcomings have been identified, the individual officer will be required to take the requisite training where the deficiency was noted.

Adopted 10/16/96

Amended 05/16/00

**12 DE Reg. 977 (01/01/09)**

### 4.0 Employment

- 4.1 All applicants must submit written testimony from five (5) reputable citizens attesting to good character, integrity, and competency.
- 4.2 All applicants must submit to either the MMPI (Minnesota Multiphasic Personality Inventory) or the PAI (Personal Assessment Inventory) evaluation performed by a licensed psychologist who has knowledge of the requirements of the duties of the Constable position, that the applicant is psychologically fit to function as a competent Constable.
- 4.3 All applicants shall be required to submit an application and their fingerprints to the Director of Detective Licensing on the appropriate forms. The Director of the State Bureau of Identification shall set the processing fee.
- 4.4 No full-time police officer may apply for a commission as a constable.
- 4.5 All applicants seeking a new commission as a constable shall be required to submit a \$100.00 application fee.
- 4.6 A \$50.00 annual renewal fee shall be required to accompany the renewal application each year thereafter.



- 4.7 A constable shall not be a member or employee of any Delaware law enforcement organization, as defined by the council on Police Training, or a member or employee of a law enforcement organization of any other state or federal jurisdiction.

Adopted 05/16/00

**12 DE Reg. 977 (01/01/09)**

## **5.0 Firearm's Policy**

- 5.1 No person licensed under Title 24 Chapter 13 Sections 1315 & 1317 shall carry a firearm unless that person has first passed an approved firearms course given by a Board approved certified firearms instructor, which shall include a minimum 40 hour course of instruction. Individuals licensed to carry a firearm must shoot a minimum of three (3) qualifying shoots per year, scheduled on at least two (2) separate days, with a recommended 90 days between scheduled shoots. Of these three (3), there will be one (1) mandatory "low light" shoot. Simulation is permitted and it may be combined with a daylight shoot.
- 5.2 Firearms - approved type of weapons
- 5.2.1 9mm
  - 5.2.2 .357
  - 5.2.3 .38
  - 5.2.4 .40
- 5.3 All weapons must be either a revolver or semi-automatic and must be double-action or double-action only and must be maintained to factory specifications.
- 5.4 Under no circumstances will anyone be allowed to carry any type of shotgun or rifle or any type of weapon that is not described herein.
- 5.5 All individuals must qualify with the same type of weapon that he/she will carry.
- 5.6 All ammunition will be factory fresh (no re-loads).
- 5.7 The minimum passing score is 80%. All licenses are valid for a period of one (1) year.

Adopted 05/20/02

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## **DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION**

### **3600 Board of Registration of Geologists**

Statutory Authority: 24 Delaware Code, Section 3606 (24 **Del.C.** §3606)  
24 **DE Admin. Code** 3600

### **PUBLIC NOTICE**

The Delaware Board of Geologists in accordance with 24 **Del.C.** §3606 has proposed amendments to Rule 2.0 Procedures for Licensure and Rule 6.0 Continuing Education of its rules and regulations. The proposed amendments to subsection 2.2.1.3 clarify that an applicant for licensure by reciprocity must have an active license in the jurisdiction from which the applicant is applying and must have actually worked for at least 2 years in the jurisdiction from which they are applying to meet the statutory requirements for licensure. The first proposed amendment to Rule 6.0 deletes language in subsection 6.1 that provided for a waiver of continuing education for the first renewal period after the continuing education requirements were enacted because it is no longer applicable. Finally, the Board is proposing to amend Rule 6.0 by adding new subsections 6.11 through 6.15 clarifying the continuing education audit process and the process for hearings for non-compliance, including the imposition of sanctions.

A public hearing will be held on October 9, 2009 at 10:15 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Geologists, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

## 3600 Board of Registration of Geologists

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

## 2.0 Procedures for Licensure

### 2.1 Application - Initial Licensure

An applicant who is applying for licensure as a geologist shall submit evidence showing that he/she meets the requirements of 24 **Del.C.** §3608. The applicant must submit the following documentation:

#### 2.1.1 An application for licensure, which shall include:

2.1.1.1 Academic credentials documented by official transcripts showing completion of an educational program meeting the requirements of 24 **Del.C.** §3608(a)(1).

2.1.1.2 Any applicant holding a degree from a program outside the United States or its territories must provide the Board with an educational credential evaluation from an agency approved by the Board, demonstrating that their training and degree are equivalent to domestic accredited programs. No application is considered complete until the educational credential evaluation is received by the Board.

2.1.1.3 Five professional references on forms provided by the Board. The references must attest that the Applicant has completed at least five (5) years of work experience in Geologic work satisfactory to the Board. A minimum of three years of work experience must be in a responsible position.

2.1.1.4 Evidence that the applicant has achieved the passing score on all parts of the written, standardized examination administered by the National Association of State Boards of Geology (ASBOG), or its successor.

2.1.1.5 Letters of good standing from all jurisdictions in which the applicant is licensed or registered.

### 2.2 Application - By Reciprocity

An applicant who is applying for licensure as a geologist by reciprocity shall submit evidence showing that he/she meets the requirements of 24 **Del.C.** §3609. The applicant must submit the following documentation:

#### 2.2.1 An application for licensure, which shall include:

2.2.1.1 Academic credentials documented by official transcripts showing completion of an educational program meeting the requirements of 24 **Del.C.** §3608(a)(1).

2.2.1.2 Any applicant holding a degree from a program outside the United States or its territories must provide the Board with an educational credential evaluation from an agency approved by the Board, demonstrating that their training and degree are equivalent to domestic accredited programs. No application is considered complete until the educational credential evaluation is received by the Board.

2.2.1.3 Evidence that the applicant is currently licensed or certified in the jurisdiction from which he/she is applying and the applicant has practiced for a minimum of two (2) years after licensure in the jurisdiction from which he/she is applying including two (2) professional references on forms provided by the Board. An applicant may not obtain reciprocity on a lapsed or expired license or certification. The references must attest that the Applicant has

completed at least two (2) years of work experience in Geologic work satisfactory to the Board. The required two years of Geologic work experience attested to by the referees must have been performed in the jurisdiction from which the applicant is seeking reciprocity.

2.2.1.4 Evidence that the applicant has achieved the passing score on all parts of the written, standardized examination administered by the National Association of State Boards of Geology (ASBOG), or its successor.

2.2.1.4.1 Applicants, who were originally licensed in another jurisdiction after June 17, 1998, will be required to have a passing score (70%) on each part of the ASBOG examination.

2.2.1.5 Letters of good standing from all jurisdictions in which the applicant is licensed or registered.

**11 DE Reg. 349 (09/01/07)**

*(Break in Continuity of Sections)*

## 6.0 Continuing Education

- 6.1 The Board will require continuing education as a condition of license renewal. ~~Continuing education shall be waived for the first licensure renewal following the effective date of the Board's Rules and Regulations.~~
- 6.1.1 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the Requirement of Rule 6.0.
- 6.1.2 Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion may be submitted.
- 6.1.3 Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 6.3.
- 6.2 Licenses are renewed biennially (every two years on the even year) on September 30 (e.g. September 30, 2006, 2008). Continuing education (CE) reporting periods run concurrently with the biennial licensing period.
- 6.3 Each licensed geologist shall complete, biennially, 24 units of continuing education as a condition of license renewal. The licensee is responsible for retaining all certificates and documentation of participation in approved continuing education programs. Upon request, such documentation shall be made available to the Board for random post renewal audit and verification purposes. A continuing education unit is equivalent to one contact hour (60 minutes), subject to the Board's review. The preparing of original lectures, seminars, or workshops in geology or related subjects shall be granted one (1) contact hour for preparation for each contact hour of presentation. Credit for preparation shall be given for the first presentation only.
- 6.4 A candidate for renewal may be granted an extension of time in which to complete continuing education hours upon a showing of hardship. "Hardship" may include, but is not limited to, disability; illness; extended absence from the jurisdiction; or exceptional family responsibilities. Requests for hardship consideration must be submitted to the Board in writing prior to the end of the licensing period for which it is made.
- 6.5 Continuing education shall be prorated for new licensees in the following manner:
- 6.5.1 If at the time of renewal, a licensee has been licensed for less than one year, no continuing education is required; if he/she has been licensed for more than one year, but less than two years, twelve of the twenty-four hours will be required; if he/she has been licensed for two years or more the full twenty-four hours is required.
- 6.6 In his/her personal records, each licensee must keep proof of attendance for each activity for which the licensee is requesting credit. If the Board conducts an audit of a licensee's CE records, the Board will require the licensee to complete a CE log provided by the Board and submit the licensee's documentation of attendance to the CE event listed on the CE log. Failure to submit proof of attendance during an audit will result in loss of CE credit for that event.

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- 6.7 Continuing education must be in a field related to Geology. Approval will be at the discretion of the Board. CEUs earned in excess of the required credits for the two- (2) year period may not be carried over to the next biennial period.
- 6.8 Categories of Continuing Education & Maximum Credit Allowed:
- 6.8.1 Courses/Workshops – 24 CEUs Total
    - Academic – 24 CEUs
    - Professional Development – 24 CEUs
    - Documentation – Proof of Completion
  - 6.8.2 Professional Activities – 12 CEUs Total
    - Meetings – 12 CEUs
    - Field Trips – 12 CEUs
    - Documentation – Proof of Attendance and Duration
  - 6.8.3 Peer Reviewed Publications– 12 CEUs Total
    - Composition – 12 CEUs
    - Review – 12 CEUs
    - Documentation – Proof of Participation
  - 6.8.4 Presentations/Seminars – 12 CEUs Total
    - Presentation – 12 CEUs (1 hour prep time per hour presented)
    - Attendance – 12 CEUs
    - Documentation – Proof of Attendance and Duration
  - 6.8.5 Research/Grants – 12 CEUs Total
    - Documentation – Proof of Submission
  - 6.8.6 Specialty Certifications – 12 CEUs Total
    - Documentation – Proof of Completion
  - 6.8.7 Home Study Courses – 12 CEUs Total
    - Documentation – Proof of Completion
  - 6.8.8 Teaching – 12 CEUs Total
    - Documentation – Verification from Sponsoring Institution
  - 6.8.9 Service on a Geological Professional Society, Geological Institution Board/Committee or Geological State Board – 6 CEUs Total
    - Documentation – Proof of Appointment
  - 6.8.10 Regulatory Based Activities – 12 CEUs Total
    - Certifications/Training – 12 CEUs Total
    - Documentation – Proof of Completion
  - 6.8.11 For any of the above activities, when it is possible to claim credit in more than one category, the licensee may claim credit for the same time period in only one category.
- 6.9 Automatic Approval for course work sponsored by the following Professional Societies:
- 6.9.1 American Association of Petroleum Geologists (AAPG)
  - 6.9.2 American Association of Stratigraphic Palynologists (AASP)
  - 6.9.3 American Geological Institute (AGI)
  - 6.9.4 American Geophysical Union (AGU)
  - 6.9.5 American Institute of Hydrology (AIH)
  - 6.9.6 American Institute of Professional Geologists (AIPG)
  - 6.9.7 Association of American State Geologists (AASG)
  - 6.9.8 Association of Earth Science Editors (AESE)
  - 6.9.9 Association of Engineering Geologists (AEG)
  - 6.9.10 Association of Ground Water Scientists & Engineers (AGWSE)

- 6.9.11 Association of Women Geoscientists (AWG)
  - 6.9.12 Clay Mineral Society (CMS)
  - 6.9.13 Council for Undergraduate Research-Geology Div. (CUR)
  - 6.9.14 Geologic Society of America (GSA)
  - 6.9.15 Geoscience Information Society (GIS)
  - 6.9.16 International Association of Hydrogeologists/US National Committee (IAH)
  - 6.9.17 Mineralogical Society of America (MSA)
  - 6.9.18 National Association of Black Geologists and Geophysicists (NABGG)
  - 6.9.19 National Association of Geoscience Teachers (NAGT)
  - 6.9.20 National Association of State Boards of Geology (ASBOG)
  - 6.9.21 National Earth Science Teachers Association (NESTA)
  - 6.9.22 National Speleological Society (NSS)
  - 6.9.23 Paleontological Research Institution (PRI)
  - 6.9.24 Paleontological Society (PS)
  - 6.9.25 Seismological Society of America (SSA)
  - 6.9.26 Society of Economic Geologists (SEG)
  - 6.9.27 Society of Exploration Geophysicists (SEG)
  - 6.9.28 Society of Independent Professional Earth Scientists (SIPES)
  - 6.9.29 Society for Mining, Metallurgy, and Exploration, Inc. (SME)
  - 6.9.30 Society for Organic Petrology (TSOP)
  - 6.9.31 Society for Sedimentary Geology (SEPM)
  - 6.9.32 Society of Vertebrate Paleontology (SVP)
  - 6.9.33 Soil Science Society of America (SSSA)
  - 6.9.34 Other professional or educational organizations as approved periodically by the Board.
- 6.10 Courses not pre-approved by the Board may be submitted for review and approval throughout the biennial licensing period.  
Note: Since regulation 6.9 provides the list of sponsors that are automatically approved by the Board for any course work used for Continuing Education units (CEU) towards the total of 24 CEUs in the biennial license period, please note that regulation 6.10, allowing for pre-approval of courses for CEUs, only pertains to courses NOT offered by a sponsor listed in the list provided in regulation 6.9. Furthermore, one CEU = one Contact Hour.
- 6.11 Audit. Each biennium, the Division of Professional Regulation shall select from the list of potential renewal licensees a percentage, determined by the Board, which shall be selected by random method. The Board may also audit based on complaints or charges against an individual license, relative to compliance with continuing education requirements or based on a finding of past non-compliance during prior audits.
- 6.12 Documentation and Audit by the Board. When a licensee whose name or number appears on the audit list applies for renewal, the Board shall obtain documentation from the licensee showing detailed accounting of the various CEU's claimed by the licensee. Licensees selected for random audit are required to supplement the attestation with attendance verification. The Board shall attempt to verify the CEUs shown on the documentation provided by the licensee. The Board shall then review the documentation and verification. Upon completion of the review, the Board shall decide whether the licensee's CEU's meet the requirements of these rules and regulations. The licensee shall sign and seal all verification documentation with a Board approved seal.
- 6.13 Board Review. The Board shall review all documentation requested of any licensee shown on the audit list. If the Board determines the licensee has met the requirements, the licensee's license shall remain in effect. If the Board initially determines the licensee has not met the requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. This hearing will be conducted to determine if there are any extenuating circumstances justifying the apparent

noncompliance with these requirements. Unjustified noncompliance of these regulations shall be considered misconduct in the practice of geology, pursuant to 24 Del.C. §3612(a)(7). The minimum penalty for unjustified noncompliance shall be a letter of reprimand and a \$250.00 monetary penalty; however, the Board may impose any of the additional penalties specified in 24 Del.C. §3612.

- 6.14 Noncompliance - Extenuating Circumstances. A licensee applying for renewal may request an extension and be given up to an additional twelve (12) months to make up all outstanding required CEUs providing he/she can show good cause why he/she was unable to comply with such requirements at the same time he/she applies for renewal. The licensee must state the reason for such extension along with whatever documentation he/she feels is relevant. The Board shall consider requests such as extensive travel outside the United States, military service, extended illness of the licensee or his/her immediate family, or a death in the immediate family of the licensee. The written request for extension must accompany the renewal application. The Board shall issue an extension when it determines that one or more of these criteria have been met or if circumstances beyond the control of the licensee have rendered it impossible for the licensee to obtain the required CEU's. A licensee who has successfully applied for an extension under this paragraph shall make up all outstanding hours of continuing education within the extension period approved by the Board.
- 6.15 Appeal. Any licensee denied renewal pursuant to these rules and regulations may contest such ruling by filing an appeal of the Board's final order pursuant to the Administrative Procedures Act.

7 DE Reg. 1342 (4/1/04)

10 DE Reg. 567 (09/01/06)

11 DE Reg. 349 (09/01/07)

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

<http://regulations.delaware.gov/register/september2009/proposed/13 DE Reg 390 09-01-09.htm>

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## PUBLIC SERVICE COMMISSION

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

### PUBLIC NOTICE

IN THE MATTER OF THE INVESTIGATION INTO THE |  
ADOPTION OF PROPOSED RULES AND REGULATIONS |  
TO ACCOMPLISH INTEGRATED RESOURCE PLANNING |  
FOR THE PROVISION OF STANDARD OFFER SERVICE | PSC REGULATION DOCKET NO. 60  
BY DELMARVA POWER & LIGHT COMPANY UNDER |  
26 DEL.C. §1007(c) & (d) (OPENED AUGUST 21, 2007) |

### ORDER NO. 7628

AND NOW, this 18th day August 2009, the Delaware Public Service Commission (the "Commission") determines and Orders as follows:

1. In Order No. 7263 (Aug. 21, 2007), the Commission opened this docket to consider promulgating rules that will govern Delmarva Power & Light Company's ("DP&L") development of integrated resource plans, or IRPs, for its Standard Offer Service ("SOS") customers, as authorized by the Electric Utility Retail Customer Supply Act of 2006 ("the Act").<sup>1</sup> Pursuant to that Order, the Commission Staff drafted proposed IRP rules after consulting with the parties in DP&L's ongoing IRP docket (PSC Dckt. No. 07-20) and with the three state agencies involved in DP&L's

1. See 26 Del. C. § 1007(c)(1)c (as amended by 75 Del. Laws ch. 242 § 6 (206)).

# PROPOSED REGULATIONS

IRP process.<sup>2</sup> On November 14, 2007, Staff submitted a set of proposed rules entitled "Integrated Resource Planning Regulation."

2. In Order No. 7318 (Dec. 4, 2007), the Commission accepted Staff's draft Rules and initiated the formal rule-making procedure dictated by the Administrative Procedures Act (See 29 **Del.C.** §10101, et. seq.) As required by the Administrative Procedures Act, the Proposed Regulations were published in the *Delaware Register*. A notice regarding the Proposed Regulations was also published in *The News Journal* and the *Delaware State News* newspapers and delivered to all public utilities affected by the Proposed Regulations.

3. Following the promulgation and publication of the Proposed Regulations, Commission Staff has been working with various parties on revisions to the Proposed Regulations. Attached hereto as "Exhibit A" is the revised set of Proposed Regulations produced as a result of these discussions, as well as Commission deliberations held in December 2008 and memorialized in Order No. 7518, dated January 6, 2009. Based upon the recommendation of Staff and other interested parties, the Commission determines that the revised Proposed Regulations shall be considered as a new proposal subject to the notice requirements at 29 **Del.C.** §10118(c) and all other requirements of subchapter II of Chapter 101 of Title 29. See **Del.C.** § 10118(c).

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

1. That, pursuant to 26 **Del.C.** §209(a) and 29 **Del.C.** §§10101 et seq., the Commission promulgates the revised Proposed Regulations that will govern DP&L's development of its IRPs for its SOS customers as authorized by the Act ("revised Proposed Regulations").

2. That the Secretary of the Commission shall transmit to the Registrar of Regulations for publication in the *Delaware Register* the revised Proposed Regulations and the notice attached hereto as Exhibits "A" and "B" respectively.

3. That the Secretary shall cause the notice attached hereto as Exhibit "B" to be sent by U.S. mail to all utilities which own electric distribution systems in Delaware and all persons who have made timely written requests for advance notice of the Commission's regulation-making proceedings.

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

BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair

Joann T. Conaway, Commissioner

Jeffrey J. Clark, Commissioner

Jaymes B. Lester, Commissioner

Dallas Winslow, Commissioner

ATTEST:

Katie Rochester, Acting Secretary

**Notice of Comment Period On Proposed Revised Regulations Concerning the Adoption of an "Integrated Resource Planning Regulation"**

**To: All Standard Offer Service Retail Customers Of Delmarva Power & Light Company And Other Interested Parties**

2. Under 26 Del. C. 1007(c), DP&L files its IRP on a biennial basis with the Commission, the Delaware Energy Office, the Controller General, and the Director of the Office of Management and Budget.

In 2006, the General Assembly and Governor enacted the "Electric Utility Retail Customer Supply Act," 75 Del. Laws. Ch. 242 § 6 (Apr. 6, 2006) (the "Act"). The Act required Delmarva Power & Light Company ("DP&L") to submit an Integrated Resource Plan ("IRP") with the Public Service Commission (the "Commission"), the Controller General, the Director of the Office of Management and Budget, and the State Energy Office (collectively the "State Agencies"). The IRP is a document that reflects the end result of an integrated resource planning process by DP&L during which it has systematically evaluated all actions or options for procuring, creating, or load-managing electric supply to meet, at minimal cost, the needs of its Standard Offer Service ("SOS") retail customers over a ten-year planning period. DP&L filed its initial IRP with the State Agencies on December 1, 2006.

In order to comply with the new legislation, on December 4, 2007, the Commission promulgated regulations intended to govern DP&L's IRP process pursuant to the Act. The Proposed Regulations and a notice regarding the Proposed Regulations were published in the Delaware Register of Regulations.

Following publication of the Proposed Regulations, the Commission Staff and certain interested parties have made material revisions to the Proposed Regulations. Accordingly, the Commission entered PSC Order No. 7628, requiring that the revised Proposed Regulations be re-published for public comment. The Commission hereby solicits written comments, suggestions, compilations of data, briefs and other written materials concerning the revised Proposed Regulations. Ten (10) copies of such material shall be filed with the Commission at its offices located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware 19904. **All such materials shall be filed with the Commission on or before October 5, 2009.**

The revised Proposed Regulations and the materials submitted in connection therewith will be available for public inspection and copying at the Commission's Dover office during normal business hours. The fee for copying is \$0.25 per page. The regulations may also be reviewed, by appointment, at the office of the Division of the Public Advocate located at the Carvel State Office Building, 4<sup>th</sup> Floor, 820 North French Street, Wilmington, Delaware 19801 and will also be available for review on the Commission's website: [www.state.de.us/delpsc](http://www.state.de.us/delpsc).

Any individual with disabilities who wishes to participate in these proceedings should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, by telephone, or otherwise. The Commission's toll-free telephone number (in Delaware) is (800) 282-8574. Any person with questions may also contact the Commission Staff at (302) 736-7500 or by Text Telephone at (302) 739-4333. Inquiries can also be sent by Internet e-mail to [Katie.rochester@state.de.us](mailto:Katie.rochester@state.de.us).

## **3010 Integrated Resource Planning for the Provision of Standard Offer Service by Delmarva Power & Light Company**

### **1.0 General**

- 1.1 The reliability of electric service and the security of energy supply are of great importance to the Delaware Public Service Commission ("Commission"), because they are essential services to the citizens of Delaware. This regulation, in support of 26 Del.C. §1007, sets forth the minimum Delmarva Power and Light ("DP&L" or "Company") Integrated Resource Plan ("IRP" or "the Plan") requirements needed to ensure a cost effective, price stable, reliable, efficient and environmentally sound energy supply for all Standard Offer Service ("SOS") customers.
- 1.2 Nothing in this regulation relieves DP&L from compliance with any requirement set forth under any other regulation, statute, or order. Compliance with this regulation meets the minimum IRP requirements. Compliance with this regulation does not imply IRP approval or automatic cost recovery.
- 1.3 In accord with 26 Del.C. §1007, DP&L, as the Standard Offer Service Supplier, shall file an IRP on December 1<sup>st</sup>, 2006 and on the anniversary date of the first filing date every other year thereafter (i.e. 2008, 2010 et seq.). The Company may request and the Commission may change the filing date for good cause shown. These regulations shall apply to all IRPs filed pursuant to 26 Del.C. §1007. These regulations shall not apply to an IRP docket opened prior to the effective date of these regulations.
- 1.4 The IRP shall be filed in compliance with normal Commission policies and practices.
- 1.5 The IRP shall identify the year of the filing, the individuals responsible for its preparation and those individuals who shall be available to respond to inquires during the Commission's review of the plan.



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# PROPOSED REGULATIONS

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- 1.6 Because an IRP may contain trade secrets and commercial or financial information, the Company may request that information, required under this Regulation, be classified as confidential, proprietary and/or privileged material. The Company must explain how the material deemed confidential, if disclosed, will cause substantial harm to the competitive position of the Company or other party. The Company must attest that such information is not subject to inspection by the public or other parties without execution of an appropriate proprietary agreement. In requesting such treatment of information the Company is also obligated to file an additional copy of the information, excluding the confidential or proprietary information. The Commission, in accordance with Rule 11, Rules of Practice and Procedure of the Delaware Public Service Commission, effective May 10, 1999, shall treat such information as "confidential, not for public release" upon receipt of a properly filed request. Any dispute over the confidential treatment of information shall be resolved by the Commission, designated Presiding Officer or Hearing Examiner. Confidential utility documents shall be presented under separate seal.
- 1.7 Commission Recognition of a filed IRP implies only that the IRP is in compliance with the administrative requirements of this regulation and the Electric Utility Retail Customer Supply Act of 2006 ("Act"), 26 **Del.C.** §1001-1012. The recognition or ratification of an IRP does not confer or imply Commission approval unless so stated by an Order of the Commission. Approval or disapproval of an IRP must be made by the Commission after, at a minimum, Staff's analysis of and public comment on the proposed IRP. Any specific ratemaking treatment for the IRP or any portions thereof is neither directly nor indirectly guaranteed by virtue of the recognition or ratification.
- 1.8 The utility shall provide whatever detail and commentary necessary to demonstrate that it has met or exceeded the planning requirements as set forth in this regulation. An effort shall be made to ensure that the IRP is clearly stated and can be readily comprehended by the Commission, State Agencies, and other interested parties. The IRP shall include an Executive Summary.
- 1.9 Compliance with this regulation is a minimum standard for IRPs. The Company needs to exercise its professional judgment based on its systems and customer needs. The Company shall include all information that assists the reader to fully understand the IRP concept and the Company's IRP to meet SOS energy needs.
- 1.10 This regulation requires the maintenance and retention of supply resource planning data and the reporting of IRP achievements on an annual basis starting in 2009 to the Commission, Governor and General Assembly. The Company shall retain such data, consistent with Federal data retention guidelines and make it available for further review as necessary.
- 1.11 The Company shall submit a total of 14 copies of its IRP - eight (8) copies to the Commission, two (2) copies to the Controller General's office, two (2) copies to the Office of Management and Budget; two (2) copies to the Division of the Public Advocate and two (2) copies to the Energy Office/DNREC. The Commission may request up to six (6) additional copies of combined and common filings as may be necessary for review.
- 1.12 These Integrated Resource Planning Regulations shall be effective for IRP dockets opened after the effective date of these regulations and may be reviewed, revised, or extended as necessary to ensure continued compliance with 26 **Del.C.** §1001-1012 and to ensure adequate SOS energy supply.
- 1.13 Failure of the Company to file an IRP or to provide progress reports as required may subject the Company to the penalty and remedial provisions of the Delaware statute (26 **Del.C.** §1019).
- 1.14 The Company shall make the full IRP, including any appendices or other supporting materials, available to the general public on its web site and shall update these materials on the Company's web site to remain current with all subsequent updates, revisions or other changes made to the IRP by the Company.

## 2.0 Definitions

The following words and terms, as used in these regulations, shall have the following meanings, unless the context clearly indicates otherwise.

“Brownfield” means any vacant, abandoned, or underutilized real property the development or redevelopment of which may be hindered by the reasonably held belief that the real property may be environmentally contaminated.<sup>3</sup>

“Capacity” means the maximum power capability of a piece of equipment. For example, a generating unit might have a rated capacity of 50 megawatts.

“Commission” means the Delaware Public Service Commission.

“Commission Approval” means that if the Company requests and the Commission approves specific policies, contracts or guidelines that are attached to the IRP for rate making purposes. Certain policies, contracts, or guidelines previously approved by the Commission will not need additional Commission approval in the IRP unless materially changed.

“Commission Recognition” means that within 45 days after the Company has filed its IRP the Commission finds that the plan is administratively complete in fulfilling the requirements of the rules and regulations.

“Commission Ratification” means that after the completion of the regulatory process, including analysis by Staff and input from the public and other parties, the Commission finds that the IRP is not unreasonable and appears to be in the best interest of the ratepayers. Any specific ratemaking treatment for the plan or any portions thereof is neither directly nor indirectly guaranteed by virtue of the ratification.

“Conservation” means any reduction in electric power consumption that results from improved efficiency, avoidance of waste, reduced consumption, or other energy usage reductions that may result from installing new equipment, modifying existing equipment to improve efficiency, adding insulation or changing behavior patterns.

“Customer-Sited Generation” means a generation unit that is interconnected on the end-use customer’s side of the retail electricity meter in such a manner that it displaces all or part of the metered consumption of the end-use customer.

“Demand Response (“DR”)” means programs that are designed specifically to reduce electricity demand during periods of supply constraint. These programs do not necessarily reduce total annual energy consumption.

“Demand-Side Management (“DSM”)” means cost effective energy efficiency programs that are designed to reduce customers’ electricity consumption, especially during peak periods.<sup>4</sup>

“DNREC” means the Delaware Department of Natural Resources and Environmental Control

“DP&L” or “Company” means Delmarva Power & Light Company, Inc. or its successor organizations.

“Energy” means electrical energy. In this sense, energy is a measure of the quantity of units of electricity used in a given time period, measured in megawatt- hours.

“Environmental Benefit” means the positive environmental impact minus the negative environmental impact attained by specific actions including, but not limited to, energy generation and distribution, transmission service, conservation, customer-sited generation, DR, or DSM.

“Environmental Impact” means the result of an action, outcome or activity related to the IRP, on natural and physical resources including, but not limited to, wetlands, sea levels, fisheries, air quality, water quality and quantity, public health, climate impacts, land masses, and ground water.

“Externalities” means the social, health, environmental and/or welfare costs or benefits of energy which result from the production, delivery or reduction in use through efficiency improvements, and which are external to the transaction between the supplier (including the supplier of efficiency improvements) and the wholesale or retail customer. Externalities should be quantified and expressed in monetary terms where possible. Those externalities that cannot be quantified or expressed in monetary terms shall nonetheless be qualitatively considered.

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3. 7 Del. C. §9103

4. 26 Del.C. § 1001 (5).

## PROPOSED REGULATIONS

“Fuel Diversity” means the utilization of resources to supply energy to SOS customers that are procured in such a way as to diminish the risk of adverse changes in fuel prices for electric generation, either through a mix of electric generating resources that utilize a variety of fuel sources, fuel hedges, Customer-Sited Generation resources, both renewable and nonrenewable, application of appropriate risk management practices, DSM or a combination of these activities and assets.

“Generation Attributes” means non-price characteristics of the electrical energy output of a generation unit including, but not limited to, the units fuel type, geographical location, emissions, vintage and Renewable Energy Portfolio Standards (26 Del.C. § 351-363) eligibility.

“Implementation Plan” means an action plan which outlines the short and long term planned actions and contingency plan of the Company to secure necessary energy, capacity, transmission and other appropriate resources as further described in the Integrated Resource Plan.

“Integrated Resource Planning” means the planning process of an Electric Distribution Company that systematically evaluates all available options, including but not limited to: generation, Supply Contracts, transmission and Demand-Side Management programs during the planning period to ensure that the electric distribution Company acquires sufficient and reliable resources over time that meet their customers’ needs at a minimal cost.<sup>5</sup>

“Integrated Resource Evaluation” means a process within the IRP that considers and compares supply- and demand-side resources to select a final resource mix.

“Integrated Resource Plan (IRP)” means the plan derived from the integrated resource planning process.

“Load Forecast” means the estimated future annual electricity usage that is used to help electric utilities make resource allocation decisions.

“New or Innovative Baseload Technologies” means energy resources using new technologies to generate electricity on a typical round- the- clock basis.

“Nominal Price” means the price paid for a product or service at the time of the transaction that has not been adjusted to reflect the effects of inflation.

“PJM Interconnection, L.L.C. (‘PJM’)” means the Regional Transmission Organization or successor organization that is responsible for wholesale electricity markets and the interstate transmission of electricity throughout a multi-state operating area that includes Delaware.

“Portfolio” or “Resource Portfolio” means the combination of physical assets (e.g. electric generating, self generating, and transmission assets), financial products (e.g. Supply Contracts for energy and related services), market resources (e.g. spot market energy purchases), DSM and DR programs, and Customer-Sited Generation resources, both renewable and non renewable, that the Electric Distribution Company uses to satisfy current and future energy procurement requirements for SOS customers, which is designed to manage the risk of adverse price changes to SOS customers.

“Plan Objectives” means the targets or goals of an IRP needed to measure the impact and/or success of the plan’s actions. Such goals or targets must be definitive, measurable and verifiable. Refer to 1.1 for IRP objectives.

“Price Stability” means the lack of significant variation in either the real price or nominal price paid by SOS customers over the planning period.

“Real Price” means the value after adjusting for inflation. Real price is expressed in constant dollars reflecting buying power relative to a base year.

“Reliability” means the degree of performance of the elements of the bulk electric system that results in electricity being delivered to customers within accepted standards and in the amount desired. Reliability may be measured by the frequency, duration, and magnitude of adverse effects on the electric supply. Electric system Reliability can be addressed by considering two basic and functional aspects of the electric system – Adequacy and Security.

5. 26 Del.C. §§ 1001(13), 1007 (b)(1).

- Adequacy is the ability of the electric system to supply the aggregate electrical demand and energy requirements of customers at all times, taking into account scheduled and reasonably expected unscheduled outages of system elements.
- Security is the ability of the electric system to withstand sudden disturbances such as electric short circuits or unanticipated loss of system elements.<sup>6</sup>
- As applied to distribution facilities, Reliability is further described as the degree to which safe, proper and adequate electric service is supplied to customers without interruption.

**"Resource Portfolio"** means **"Portfolio."**

**"Retail Competition"** means the right of a customer to purchase electricity from a certified electric supplier.

**"Scenario Analysis"** means a component of integrated resource planning that analyzes and assigns probabilities to a variety of possible future conditions and the options available to deal with them. Its primary purpose is to facilitate better resource planning decisions by assessing and quantifying the economic and other risks related to a particular decision.

**"Standard Offer Service ("SOS")"** means the provision of electric supply service by a Standard Offer Service Supplier to customers who do not otherwise receive electric supply service from a certified electric supplier.

**"Standard Offer Service Supplier"** means the electric distribution company serving within its certificated service territory.

**"Supply Contracts"** means short or long term power procurement contracts as may be negotiated and agreed upon to meet defined requirements, more specifically for Delaware's Standard Offer Service customers.

**"Transmission Service"** means the delivery of electricity from supply sources through transmission facilities to distribution system interconnection points.

**"Wholesale Electricity Market"** means the various PJM markets in which the purchase and sale of electric energy, capacity, and ancillary services from generators to resellers/wholesale suppliers (who sell to retail customers) takes place at the transmission level.

## **3.0 General Requirements**

- 3.1** Consistent with the requirements of 26 Del.C. §1007 and this regulation, the Company shall file a new and complete IRP every two years, starting on December 1, 2010 (first even-numbered year after the effective date of these regulations), that meets the following requirements:
- 3.1.1** The IRP shall provide a framework for comparing a comprehensive resource mix of supply- and demand-side and Transmission Service resource costs and attributes.
  - 3.1.2** The IRP shall utilize a Resource Portfolio in achieving the objectives of the IRP, shall incorporate a Portfolio approach to securing resources and incorporating an analysis of risk versus certainty into the planning process, or absent such a Portfolio approach, the rationale supporting the exclusion.
  - 3.1.3** The IRP process shall provide for regulatory, stakeholder and public input into the development of the IRP in accordance with normal Commission policies and practices.
  - 3.1.4** The IRP shall include provisions for the IRP to be modified from time to time, as may be necessary to conform with any subsequent legislative or regulatory directives.
- 3.2** The IRP shall at the minimum include the following requirements:
- 3.2.1** An executive summary with a short description of the utility, its customers, service territory, current facilities, planning objectives, notable areas of departure in the new IRP from the old, citing specific location within the IRP where the new aspects shall be found, Load Forecast, proposed IRP and Implementation Plan.
  - 3.2.2** Established Plan Objectives in quantitative and qualitative terms by which the IRP achievements may be measured and shall not be biased against any particular option. Measures must be

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6. NERC definition - NERC's Reliability Assessment 2001–2010, dated October 16, 2001.

- ascribed to each objective. The Company must include a summary of the overall process, and models used in developing the IRP.
- 3.2.3 A description of the load forecast, the assumptions used or implicit in creating the forecast, the range of forecast examined, and the forecast selected for the filing period and a detailed rationale for such selection.
- 3.2.4 An Integrated Resource Evaluation which shall include a listing of all the options considered to meet the load forecast, identification of those chosen for further evaluation and possible inclusion in the IRP, and a discussion of the rationale for such selections including any key assumptions. This planning information shall include a 10-year planning horizon, starting with the year immediately following the filing year (i.e. filing year of 2010 shall include planning information for years 2011 through 2020).
- 3.2.5 A Scenario Analysis used to integrate the options into a single resource plan or individual scenario for further review and analysis, to include a listing of the various scenarios considered and any key assumptions.
- 3.2.6 A description of the process used to develop the proposed IRP, including the assumptions and analysis leading up to the decision and the application of the valuation criteria as specified in section 5.0.
- 3.2.7 An analysis of the risk and sensitivity of the proposed IRP in comparison to other options also considered and a contingency plan to meet the Plan Objectives should one of the supply, demand or transmission options be either delayed or not realized.
- 3.2.8 Plans for implementation of the IRP, for no less than five (5) years, starting with the year immediately following the filing year.

#### **4.0 Load Forecast**

- 4.1 The Company shall consider a range of load growth forecasts that include:
- 4.1.1 Both historical data and future estimates.
- 4.1.2 Both winter and summer peak demand for total Delmarva Delaware load and Delmarva Delaware SOS load by customer class.
- 4.1.3 Weather adjustments, including consideration of climate change potential.
- 4.1.4 Five (5) year historical loads, current year-end estimate and ten (10) year weather adjusted forecast showing individually and aggregated Delmarva Delaware and Delmarva Delaware SOS load, and both Delmarva Delaware and Delmarva Delaware SOS load disaggregated by customer classes, including both capacity (MW) and energy requirements (MWh).
- 4.1.5 Analyses of how existing and forecast Conservation, DR, DSM, Customer-Sited Generation, various economic and demographic factors, including the price of electricity, will affect the consumption of electric services, and how customer choice under Retail Competition of utility service may affect future loads.
- 4.1.6 Description of the process the Company used to develop these forecasts. Forecasts shall include the probability of occurrence. Within the forecasting modeling descriptions the Company shall demonstrate how well its model predicted past load data for the prior five (5) years.

#### **5.0 Resource Portfolio Options**

- 5.1 The Company shall include a description of the overall process and the analytical techniques it used to identify its proposed options. The Company shall not rely exclusively on any particular resource or purchase procurement process.
- 5.2 The Company shall identify and evaluate all reasonable resource options including generation and transmission service, Supply Contracts, both short- and long-term procurement DSM, DR and customer sited generation, even if a particular strategy is ultimately not recommended by the Company. The IRP must show an investigation of all reasonable opportunities for a more diverse supply at the lowest reasonable cost, including consideration of environmental benefits and externalities. The Company shall also provide any hedging guidelines and shall identify any changes

from any existing hedging policy. Cost evaluations shall contain a description of each option and an evaluation that considers the economic and environmental value of the following:

- 5.2.1 Resources that utilize New or Innovative Baseload Technologies;
  - 5.2.2 Resources that provide short or long term Environmental Benefits to the citizens of this State;
  - 5.2.3 Facilities that have existing fuel and transmission infrastructure;
  - 5.2.4 Facilities that utilize existing brownfield or industrial sites;
  - 5.2.5 Resources that promote Fuel Diversity;
  - 5.2.6 Resources or facilities that support or improve Reliability; or
  - 5.2.7 Resources that encourage Price Stability.
- 5.3 Where Transmission Service is identified as a planning option, the Company shall describe the transmission enhancement, the location, and provide PJM's assessment of the impact of the proposed transmission asset when available. The IRP shall reflect the current projects included in PJM's Regional Transmission Expansion Plan ("RTEP"). The Company shall file with the Commission any PJM revisions or updates to the RTEP immediately after receipt.
- 5.4 At least 30 percent of the resource mix shall be acquired through the regional Wholesale Electricity Market via a bid procurement or auction process held by DP&L. (Docket No. 04-391.)
- 5.5 The Company shall also include discussion of known plans to reduce existing physical, contractual or service related Portfolio resources during the IRP planning period.
- 5.6 The Company shall include a detailed description of its energy efficiency activities in accordance with 26 Del.C. §1020. The Company shall first consider electricity DR and DSM strategies for meeting base load and load growth needs and cost-effective renewable energy resources before considering traditional fossil fuel-based electric supply services to meet their retail electricity supplier obligations as defined in 26 Del.C. §352.
- 5.7 The Company shall evaluate all technically feasible and cost effective DR improvements. Where non-Company evaluations of DSM and Conservation are available through the Sustainable Energy Utility ("SEU") (or other organization as requested by the Commission), the Company shall summarize the results and actions taken. The Company shall collaborate and may contract with the SEU to provide services to accomplish the SEU's Demand Side management plans. The Company, using its independent best judgment, may recommend in the IRP any DSM program first offered to the SEU but rejected by the SEU. Where DR programs are new, the Company shall summarize the anticipated benefits with respect to load reductions and provide supporting material to justify the new program.
- 5.8 The Company shall collaborate with the SEU and appropriate State Agencies in its evaluation of Customer-Sited Generation resource options. The Company may enter into a contractual relationship with the SEU or other energy service providers to implement a Customer-Sited Generation resource option strategy.
- 5.9 The Company shall assess the Resource Portfolio options against the set of Plan Objectives and criteria.

## **6.0 Plan Development**

- 6.1 The Company shall conduct an Integrated Resource Evaluation in formulating its potential plans for supply and demand-side resource scenarios. The Company shall describe the mechanism or process by which the Load Forecast and options have been blended into the various IRP scenarios. In integrating its supply and demand-side resources, the Company shall:
- 6.1.1 Prepare an evaluation that takes into consideration the life expectancy of the resource, if the resource provides capacity and/or energy, any improvements to system Reliability, the dispatchability of the source, any lead time requirements, the flexibility of the resource, the Generation Attributes of the resource, the efficiency of the resource, and the opportunities for customers' participation. The valuation shall assess the probability of securing the options according to modeling information used, including any key assumptions. The Company shall provide the estimated energy and capacity impacts for each option and the rationale behind the estimate.

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## PROPOSED REGULATIONS

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- 6.1.2 Prepare a contingency plan that shall include a discussion of how the Company might alter the proposed IRP in the future if the key planning assumptions used to develop the proposed IRP in the future turn out to be different than what was assumed in preparing the proposed IRP.
- 6.1.3 Evaluate the cost-effectiveness of the options from the perspectives of the utility and the different classes of ratepayers. Any cost evaluation should be based on real prices, the Company, should it so choose also may provide a cost evaluation using nominal prices.
- 6.1.4 Include a current evaluation, detailing and giving consideration to environmental benefits and externalities associated with the utilization of specific methods of energy production. This evaluation need not be based on original research by the Company and may rely on published research and peer reviewed scientific and/or medical studies commonly available. To the extent that any reliable, relevant peer reviewed published research and scientific and/or medical studies commonly available include life cycle analyses encompassing energy extraction, transport, generation and/or use, the Company shall include such research and studies in its evaluation.
- 6.1.5 The IRP shall not include any assumptions that externalities are adequately addressed by either the fact that the IRP meets the Renewable Energy Portfolio Standards, satisfies the Energy Efficiency Resources Standards, or that the generating units to be utilized comply with existing environmental regulations. This rule does not, however, preclude a potential conclusion that the Renewable Energy Portfolio Standards or Energy Efficiency Resources Standards in effect at the time adequately address externalities.
- 6.1.6 Evaluate the financial, competitive, reliability, and operational risks associated with the options recommended by the IRP and how these risks may be mitigated over the 10 year planning period. Each candidate plan shall include a discussion of the likelihood of the occurrence of such risks.
- 6.1.7 For the options included in the proposed plan identified in the IRP, the IRP shall include an analysis of the fuel risk associated with the proposed Resource Portfolio and how such fuel risk will be mitigated when the proposed IRP is implemented.
- 6.1.8 Perform sensitivity analyses on each of the candidate plans to include variations in key assumptions and to assess the likelihood of planned outcomes. The sensitivity analyses shall include among other analyses the impact of proposed or existing rules and regulations on a local, regional or national level related to climate change.
- 6.2 The Company shall forward a copy of the IRP to DNREC and seek input into externalities, including but not limited to, health effects.
- 6.3 In developing candidate plans, special attention shall be given to ensuring consistency between the IRP and typical rate- making processes. While the ultimate consumer price associated with the plan is important, the stability of rates and other factors as described in Section 5.2 need to be considered in any candidate plan selection.

### **7.0 Proposed Plan Selection.**

- 7.1 The Company shall select and file the proposed IRP that is the most consistent with the criteria set forth in 26 Del.C. §§1007, 1020 and this Regulation. The Company shall provide a description of the options recommended for inclusion in the proposed IRP, including a description of the mechanism or process used for valuing each option. The Company shall describe the rationale behind its selection, including any modeling or methodology used as the basis for selection of the proposed IRP.
- 7.2 In filing the proposed IRP, the Company shall provide at a minimum a five (5) year forecast of supply rates by customer class that would be anticipated based on the IRP planning assumptions and recommended procurement strategy.

### **8.0 Implementation Plan**

- 8.1 As part of the IRP, the Company shall file a plan needed to implement the IRP. Such Implementation Plan shall be a five (5) year action plan outlining the resource decisions intended to implement the IRP. The Implementation Plan shall include:

- 8.1.1 All actions to be taken in the first two (2) years and outline actions anticipated in the last three (3) years.
- 8.1.2 For IRPs filed on or after December 1, 2010, a status report of the specific actions contained in the previous Implementation Plan, including what risk assumptions were made and what actually occurred.
- 8.1.3 Schedule of key activities related to the IRP implementation.

## **9.0 Review and Comment**

- 9.1 As part of the process commencing in 2009 and continuing on an annual basis, the Company shall submit a report to the Commission, the Governor and the General Assembly detailing their progress in implementing their IRPs.
  - 9.2 The Commission, interested State Agencies, interested parties and the general public shall be provided an opportunity for review and comment on the Company's IRP filings. The Commission shall seek input from DNREC on the issue of externalities and environmental benefits due to emissions, as the result of the proposed IRP.
  - 9.3 Subsequent to the IRP recognition and after input from the public, and other parties, the Commission may ratify the filing of the Company's IRP and its compliance with these regulations. Ratification that the IRP complies with the statute shall not guarantee a particular ratemaking treatment of future resource acquisitions. To the extent that the Commission determines that the IRP is not compliant with the statute or is unlikely to meet the goals of the statute, the Company shall revise its IRP to meet these requirements. Rate treatment shall be addressed in rate or other proceedings as filed by the utility or as initiated by the Commission.
  - 9.4 The Integrated Resource Plan may be used as a factor in rate cases to evaluate the performance of the utility. Reports provided under this Regulation are subject to annual review and audit by the Commission and interested State Agencies. The Company must maintain sufficient records to permit a review and confirmation of material contained in all required reports.
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## **DEPARTMENT OF TRANSPORTATION DIVISION OF MOTOR VEHICLES**

Statutory Authority: 2 Delaware Code, Sections 1802; 29 Delaware Code, Section 8404  
(2 Del.C. §1802 and 29 Del.C. §8404)  
2 DE Admin. Code 2287

### **PUBLIC NOTICE**

#### **Rules and Regulations Pertaining to the Regulation of Public Carriers**

Under Title 2 of the **Delaware Code**, Section 1802, as well as 29 **Delaware Code** Section 8404, the Delaware Department of Transportation (DelDOT), is empowered to adopt regulations concerning public carriers, such as taxicabs, limousines, and charter buses operated by private entities. The Department has now drafted revisions to its existing Public Carrier regulations. A copy of the proposed changes accompanies this notice.

The Department will take written comments on the draft changes to the Delaware Public Carrier Regulations from September 1, 2009 through September 30, 2009.

Questions or comments regarding these proposed changes should be directed to: Michael Harrell, Administrator, DelDOT DMV Transportation Services, P.O. Drawer E, Dover, DE 19903 (302) 744-2730 (telephone) (302) 739-6299 (fax) [michael.harrell@state.de.us](mailto:michael.harrell@state.de.us).

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

**<http://regulations.delaware.gov/register/september2009/proposed/13 DE Reg 405 09-01-09.htm>**



**Symbol Key**

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

Statutory Authority: 29 Delaware Code, Section 4805 (29 **Del.C.** §4805)

**ORDER**

After due notice in the *Register of Regulations* and two Delaware newspapers, written comments on proposed regulations relating to a sports lottery were invited. These regulations resulted from recent legislation amending 29 **Del.C.** Ch. 48, activating a sports lottery, which legislation also directed the Director of the Lottery to issue regulations.

The proposed regulations establish definitions and set rules relating to licensing and a variety of other issues relating to the sports lottery.

The proposed amendments were published in the *Register of Regulations*, Vol. 13, Issue 1, on July 1, 2009.

**Summary of the Evidence and Information Submitted**

No written comments were received.

**Findings of Fact and Conclusions of Law**

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

The Lottery finds that the proposed amendments to the rules are necessary and in the public interest.

Pursuant to 29 **Del.C.** §4805, the Lottery has statutory authority to promulgate regulations governing the establishment and operation of lottery matters.

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## Decision and Effective Date

The Lottery hereby adopts the proposed rules in the manner to be published in the *Register of Regulations* in September, 2009, to be effective ten days after publication of the Order in the *Register of Regulations*.

## Text and Citation

The text of the revised rules shall be as published in the *Register of Regulations* in September, 2009 as attached hereto as Exhibit A.

**SO ORDERED** this 24<sup>th</sup> day of August, 2009.

### DELAWARE STATE LOTTERY OFFICE

Wayne Lemons, Director

**\*Please note that no changes were made to the regulation as originally proposed and published in the July 2009 issue of the *Register* at page 24 (13 DE Reg. 24). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

**<http://regulations.delaware.gov/register/september2009/final/13 DE Reg 406 09-01-09.htm>**

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

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

### REGULATORY IMPLEMENTING ORDER

### **DSSM 1006.6 Civil Rights Program and Public Relations**

#### 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 administrative policies. 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 July 2009 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by July 31, 2009 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 changes described below amend administrative policies in the Division of Social Services Manual (DSSM) regarding Civil Rights Program requirements.

**Statutory Authority**

- 45 CFR Part 80, Title VI of the Civil Rights Act of 1964

**Summary of Proposed Change**

**DSSM 1006.6:** The rule is being removed as part of a project to clarify and simplify the Division of Social Services (DSS) policy manual. This rule is not needed. DSS publicizes its Civil Rights Program on its application and other printed material. Posters about Civil Rights are located in every DSS office location statewide.

**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.

First, Council would ask the Division to reconsider its wholesale repeal of the entire dissemination/publication regulation. We recognize the elimination of newspaper publication of the policy may make sense since it saves money and newspaper publication in the "legal notices" section of the newspapers is not a very effective publication approach. However, elimination of a requirement of posters in DSS service sites is objectionable since they are: 1) already required in Food Supplement sites [16 **DE Admin Code** 1006.3]; 2) inexpensive; and 3) most likely to be noticed by DSS applicants.

**Agency Response:** After consideration of your comments we are amending the policy rather than repealing it.

Second, the Councils recommended that DSS amend its civil rights policy regulations in 2007 to require publication of the policy on the DSS website. DSS responded that it would consider that recommendation "when this section is under revision again". See 11 **DE Reg.** 325, 327 (September 1, 2007). Rather than repealing Section 1006.6, it would be preferable to amend it to require publication of the civil rights policy on the DSS website.

Again, the Councils promote an amendment, rather than repeal, of Section 1006.6 to include publication by poster and website. In addition to the practical benefit of such publication to applicants for DSS services, such publication may also assist with fulfillment of federal program expectations that DSS will effectively publicize its non-discrimination policy.

**Agency Response:** DSS has amended the policy to include the following statement. The DSS Civil Rights policy is available on the State website at [www.dhss.delaware.gov/dss](http://www.dhss.delaware.gov/dss).

**FINDINGS OF FACT:**

The Department finds that the proposed changes as set forth in the July 2009 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Division of Social Services Manual (DSSM) as it relates to administrative policies regarding the Civil Rights Program and Public Relations is adopted and shall be final effective September 10, 2009.

Rita M. Landgraf, Secretary, DHSS

**DSS FINAL ORDER REGULATION #09-34****REVISION:****1006.6 [Civil Rights Program and Public Relations Civil Rights Program and Public Relations**

~~The general public, including citizens interested in public welfare and civil rights, will be informed as widely as possible of the Civil Rights Program of the Division.~~

~~Informational releases will be given to the daily newspapers in Wilmington, and to the weekly or daily newspapers in the rest of the State. Similar information will be given to all radio stations in Delaware and, if acceptable, to the television station in Wilmington.~~

~~Organizations interested in learning more about the Civil Rights Program of the Division will be furnished speakers from the administrative staff of the Department on request to the Director.~~

~~Posters will be displayed in all offices of the Division notifying all persons that assistance and services are provided by the Division to all eligible persons without regard to race, color, national origin, sex, religious creed, age, disability, political beliefs, or retaliation. **RESERVED**~~

The general public, including citizens interested in public welfare and civil rights, will be informed of the Civil Rights Program of the Division. The DSS Civil Rights policy is available on the State website at [www.dhss.delaware.gov/dss](http://www.dhss.delaware.gov/dss).

Organizations interested in learning more about the Civil Rights Program of the Division will be furnished speakers from the administrative staff of the Department on request to the Director.

Posters will be displayed in all offices of the Division notifying all persons that assistance and services are provided by the Division to all eligible persons without regard to race, color, national origin, sex, religious creed, disability, political beliefs, or retaliation.]

11 DE Reg. 325 (09/01/07)

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## DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 312 and 1113;  
(18 Del.C. §311, §1113)  
18 DE Admin. Code 1212

### ORDER

#### 1212 Valuation of Life Insurance Policies

Proposed changes to Regulation 1212 relating to Valuation of Life Insurance Policies were published in the *Delaware Register of Regulations* on March 1, 2009. The comment period remained open until April 6, 2009. There was no public hearing on the proposed changes to Regulation 305. Public notice of the proposed changes to Regulation 1212 in the Register of Regulations was in conformity with Delaware law.

#### Summary of the Evidence and Information Submitted

Comment was received from the American Council of Life Insurers (ACLI), Genworth Financial (Genworth) and eight Delaware residents. The comment from ACLI expressed agreement with the proposed changes, with the exception of the paragraph requiring disclosure of any insufficiency of assets to support the payment of benefits and expenses. Genworth expressed support for the Regulation, except for the requirement that the appointed actuary use an assigned "x factor". Genworth fears that such a requirement could be interpreted to require assets necessary to fund future reserves. The comments of the Delaware residents uniformly expressed concern that adoption of the proposed amendments would dangerously lower reserves, thereby imperiling the solvency of the affected life insurance companies. The concerns of both ACLI and Genworth are understood, nevertheless the changes questioned are supported by the Department actuaries and are necessary to assure the Department that the reserves maintained are adequate to protect not only the companies but also the policyholders and the citizens of Delaware. While it is understandable that citizens would question any move to lower reserve requirements, the

proposed changes serve to eliminate unreasonable minimum reserve amounts and replace them with greater scrutiny by the Department and more stringent oversight by actuaries.

#### **Findings of Fact**

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

The requirements of the amended Regulation 1212 best serve the interests of the public and of insurers and comply with Delaware law.

**\*Please note that no changes were made to the regulation as originally proposed and published in the March 2009 issue of the *Register* at page 1157 (12 DE Reg. 1157). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

**<http://regulations.delaware.gov/register/september2009/final/13 DE Reg 409 09-01-09.htm>**

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### **DEPARTMENT OF INSURANCE**

Statutory Authority: 18 Delaware Code, Sections 312 and 1113;

(18 Del.C. §311, §1113)

18 DE Admin. Code 1215

#### **ORDER**

#### **1215 Recognition of Preferred Mortality Tables for use in Determining Minimum Reserve Liabilities**

Proposed changes to Regulation 1215 relating to Recognition of Mortality Tables for use in Determining Minimum Reserve Liabilities were published in the *Delaware Register of Regulations* on March 1, 2009. The comment period remained open until April 6, 2009. There was no public hearing on the proposed changes to Regulation 1215. Public notice of the proposed changes to Regulation 1215 in the *Register of Regulations* was in conformity with Delaware law.

#### **Summary of the Evidence and Information Submitted**

Comment was received from the American Council of Life Insurers. The comment commended the Department for proposing the amendments and had no suggested changes.

#### **Findings of Fact**

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

The requirements of the amended Regulation 1215 best serve the interests of the public and of insurers and comply with Delaware law.

#### **Decision and Effective Date**

Based on the provisions of 18 Del.C. §§311, 1113 and 29 Del. C. §§10119 and the record in this docket, I hereby adopt Regulation 1215 as amended and as may more fully and at large appear in the version attached hereto to be effective ten days after publication on the Register of Regulations.

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## Text and Citation

The text of the proposed amendments to Regulation 1215 last appeared in the *Register of Regulations* Vol. 12, Issue 9, pages 1147-1149.

**IT IS SO ORDERED** this 3rd day of August 2009.  
Karen Weldin Stewart, CIR-ML  
Insurance Commissioner

\*Please note that no changes were made to the regulation as originally proposed and published in the March 2009 issue of the *Register* at page 1167 (12 DE Reg. 1167). Therefore, the final regulation is not being republished. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/september2009/final/13 DE Reg 410 09-01-09.htm>

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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)  
7 **DE Admin. Code** 1101

**Secretary's Order No. 2009-A-0028**

Date of Issuance: August 14, 2009  
Effective Date: September 10, 2009

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 February 22, 2009, the Department's issued Start Action Notice #2009-03, which approved Division of Air and Waste Management, Air Quality Management Section's (AQMS) request to begin the formal regulatory development process to amend 7 **DE Admin. Code** 1101, *Definitions and Administrative Principles*. AQMS prepared a proposed regulation to revise Section 2.0's definition of volatile organic compounds (VOCs). The Department had the proposed regulation published in the May 1, 2009 *Delaware Register of Regulations* and notice was published in newspapers of general circulation. The public notices also included a scheduled May 26, 2009 public hearing to be held in AQMS' office in Dover.

The Department received three comments in support of the proposed regulation within the public comment period that began May 1, 2009 and ended thirty day later, as required by Delaware's *Administrative Procedures Act*, 29 **Del.C.** §10118(a). The Department held a public hearing before presiding Hearing Officer Robert P. Haynes. Department representatives, Gene Pettingill and Ron Amirikian, of AQMS attended the public hearing, but no member of the public attended. The Department's expert responsible for drafting the proposed regulation, Gene Pettingill, developed the administrative record to support the proposed regulation and the exhibits and the transcript of the hearing constitute the entire record as recommended by the presiding hearing officer. Mr. Haynes, based upon no public comments in opposition and the public hearing record, recommended no need to further

develop the record, and he prepared a draft order and accompanying Report dated August 13, 2009 that recommends adoption of the proposed regulation as a final regulation without any change.

### Findings

This Order considers a draft revision prepared by AQMS to reflect certain changes made by the United States Environmental Protection Agency (EPA) to the definition of VOCs. I find that the proposed regulation reflects EPA's determination that certain VOCs have negligible photochemical reactivity and has exempted them from federal regulation as ground-level ozone precursors. I find that this will impact Delaware users of certain products such as coatings, adhesives, cleaning compounds, aerosol propellants, and blowing agents from regulation as sources of air emissions of VOCs. Based upon the record developed, I find that the proposed regulation is reasonable and supported by maintaining consistency between the federal and state regulation of VOCs as defined by EPA in the Department's *Regulations*. The *Regulations* follow the regulatory scheme established by EPA. The federal definition of VOCs

changed and the proposed revision tracks the federal change so that Delaware's regulation of VOCs emissions will regulate the same substances as the federal regulation. Consequently, this Order approves the proposed regulation 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, acting through this Order of the Secretary, hereby approves as reasonable the proposed regulation and the record in support of the proposed regulation, and adopts as a final regulation the proposed regulation published in the *May 1, 2009 Delaware Register of Regulations* and attached hereto as Appendix A; 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.

David S. Small, Acting Secretary

**\*Please note that no changes were made to the regulation as originally proposed and published in the May 2009 issue of the *Register* at page 1392 (12 DE Reg. 1392). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

**<http://regulations.delaware.gov/register/september2009/final/13 DE Reg 411 09-01-09.htm>**

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**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**400 Delaware Gaming Control Board**

Statutory Authority: 28 Delaware Code, Sections 1122 (a) (28 **Del.C.** §§1122 (a))  
24 **DE Admin. Code** 401, 404

### ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on August 6, 2009, 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 provide a new definition of "Cookie Jar Bingo" and how the game is to be played. They would also remove the requirement that the Division of Professional Regulation retain licenses issued in triplicate and retain two copies thereof. They would also set monetary limits in Texas Hold'em tournaments of no greater than \$5,000 offered in any single tournament event and the aggregate amount of all awards at a tournament shall not exceed \$13,000.

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The proposed amendments were published in the *Register of Regulations*, Vol. 13, Issue 1 on July 1, 2009.

## Summary of the Evidence and Information Submitted

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

## 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.

## 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* in September, 2009, to be effective ten days after publication of the Order in the *Register of Regulations*.

## Text and Citation

The text of the revised rules shall be as published in the *Register of Regulations* in September, 2009 as attached hereto as Exhibit A.

**SO ORDERED** this 6<sup>th</sup> day of August, 2009

## DELAWARE GAMING CONTROL BOARD

Deborah Messina, Chair  
Scott Angelucci, Member  
Brad Barrie, Member

James Greene, Member  
Sharon McDowell, Member

## 401 Regulations Governing Bingo 404 Regulations Governing No Limit Texas Hold'em Poker

\*Please note that no changes were made to the regulation as originally proposed and published in the July 2009 issue of the *Register* at page 1167 (13 DE Reg. 49). Therefore, the final regulation is not being republished. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/september2009/final/13 DE Reg 412 09-01-09.htm>



# FINAL REGULATIONS

## DIVISION OF PROFESSIONAL REGULATION

### 3800 COMMITTEE ON DIETETICS/NUTRITION

Statutory Authority: 24 Delaware Code, Section 3805 (a)  
24 DE Admin. Code 3800

#### ORDER

#### 3800 State Board of Dietetics/Nutrition

After due notice in the *Register of Regulations* and two Delaware newspapers, public hearings were held on April 17, 2009 and August 7, 2009 to receive comments regarding proposed amendments to the rules and regulations of the Delaware State Board of Dietetics/Nutrition ("Board"). The Board proposed amendments to its rules and regulations as the result of the enactment in the 144<sup>th</sup> General Assembly of House Bill 38, as amended, providing for the licensure of dietitians and nutritionists in the State of Delaware. The previous regulations governed certification and not licensure.

The proposed regulations were first noticed for hearing and published in the *Register of Regulations* and on March 1, 2009 at 12 DE Reg. 1179. As a result of the public comment the Board determined to make substantive revisions to regulations as originally proposed and republished its revised regulations in the *Register of Regulations* on July 1, 2009 at 13 DE Reg. 79. A second public hearing was noticed for and conducted on August 7, 2009.

#### Summary of the Evidence and Information Submitted

The following individuals submitted correspondence and/or offered public comment at the April 17, 2009 hearing: **Marianne Carter**, MS, RD, **Tami L. Wahl**, Legislative Director, American Association for Health Freedom, **Barry D. Norby**, **Karyn Hammond**, **Perry A Chapdelaine**, Jr. MD, MSPH, General and Alternative Medicine, **Vanessa Churchill**, **Mark Kennedy**, **Monica Reinagel**, MS, CNS, LD/N, Dolores C. Perri, MS, RD, CNS, Alternative Health Center, **Sigrid Fisher**, **Richard V. Teschner**, American Association for Health Freedom–Citizen's Letter in Delaware, **Andrea Helin**, **Kristy Mills**, Laguna Natural Health, **J.K. Deybrook**, **Paul Seely**, American Association for Health Freedom –Citizen's Letter in Delaware, **Stuart H. Freedenfeld**, MD, Stockton Family Practice, **Guarang B. Pandya**, **Lance M. Martin**, **Sally Selutz**, **Nicole Kastelanic**, American Association for Health Freedom –Citizen's Letter in Delaware, **Jennifer Rabenhorst**, MD, Integrative Family Medicine LLC, **Laurel Thorne**, Registered Sanitarian, Assistant Director of Public Health, Marshfield Board of Health, **Lolin Kathryn Hilgartner**, DC, CNS, **Michelle E. Martins**, **Robin Moore**, **Corrine Bush**, MS, CNS, Far Hills Pharmacy, **Ginger Hodulik**, CNS, **Dana Reed**, MS, CNS, CDN, Reednutrition, **Garry M. Gordon**, MD, DO, MD(H), Gordon Research Institute, **Anna Beck**, BA, WN, CNHP, NES Practitioner and Nursing Instructor, **Leif Owen Klein**, American Association for Health Freedom –Citizen's Letter in Delaware, **Ray Hronchak**, **Theresa Bradshaw**, American Association for Health Freedom –Citizen's Letter in Delaware, **Jeannette Shattuck**, American Association for Health Freedom –Citizen's Letter in Delaware, **Jeremy E. Baptist**, MD, PhD, American Association for Health Freedom –Citizen's Letter in Delaware, **Robert Beiswinger** and **Stuart Swinger**. Thirty-four (34) documents were admitted as exhibits were admitted at the April 17<sup>th</sup> public hearing.

The following individuals submitted correspondence and/or offered public comment at the August 7, 2009 hearing: **Tami L. Wahl**, Legislative Director, American Association for Health Freedom, **Barry D. Norby**, and **Corrine Bush**, MS, CNS. Five (7) documents were admitted as exhibits at the August 7, 2009 public hearing.

#### Findings of Fact With Respect to the Evidence and Information Submitted

1. As a result of comment received at the first public hearing on April 17, 2009 the Board made the following changes to the regulation before republishing on July 1, 2009. The regulations were republished with the following substantive changes:

**Regulation 1.3** - The Board re-inserted an alternate method for demonstrating 900 hours of supervised practice to allow demonstration other than by documenting proof of a Commission on Accreditation for Dietetic Education (CADE) Program. The Board also struck the word “physician” from Regulations 1.3.2.4.4 finding that it was inconsistent with the statute.

**Regulation 1.4** – The Board determined that it has authority to designate more than one examination and modified Regulation 1.4.1 to accept the examination of the Certification Board for Nutrition Specialists (CBNS) or another national examination acceptable to the Board and approved by the Director of the Division of Professional Regulation, in addition to designating the examination established by the Commission on Dietetic Registration (CDR).

**Regulation 3.0** - The Board modified the provisions of proposed regulation 3.3.6 to reflect that it would accept the decisions of CDR and CBNS for the appropriateness of continuing professional education activities. The proposal previously only referenced accepting CDR.

2. The majority of the public comment at the first public hearing centered on the Board’s designation of the examination established by CDR as the only acceptable examination for licensure. The public comment also urged the Board to accept, as meeting the licensure requirements, the credentialing and/or examinations from credentialing bodies other than the just the ADA.

3. As a result of the comment, the Board did an extensive review of the proposed entities and evaluated their equivalency to the examination requirements of the ADA. The Board did find the requirements of the CBNS examination to be at least equivalent to those of the ADA. Based on its research, the Board was not persuaded that the American Clinical Board of Nutrition (ACBNS) requires an equivalent examination.

4. The Board is persuaded that the regulations as drafted provide alternate options to obtain licensure while meeting the Board’s statutory duty to designate the licensure examination(s).

5. The Board appreciates thought that was given by those individuals who provided comment on the regulations. The Board is not foreclosed from considering alternate examinations in the future and possible further modifications to its regulations in that regard. However, the Board finds that it does not have sufficient evidence at this time to do so based on its research and the evidence submitted at the 2 public hearings.

6. Finally, a number of the individuals offering public comment at both hearings requested that CBNS be treated the same as CDR under 24 Del. C. §3806(b). The Board does not have the authority to provide the requested equivalency by regulation; a statutory change would be required.

## THE LAW

The Board’s rulemaking authority is provided by 24 **Del.C.** §3805(a).

## 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 July 1, 2009 without any additional revision as a result of the August 7, 2009 public hearing.

**SO ORDERED** this 7th day of August, 2009.

## STATE BOARD OF DIETETICS/NUTRITION

Sharon Collison, L.D.N., President

Elizabeth Tschiffely, L.D.N.

Mary Trotter, L.D.N., Vice-President

Christy Vanderwende, Public Member

Patricia Hawkins, Public Member

\*Please note that no changes were made to the regulation as originally proposed and published in the March 2009 issue of the *Register* at page 1179 (12 DE Reg. 1179). Therefore, the final regulation is not being republished. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/september2009/final/13 DE Reg 414 09-01-09.htm>

### PUBLIC SERVICE COMMISSION

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

IN THE MATTER OF THE ADOPTION OF RULES TO		
ESTABLISH AN INTRASTATE GAS PIPELINE SAFETY		
COMPLIANCE PROGRAM PURSUANT TO		PSC REGULATION DOCKET NO. 61
26 DEL.C. CH. 8, SUBCHAPTER II		
(OPENED OCTOBER 7, 2008)		

### ORDER NO. 7610

**AND NOW**, this 4<sup>th</sup> day of August, 2009, the Commission determines and orders the following:

1. On October 7, 2008, the Commission entered PSC Order No. 7458, which promulgated proposed Regulations Governing Safety of Gas Transmission and Distribution Systems (the "Proposed Regulations"). The Commission promulgated the Proposed Regulations as a result of the enactment of 26 **Del.C.** § 821 (authorizing the Commission to make and enforce rules required by the Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. Chapter 601).) *See also* 26 **Del.C.** § 209(a).

2. As required by the Administrative Procedures Act, the Proposed Regulations were published in the *Delaware Register*. A notice regarding the Proposed Regulations was also published in *The News Journal* and the *Delaware State News* newspapers and delivered to each public utility owning or operating any gas transmission or distribution systems in Delaware.

3. Following the promulgation and publication of the Proposed Regulations, Commission Staff met and worked with various parties regarding the Proposed Regulations. As a result of those meetings, the Proposed Regulations underwent numerous, substantive changes, and, therefore, notice of the "Revised Proposed Regulations" was published in the *Delaware Register* as required by 29 **Del.C.** §§ 10118(c) and 10115. *See* PSC Order 7559 (May 5, 2009).

4. Following republication, Delmarva Power and Chesapeake Utilities Corporation filed letters with the Commission supporting the promulgation of the Revised Proposed Regulations. The Commission received no other comments or suggested changes to the Revised Proposed Regulations.<sup>1</sup>

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

1. One non-substantive change has been made to the Revised Proposed Regulations that were published in the *Delaware Register*. At the request of the Commission Chair, "Actual or", was inserted between "of" and "Potential" in the title of section 4.

1. That, pursuant to 26 **Del.C.** §§ 209(a) and 821, and 29 **Del.C.** §§ 10111 *et seq.*, the Commission hereby promulgates the revised *Regulations Governing Safety of Gas Transmission and Distribution Systems* (the "Regulations"), a true and correct copy of which is attached hereto as Exhibit A, as official regulations as defined by 29 **Del.C.** § 1132.

2. That, pursuant to 26 **Del.C.** §§ 10113 and 10118, the Secretary of the Commission shall transmit to the Registrar of Regulations for publication in the *Delaware Register* a copy of this Order (with the attached Regulations). An exact copy of the Regulations attached hereto shall be published as final, official regulations in the *Delaware Register*.

3. The effective date of this Order and the Regulations shall be the latter of August 14, 2009, or ten days after the date of publication of the Regulations in the *Delaware Register*.

4. That the Secretary shall cause a copy of this Order to be sent by U.S. mail to all utilities which own and/or operate any gas transmission or distribution system in Delaware and all persons who have made timely written requests for advance notice of the Commission's regulation-making proceedings.

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

BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair  
Joann T. Conaway, Commissioner  
Jeffrey J. Clark, Commissioner  
Jaymes B. Lester, Commissioner  
Dallas Winslow, Commissioner

ATTEST:

Katie Rochester, Acting Secretary

## **8000 Rules to Establish an Intrastate Gas Pipeline Safety Compliance Program**

(Opened October 7, 2008)

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

### **4.0 Informal Disposition of [Actual or] Potential Violation**

When an evaluation of an Operator's records or Regulated Facilities indicate that the Operator is or may be violating these Regulations, Staff shall provide the Operator with prompt notice of the potential violation, at which point Staff may informally discuss the potential violation with the Operator. Any documentation or physical evidence necessary to support an allegation of non-compliance may be obtained during the inspection. Timely corrective action may be taken by the Operator of the facilities where a potential violation exists, thus correcting the potential violation without further action.

**\*Please Note: As the rest of the sections were not amended since the proposal in the June 2009 Register, they are not being published here. A complete copy of the final regulation is available at:**

**<http://regulations.delaware.gov/register/september2009/final/13 DE Reg 416 09-01-09.htm>**

**DEPARTMENT OF TRANSPORTATION  
DIVISION OF TRANSPORTATION SOLUTIONS**

Statutory Authority: 17 Delaware Code, Sections 134 and 141; 21 Delaware Code, Chapter 41  
(17 Del.C. §§134, 141 and 21 Del.C. Ch. 41)  
2 DE Admin. Code 2402

**ORDER****Revisions to the Delaware Manual on Uniform Traffic Control Devices, Parts 2, 6, and 9**

Under Title 17 of the **Delaware Code**, Sections 134 and 141, as well as 21 **Delaware Code** Chapter 41, the Delaware Department of Transportation (DelDOT) adopted a Delaware version of the Federal Manual on Uniform Traffic Control Devices (MUTCD). The Department then drafted changes to Parts 2, 6, and 9 of the Federal MUTCD, and published a Notice seeking public comment on these changes in the May 1, 2009 edition of the *Delaware Register*. Other portions of the MUTCD have already been drafted and adopted.

**Summary of the Evidence and Information Submitted**

No comments were received regarding these proposed changes to the MUTCD. Since the initial publication for comment, however, the Department made certain small changes in its draft of the amendments to Part 6. The Department considers none of these changes to be substantive in nature, and thus causing the need for a new comment period.

**Findings of Fact**

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

1. The proposed amendments to Parts 2, 6, and 9 of the Delaware version of the MUTCD are useful and proper, as amended pursuant to the comment period process required under the Administrative Procedures Act.
2. The adoption of these proposed changes to the MUTCD for Delaware is in the best interests of the State of Delaware.

**Decision and Effective Date**

Based on the provisions of Delaware law and the record in this docket, I hereby adopt the amended Parts 2, 6, and 9 of the MUTCD, as set forth in the version attached hereto, to be effective on September 21, 2009.

**IT IS SO ORDERED this 17<sup>th</sup> day of August, 2009.**

Carolann Wicks, Secretary

**\*Please Note: Due to the size of the proposed regulation, the DelDOT Manual on Uniform Traffic Control Devices, Parts 2, 6 and 9, is not being published here. A PDF version is available at the following location:**  
<http://regulations.delaware.gov/register/september2009/final/mutcd.pdf>

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**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER****EXECUTIVE ORDER  
NUMBER EIGHT****TO: Heads Of All State Departments And Agencies****RE: Our Continuing Commitment To Equal Opportunity Hiring Standards And Best Practices of Human Resources Management in The Executive Branch**

**WHEREAS**, Delaware law, executive order and/or Merit Rules prohibit discrimination in state employment based on gender, race, color, religion, national origin, age, marital status, disability, sexual orientation, veteran status; or genetic information; and

**WHEREAS**, the State of Delaware is committed to providing equal employment opportunities to all Delawareans; and

**WHEREAS**, all Delawareans are indebted to the servicemen and servicewomen of our armed forces, and the State of Delaware is committed to honoring that service by ensuring equal employment opportunities to all members of the Armed Forces, Reserves, National Guard and veterans; and

**WHEREAS**, the State of Delaware remains committed to maintaining a high quality workforce that draws upon the talents of our diverse citizenry to operate our government effectively and efficiently for the benefit of the State's citizens; and

**WHEREAS**, the State of Delaware has succeeded over the years in diversifying its workforce; and

**WHEREAS**, the State of Delaware must continue vigorously to promote equal employment opportunity and workplaces free of unlawful or improper discrimination; and

**WHEREAS**, the State of Delaware can achieve equal opportunity and a diverse workforce only by continuing and improving an equal employment opportunity program that enforces fair recruitment, hiring and promotional practices throughout state government.

**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. The State of Delaware's commitment to equal employment opportunity is hereby affirmed and heads of each Department and Agency within the Executive Branch (collectively "Executive Branch Agencies") are directed to pursue diligently the recruitment and promotion of qualified applicants from diverse backgrounds and to be vigilant in complying with the laws prohibiting discrimination in employment.

2. The work atmosphere in Executive Branch Agencies shall be one that fosters mutual respect and understanding among persons of different gender, race, color, religion, national origin, age, marital status, disability, sexual orientation, gender identity or expression, or military or veteran status.

3. Paragraphs 1 and 2 of this Executive Order are directives from the Governor to Executive Branch Agencies. They will be vigorously enforced by the Governor. However, they are not intended to and shall not create independent causes of action for or on behalf of persons who allege a lack of compliance with those paragraphs.

4. The Governor's Council on Equal Employment Opportunity (hereinafter "Council") is continued. The function of the Council shall be to assist in the monitoring and evaluation of the Executive Branch Agencies' implementation of and compliance with this Executive Order, and to provide advice and recommendations to the Director of the Office of Management & Budget and the Governor.

a. The Council shall consist of eight members. One half of the Council's members shall be members of

the Delaware Human Relations Commission, who shall be nominated by the Chairperson of the Human Relations Commission and appointed by the Governor. The remainder of the Council's members shall be appointed by the Governor. All members of the Council shall serve at the pleasure of the Governor. The Chairperson of the Council shall be appointed by the Governor from among the Council's members, and shall serve as Chairperson at the pleasure of the Governor.

b. The Council shall receive staff support from Human Resource Management and the Office of Human Relations. The Division of Vocational Rehabilitation shall advise the Council on matters regarding persons with disabilities.

c. The Council shall furnish each year a written annual report to the Governor and the Director of the Office of Management & Budget on the progress being made in improving the diversity of the State's workforce. Further, the Council should include in its report recommendations to advance cohesion and understanding among current employees, address the effects of implicit bias, and to foster an environment of inclusion. In its report, the Council shall recommend any additional action which, in the Council's judgment, should be undertaken. Such report shall be available to the public.

5. On behalf of the Office of Management & Budget, Human Resource Management shall maintain the central managerial role over all diversity and equal employment matters in the Executive Branch and shall accept overall responsibility for the implementation and management of the policies and procedures set forth in this Order. The Director of Human Resource Management shall:

a. establish the duties and responsibilities of the Equal Employment Opportunity/Affirmative Action Administrator and of Agency equal employment officers ("EEO officers");

b. prepare and submit an annual Executive Department Affirmative Action plan, to include short and long term strategies;

c. hold Agencies accountable for their implementation of this Order;

d. act as the State of Delaware's liaison with the EEOC for federal reporting requirements; and

e. communicate and coordinate diversity and equal opportunity initiatives across Agencies.

#### **AFFIRMATIVE ACTION PLANS**

6. The head of each Executive Branch Agency shall maintain an Affirmative Action Plan, which shall be filed annually with Human Resource Management and the Council on or before September 15.

7. Each Affirmative Action Plan referred to in paragraph 6 shall be in a form prescribed by Human Resource Management to ensure compliance with federal laws, state laws, and this Order. Each plan shall include, but shall not be limited to, the following provisions:

a. A specific statement of goals and objectives designed to assure equal employment opportunities in hiring and promotion and to eliminate any unlawful discrimination in Agency employment;

b. A specific statement of action steps designed to address any documented under-representation of minorities or women in the Agency as compared to Delaware's labor pool. Such action steps shall include:

(i.) Specific proposals for recruiting minorities and women for employment in the Agency to the extent that they are underrepresented in the Agency when compared to the relevant statewide labor market.

(ii.) Specific proposals for assuring that hiring practices are conducted consistently with the objectives of this Order.

(iii.) Specific proposals for assuring that all promotional opportunities are offered in a manner consistent with this Order.

(iv.) Specific proposals for staff participation in training programs on interview techniques and acceptable hiring practices.

(v.) Specific proposals for employee participation in career enhancement programs and seminars.

(vi.) Specific statements regarding the applicability of the following outreach, training, and accountability measures to the Agency's recruitment and retention efforts:

A. Job fairs

B. College and university outreach

C. Professional group outreach

D. Advertising

E. Employee recognition programs

F. Formal and informal mentoring

- G. Internal leadership programs
  - H. Participation in statewide programs
  - I. Professional development for existing staff, including tuition reimbursement programs, attendance at conferences and seminars, and internal training opportunities.
  - J. Inclusion of recruitment and retention of women and minorities in Agency's strategic and staff plans.
  - K. Statements of Agency policy
  - L. Creation or continuation of Agency diversity committees.
  - M. Specific efforts of top leadership within the Agency
  - N. Internal communications efforts within the Agency
- c. A designation of the EEO officer within the Agency to carry out diversity and equal employment opportunity functions for the Executive Branch Agency.
8. Each Executive Branch Agency shall make available a summary or full copy of its Affirmative Action Plan to any employee upon request.

### **RECRUITMENT AND PROMOTION OF A DIVERSE WORKFORCE**

9. To support the recruitment of a diverse workforce, the Director of Human Resource Management or designee shall:
- a. Assist Executive Branch Agencies in updating their Affirmative Action Plans in accordance with federal guidelines;
  - b. Develop, coordinate, and implement professional recruiting efforts throughout State government designed to increase the number of qualified women and minority candidates for State employment for positions and opportunities where women and minorities are under-represented. Human Resource Management shall develop a statewide directory of organizations that can serve as resources for the identification of qualified women and minority candidates in particular fields, so that these organizations can be notified regarding specific vacant positions;
  - c. Review and revise employment hiring procedures and Merit Rules to ensure a selection process that is fair, non-discriminatory and equitable;
  - d. Require Agencies filling merit positions at paygrade 15 and above to use an interview team of at least three members. Such a team should be diverse in its composition;
  - e. Work with the State Manager of Training and Development to facilitate Statewide training and technical assistance programs to ensure compliance with State and Federal equal opportunity laws and this Order, and to inculcate effective recruitment and career development procedures; and
  - f. Work with the EEO officers and personnel officers of the various Executive Branch Agencies to review job classifications within those Agencies, and the qualifications of the employees of such Agencies, with a view toward eliminating any artificial barriers to hiring and promotion, and targeting appropriate employee career development, mentoring and workforce development plans.

### **REPORTING REQUIREMENTS**

10. Each Executive Branch Agency shall:
- a. Be held accountable for compliance with this Order by including the measures and statements required in this Order in each manager's performance plan and each relevant Agency strategic plan;
  - b. Retain a record of all applicants who voluntarily divulge protected class information. The information required shall be prescribed by Human Resource Management and, to the extent practicable, shall be in a format consistent with the terminology and categories used in federal EEO standard forms;
  - c. Ask each terminating employee to participate in an exit interview to determine the reasons for that employee's termination and retain records of such interviews; and
  - d. Report to Human Resource Management information requested by Human Resource Management concerning the Agency's Affirmative Action Plan.
11. Human Resource Management shall:
- a. Maintain a comprehensive, statewide, on-line, user-friendly system that allows continuous monitoring of the diversity of the State's workforce across all paygrades;



- b. Work with the Council to ensure the publication of clear information regarding the composition of the State's workforce;
- c. Submit a quarterly report to the Council; and
- d. Assist the Council in preparing its annual report.

#### **PUBLIC ACCOUNTABILITY**

12. The Council, with the assistance of Human Resource Management and the Human Relations Commission staff, shall:

- a. Establish a schedule for conducting an intensive review of each Executive Branch Agency in need of review based on criteria established by the Council, to assess compliance with the terms of this Executive Order, the Agency's Affirmative Action Plan, and equal opportunity laws. The review criteria shall be used to determine which Agencies will appear before the Council in priority order. The review shall involve an in-depth consideration of Agency promotion, hiring and recruiting practices. Each reviewed Agency shall receive a detailed report identifying those practices and policies of the Agency that are constructive and those practices and policies which need improvement or elimination, with specific recommendations for the Agency to consider. The Council shall incorporate a summary of the results of these reviews in its annual report, as required by paragraph 4 of this Order. From these annual reviews, Human Resource Management shall submit to each Executive Branch Agency a guidance memorandum identifying successful practices used by the reviewed Agencies to increase the diversity of their workforce and examples of policies and practices that hindered the State's attempt to create a more diverse workforce.

- b. Publish, as a part of its annual report, an overall report on the composition of the State's workforce and the State's effectiveness in complying with equal employment laws and this Order.

#### **COMPLAINTS**

13. Each Agency shall include in its Affirmative Action Plan a description of a mechanism or complaint procedure to permit and encourage employees to discuss any problems resulting from alleged bias, discrimination, lack of equal employment opportunity or any similar matters with appropriate division or Agency supervisory personnel. The procedure shall provide for the lodging of employee complaints and for a response to be made within a specified reasonable period of time. Employees shall be advised of their right to file a formal complaint with the Office of Anti-Discrimination of the Department of Labor. Employees shall receive such assistance with the complaint as may be requested from their Agency EEO officer.

14. Human Resource Management shall:

- a. Post a public notice, in conspicuous locations or bulletin boards, of all cabinet Departments, major offices, divisions or Agencies which shall affirm the State's commitment to equal opportunity and advise all State employees and applicants for State employment that any complaints of discrimination should be promptly reported to the State Equal Employment Opportunity/Affirmative Action Program Administrator and the Office of Anti-Discrimination of the Department of Labor; and

- b. Provide on the application form for state employment a statement of the state's commitment to equal employment opportunity and instructions as to how complaints of discrimination may be reported.

15. The complaint process for employment discrimination cases shall fall into two categories: informal and formal.

- a. An informal complaint is filed with Human Resource Management by written or oral communication with the State Equal Employment Opportunity/Affirmative Action Program Administrator requesting the State Equal Employment Opportunity/Affirmative Action Program Administrator to attempt to facilitate resolution of the complaint. Human Resource Management will determine whether or not the complaint appears to fall within the jurisdiction of the Office of Anti-Discrimination of the Department of Labor and may require a formal charge of discrimination within the time limits prescribed by statute.

- b. The State Equal Employment Opportunity/Affirmative Action Program Administrator will inquire into such cases by working through the designated Agency EEO officer and appropriate management staff, as deemed appropriate by the Cabinet Secretary. Based on the determination, the State Equal Employment Opportunity/Affirmative Action Program Administrator will respond in writing to the complainant. For allegations of violations to Title VII of the Civil Rights Act of 1964 as amended, the Age Discrimination in Employment Act of 1967 as

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amended, Vietnam Era Veterans Readjustment Assistance Act of 1979, the Americans with Disabilities Act of 1990, or Title 19 of the Delaware Code relating to discrimination in employment, the complainant will be advised and/or referred to the Office of Anti-Discrimination of the Department of Labor for investigation into filing a formal complaint even if a resolution is reached through Human Resource Management. Nothing in this Order shall be construed to bar mediation of a complaint by the State Human Relations Commission; however, such mediation shall not affect or in any way toll relevant time limitations.

#### **REPEAL OF PREVIOUS EXECUTIVE ORDERS**

16. Executive Order No. 81, dated February 1, 2006, and Executive Order No. 86, dated May 2, 2006, are hereby rescinded.

#### **APPLICABILITY OF EXECUTIVE ORDER**

17. This Order shall apply to all Cabinet Departments and Executive Agencies of the State. The members of the General Assembly and the Judiciary are also encouraged to adopt this Order.

18. No provision of this Order is intended to or shall create any individual right or legal cause of action that does not already exist under state or federal law.

**APPROVED this 11th day of August, 2009**

Jack A. Markell,  
Governor

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# GENERAL NOTICES

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## DEPARTMENT OF EDUCATION PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b)  
14 DE Admin. Code

### IMPLEMENTING FINAL ORDER

#### The Professional Standards Board's Ethical Guideline for Delaware Educators

##### I. Summary of the Evidence and Information Submitted

The Professional Standards Board is committed to providing leadership for improving the quality of education in the State of Delaware by establishing high standards for educator licensure, certification, professional development and conduct. The purpose of The Professional Standards Board's Ethical Guideline for Delaware Educators is to inform and clarify expectations and commitments of educators to the student, the profession and the educational community. This applies to current Delaware educators, those educators new to Delaware and recent college graduates. This guideline is not intended to be a definitive list of acceptable and unacceptable behaviors, but is intended to be an edifying document that will facilitate conversations and reflections of current and future practice.

##### II. Effective Date of Order

The effective date of this Order shall be August 6, 2009

**APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 6<sup>TH</sup> DAY OF AUGUST, 2009**

Kathleen Thomas, Chair  
Joanne Christian  
Samtra Devard  
Marilyn Dollard  
Karen Gordon  
Cristy Greaves  
Lori Hudson  
David Kohan

Jill Lewandowski  
Wendy Murray  
Gretchen Pikus  
Whitney Price  
Karen Schilling-Ross  
Michael Thomas  
Carol Vukelich  
Cathy Zimmerman

**IT IS SO ENDORSED THIS 20<sup>TH</sup> DAY OF AUGUST, 2009 BY THE STATE BOARD OF EDUCATION**

Teri Quinn Gray, Ph.D., President  
Jorge Melendez, Vice President  
G. Patrick Heffernan  
Barbara Rutt

Dennis J. Savage  
Terry Whittaker Ed.D.  
James Wilson Ed.D.

#### The Professional Standards Board's Ethical Guideline for Delaware Educators

##### Preamble

The Professional Standards Board is committed to providing leadership for improving the quality of education in the State of Delaware by establishing high standards for educator licensure, certification, professional development and conduct.

## Purpose Statement

The purpose of The Professional Standards Board's Ethical Guideline for Delaware Educators is to inform and clarify expectations and commitments of educators to the student, the profession and the educational community. This applies to current Delaware educators, those educators new to Delaware and recent college graduates. This guideline is not intended to be a definitive list of acceptable and unacceptable behaviors, but is intended to be an edifying document that will facilitate conversations and reflections of current and future practice.

## Forward

Delaware educators recognize the trust and responsibility the public has vested in the profession for educating the children of Delaware. Educators acknowledge the worth and dignity of all people and must exemplify a commitment first to the student, to teaching and student learning, the profession and to their educational community. Delaware educators are entrusted to pursue personal professional growth, to promote democratic citizenship and diversity, and to serve as appropriate role models.

## Commitments

### **To the Student**

- Standard: *The educator's primary commitment is to students: the students' pursuit of knowledge, the development of the students' potential and the students' cognitive, physical and psychological safety.*
  - The educator shall treat every student with dignity and respect by valuing students' personal boundaries and maintaining professional relationships with students both inside and outside of the classroom or school. Educators shall engage all students in the acquisition of knowledge and understanding in an environment free from harassment, intimidation or physical danger. The educator shall accord just and equitable treatment to every student, regardless of race, color, creed, sex, sexual preference, age, socioeconomic status, handicapping condition, national origin or ethnic background. The educator promotes the worth and dignity of each student and has an obligation to support each student in the quest of reaching his/her full potential and of becoming a contributing member in our democratic society.

### **To the Profession**

- Standard: *The educator, in maintaining the dignity of the profession, shall demonstrate personal integrity, exemplify honesty and compassion, maintain high levels of competence, engage in or lead appropriate continuing professional development to move their students and the profession forward, and respect and follow the law.*
  - The educator shall encourage, support and respect fellow educators by providing the best of educational services. The educator shall respect the confidential expectations of the profession with students, colleagues and in records, and shall refrain from the exploitation of relationships for personal gain. The educator has an obligation to raise educational standards; to keep abreast of current research and technology; to commit to their own learning; and to create, support and maintain challenging learning environments for all. Educators collaborate with colleagues in the interest of student learning. The educator serves as a positive role model and shall refrain from the use of alcohol, tobacco and/or drugs on any school grounds or at any school activity. The educator is aware of the fine line between his/her personal and professional life relative to the purposeful or inadvertent sharing of digital media and burgeoning internet applications, and therefore exercises due diligence in this Information Age. Educators shall demonstrate a high standard of personal character and conduct, and promote the principles of democracy.

### **To the Educational Community**

- Standard: *The educator collaborates with parents and the educational community to enhance and promote student learning by building trust and respecting diversity.*
  - The educator encourages the educational community to be active participants in the formulation of educational policy and to be advocates for students. The educator shall communicate appropriate information with parents and endeavor to understand their community's cultures and diverse home environments. It is expected that the educator will distinguish between personal views and those of the employing educational agency and will model and encourage students to pursue the principles of our democratic heritage. The educator is responsible to the educational community for practicing the profession to the highest ethical principles.

**Delaware State Board of Education Endorsement**

On August 20, 2009, the State Board of Education reviewed The Professional Standards Board's Ethical Guideline for Delaware Educators. After consideration, the State Board of Education joins the Professional Standards Board in their commitment to providing leadership for improving the quality of education in Delaware through high standards and endorsed The Professional Standards Board's Ethical Guideline for Delaware Educators as a guideline for educators.

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**DEPARTMENT OF FINANCE  
DIVISION OF REVENUE**

Statutory Authority: 30 Delaware Code, Section 354 (30 Del.C. §354)

**Technical Information Memorandum 2009- 01**

**DATE:** July 10, 2009

**SUBJECT:** CIGARETTE TAX INCREASE

**CONTACT:** Ray Benton, Phone (302) 577-8268, Fax (302) 577-8662  
raymond.benton@state.de.us

House Bill 211 of the 145th General Assembly amended Chapter 53 of Title 30 of the **Delaware Code** to provide for an increase of 45 cents to the existing cigarette tax of \$1.15 per pack of 20 cigarettes. House Bill 211 also provided for an increase of 56 cents to the existing cigarette tax of \$1.44 per pack of 25 cigarettes.

This Act establishes the rate of tax to pay or to have been paid on cigarettes in possession of any person liable for payment of the tax on or after midnight July 31, 2009.

The new tax rate also applies to cigarettes in possession of any person (generally wholesalers and affixing agents) liable for the payment of the tax as of midnight July 31, 2009, which as of that date have been affixed with any Delaware tobacco product tax stamp or other indicia of payment of the tax in effect prior to the effective date of this Act. The increase in tax is also imposed on Delaware tobacco tax stamps purchased on or before July 31, 2009, and not affixed to any cigarette pack. The amount of the additional tax due is the difference between the new tax rate and the tax paid for Delaware cigarette stamps in their possession which are affixed or unaffixed to packs of cigarettes.

Wholesalers who are not affixing agents and who also possess a retailer license are required to inventory, report and pay the tax increase on all cigarettes in their possession on which the increased tax has not been paid in accordance with the requirements of this Technical Information Memorandum.

Between noon local time and midnight July 31, 2009, all persons liable to pay the tax will be required to conduct a floor stock inventory of Delaware stamped cigarettes and unaffixed Delaware tax stamps in their possession. For purposes of this regulation, possession means cigarettes in the physical control of which remain

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with the wholesaler or affixing agent including goods in transit where the title to such goods has not passed to the purchaser. The floor stock inventory requirement does not apply to retailers.

All persons liable to pay the tax must report their inventory at close of business on July 31, 2009, via fax to (302) 577-8662 to the attention of Mr. Ray Benton, using the enclosed Form 1074M, Resident Wholesaler Dealer's Monthly Report of Cigarette & Cigarette Tax Stamps, or Form 1075M, Nonresident Wholesaler Dealer's Monthly Report of Cigarette & Cigarette Tax Stamps, reporting the number of Delaware stamped packs of cigarettes and unaffixed Delaware tax stamps in their possession which are subject to the tax increase.

On or before August 20, 2009, all persons liable to pay the tax must complete and file the enclosed Form 1074M, Resident Wholesaler Dealer's Monthly Report of Cigarette & Cigarette Tax Stamps, or Form 1075M, Nonresident Wholesaler Dealer's Monthly Report of Cigarette & Cigarette Tax Stamps, reporting the number of Delaware stamped packs of cigarettes and unaffixed Delaware tax stamps in their possession which are subject to the tax increase. The Resident or Nonresident Wholesaler Dealer's Monthly Report of Cigarette & Cigarette Tax Stamps must be accompanied by full payment of the tax increase. Please use the revised Forms 1074M or 1075M, which are enclosed.

Contact Ray Benton concerning the tax increase or the use of the reporting forms.

Patrick T. Carter  
Director of Revenue

**DELAWARE SOLID WASTE AUTHORITY****PUBLIC NOTICE****501 Regulations of the Delaware Solid Waste Authority**

Pursuant to 7 **Delaware Code**, Sections 6403, 6404, 6406 and other pertinent provisions of 7 **Delaware Code**, Chapter 64; the Delaware Solid Waste Authority ("DSWA") is proposing amendments to the Regulations of the Delaware Solid Waste Authority (adopted by DSWA Board January 29, 2009) and the Statewide Solid Waste Management Plan (adopted May 26, 1994).

A public hearing will be held Wednesday, October 7, 2009, immediately following the hearing scheduled at 5:00 p.m. addressing contemporaneous amendments to the Statewide Solid Waste Management Plan, at Delaware Technical Community College, Terry Campus, Corporate Training Center, Room 400, Dover, Delaware 19903. The hearing is to provide an opportunity for public comment on the proposed amendments. The public record will close at the close of the hearing, unless the hearing officer extends the comment period at the close of the hearing.

The DSWA will receive written comments, suggestions briefs or other written material until the close of business, October 2, 2009. Written comments, suggestions, compilations of data, briefs or other written material shall be submitted to Michael D. Parkowski, Manager of Business Services and Government Relations, Delaware Solid Waste Authority, 1128 South Bradford Street, PO Box 455, Dover, Delaware 19903. Anyone wishing to obtain a copy of the proposed amendments may obtain a copy from the Delaware Solid Waste Authority, 1128 South Bradford Street, PO Box 455, Dover, Delaware 19903, (302) 739-5361.

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

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to change its Rules 7 and 10. The Commission will hold a public hearing on the proposed rule changes on October 13, 2009. 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 September 1, 2009.

The proposed changes are for the purpose of updating Rule 7 and 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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**THOROUGHBRED RACING COMMISSION****PUBLIC NOTICE****1001 Thoroughbred Racing Rules and Regulations**

The Thoroughbred Racing Commission, in accordance with 3 **Del.C.** §10103(c) proposes changes to its rules and regulations. The proposal amends Section 11 of the rules and regulations by amending existing Rule 11.4.1 by striking the last sentence. A public hearing will be held on September 22, 2009 at 10:00 AM, in the Horsemen's Office at Delaware Park, 777 Delaware Park Blvd., Wilm., DE, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed regulations may obtain a copy from the Thoroughbred Racing Commission, 777 Delaware Park Blvd., Wilm., DE. Copies are also published online at the Register of Regulations website: [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml). Persons wishing to submit written comments may forward these to the attention of Mr. John F. Wayne, Executive Director, at the above address. The final date to receive comments will be at 10:00 AM on September 22, 2009.

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

The State Board of Education will hold its monthly meeting on Thursday, September 17, 2009 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****Diamond State Health Plan 1115 Demonstration Waiver**

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) intends to submit an application to the Centers for Medicare and Medicaid Services (CMS) to renew Delaware's Section 115 demonstration waiver, entitled "Diamond State Health Plan" for an additional three years.

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 September 30, 2009. The draft Diamond State Health Plan 1115 waiver application is available upon request.

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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**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Medicaid for Workers with Disabilities**

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 Division of Social Services Manual (DSSM) related to the implementation of the Medicaid Buy-In program for the working disabled.

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 September 30, 2009.

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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**DIVISION OF MEDICAID AND MEDICAL ASSISTANCE****PUBLIC NOTICE****Reimbursement Methodology for Inpatient Hospital Services**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) with 42 CFR §447.205, 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 amending the Title XIX Medicaid State Plan to revise the reimbursement methodology for inpatient hospital 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) 255-4454 by September 30, 2009.

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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**DIVISION OF SOCIAL SERVICES****PUBLIC NOTICE****DSSM 2001.1 Redetermination: Eligibility Review Periods**

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 Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding redeterminations.

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, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by September 30, 2009.

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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**DIVISION OF SOCIAL SERVICES****PUBLIC NOTICE****DSSM 4002 Resources**

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 Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding available resources, excluded resources and disposal of real property.

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, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by September 30, 2009.

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 JUSTICE****DIVISION OF SECURITIES****PUBLIC NOTICE****Notice of Proposed Revision to the Rules and Regulations Pursuant to the Delaware Securities Act**

In compliance with the State's Administrative Procedures Act (APA) Title 29, Chapter 101 of the Delaware Code) and section 7325(b) of Title 6 of the Delaware Code, the Division of Securities of the Delaware Department of Justice hereby publishes notice of a proposed revision to the Rules and Regulations Pursuant to the Delaware Securities Act. The Division hereby proposes numerous changes to the rules and regulations governing administrative proceedings before the Securities Commissioner for the State of Delaware.

Persons wishing to comment on the proposed revision may submit their comments in writing to:

James B. Ropp  
Securities Commissioner  
Department of Justice  
State Office Building, 5th Floor  
820 N. French Street  
Wilmington, DE 19801

The comment period on the proposed revision will be held open for a period of thirty days from the date of the publication of this notice in the *Delaware Register of Regulations*.

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL****DIVISION OF AIR AND WASTE MANAGEMENT****PUBLIC NOTICE****1142 Specific Emission Control Requirements**

The Clean Air Act Amendments of 1990 (CAA) requires Delaware, as part of the Philadelphia-Wilmington-Atlantic City non-attainment area, to attain the 8-hour ozone National Ambient Air Quality Standard (NAAQS) of 0.08 ppm by 2010. Since nitrogen oxides (NOx) are a major precursor to the formation of ozone in the lower atmosphere, Delaware must reduce NOx emissions in order to reduce ambient ozone concentrations, and thus attain the NAAQS. As a part of the overall effort towards attainment, in July 2007, the Delaware Department of Natural Resources and Environmental Control (DNREC) promulgated 7 **DE Admin. Code** 1142 Section 2, which required large industrial boilers and process heaters with heat input capacities equal to or greater than 200 million British thermal units per hour (mmBTU/hour) at Delaware petroleum refineries to meet certain NOx emission limits.

DNREC is proposing to repromulgate the regulation and revise the emission limits for 3 boilers in the Premcor Refinery at Delaware City and to submit the regulation to EPA as a revision to Delaware's SIP. DNREC believes that the new limits are adequate for achieving necessary and timely NOx emission reductions from the subject sources. The revisions are being proposed pursuant to a settlement of an appeal to the Environmental Appeals Board by the Premcor Refinery on 7 **DE Admin. Code** 1142 Section 2 as promulgated in July 2007.

A public hearing will be held on September 30, 2009, beginning at 6:00 pm, in DNREC Conference Room A, 391 Lukens Drive, New Castle, DE 19720.

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**DIVISION OF FISH AND WILDLIFE****PUBLIC NOTICE****Regulation No. 3512, Winter Flounder Size Limit; Possession Limit; Seasons**

In order to come into compliance with Addendum 1 to Amendment 1 of the Interstate Fishery Management Plan for Inshore Stocks of Winter Flounder as administered by the Atlantic States Marine Fisheries Commission, Delaware must decrease its daily recreational harvest limit and cap daily commercial landings. Specifically,

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Delaware must reduce its recreational daily harvest limit to two winter flounder per person per day and the daily commercial harvest limit for any commercial fishermen is capped at 50 pounds. No other changes are proposed to the minimum size of winter flounder that may be taken during the open season, or to the allowable recreational harvest season. These changes are considered necessary because the Southern New England/Mid-Atlantic winter flounder stocks are considered to be overfished, and overfishing is still occurring. Winter flounder stocks taken in federal waters or those taken by commercial fishermen in possession of a federal permit are subject to the catch restrictions currently in place for federal waters.

Individuals may address questions to the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901 or phone (302)-739-9914. A public hearing on these proposed regulations will be held in the Department of Natural Resources and Environmental Control auditorium at 6:00 PM on Wednesday, September 30, 2009. Individuals may present their opinions and evidence either at the hearing or in writing to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901, or via email to Lisa.Vest@state.de.us.

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**DIVISION OF FISH AND WILDLIFE****PUBLIC NOTICE****Regulation 3711 Conch Minimum Size Limits (Formerly S-48)**

Revised regulation 3711 will establish a tolerance for undersize knobbed whelks (knobbed conchs) in the dredge and pot commercial fisheries similar to the existing tolerance established in Regulation 3711 2.0 for the channeled or smooth whelks (conchs). The purpose of the proposed regulation is to allow the retention of up to five (5) undersized knobbed whelks (that is conchs that are less than the applicable minimum length or diameter measurement in effect during the year in question) per 60 pound bag or basket of whelks per day. The allowance of a few undersized knobbed whelks during the course of normal harvesting operations will be a convenience for harvesters who have to pay crews of widely varying experience to cull undersize conchs from the harvest. Also such a tolerance is in recognition that occasionally conch shells are partially broken off either during or prior to harvesting. This proposed regulation should ease the burden on Department enforcement staff who during the course of checking the harvest for compliance with applicable minimum size limits.

Individuals may address questions to the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901 or phone (302)-739-9914. A public hearing on these proposed regulations will be held in the Department of Natural Resources and Environmental Control auditorium at 6:00 PM on Wednesday, September 30, 2009. Individuals may present their opinions and evidence either at the hearing or in writing to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901, or via email to Lisa.Vest@state.de.us.

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**DEPARTMENT OF SAFETY AND HOMELAND SECURITY****DIVISION OF STATE POLICE****2400 Board of Examiners of Constables****PUBLIC NOTICE**

Notice is hereby given that the Board of Examiners of Constables, in accordance with Del. Code Title 10 Chapter 27 proposes to amend Rule 3.0 – Law Enforcement Exemption and Rule 4.0 – Employment. These amendments give the Board of Examiners the authority to oversee all training for Constables. If you wish to view this adoption, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by September 30, 2009, to Delaware State Police, Detective Licensing, P.O. Box 430, Dover, DE 19903. The Board will hold their regular meeting in May 2010, at the Delaware State Police Headquarters Conference Room, 1441 North DuPont Highway in Dover, Delaware.

**DEPARTMENT OF STATE**  
**DIVISION OF PROFESSIONAL REGULATION**  
**3600 Board of Registration of Geologists**  
**NOTICE OF PUBLIC HEARING**

The Delaware Board of Geologists in accordance with 24 **Del.C.** §3606 has proposed amendments to Rule 2.0 Procedures for Licensure and Rule 6.0 Continuing Education of its rules and regulations. The proposed amendments to subsection 2.2.1.3 clarify that an applicant for licensure by reciprocity must have an active license in the jurisdiction from which the applicant is applying and must have actually worked for at least 2 years in the jurisdiction from which they are applying to meet the statutory requirements for licensure. The first proposed amendment to Rule 6.0 deletes language in subsection 6.1 that provided for a waiver of continuing education for the first renewal period after the continuing education requirements were enacted because it is no longer applicable. Finally, the Board is proposing to amend Rule 6.0 by adding new subsections 6.11 through 6.15 clarifying the continuing education audit process and the process for hearings for non-compliance, including the imposition of sanctions.

A public hearing will be held on October 9, 2009 at 10:15 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Geologists, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

The Board will consider promulgating the proposed regulations at its regularly scheduled meeting following the public hearing.

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**PUBLIC SERVICE COMMISSION**  
**PUBLIC NOTICE**

**Notice of Comment Period On Proposed Revised Regulations Concerning the Adoption of an "Integrated Resource Planning Regulation"**

**To: All Standard Offer Service Retail Customers Of Delmarva Power & Light Company And Other Interested Parties**

In 2006, the General Assembly and Governor enacted the "Electric Utility Retail Customer Supply Act," 75 Del. Laws. Ch. 242 § 6 (Apr. 6, 2006) (the "Act"). The Act required Delmarva Power & Light Company ("DP&L") to submit an Integrated Resource Plan ("IRP") with the Public Service Commission (the "Commission"), the Controller General, the Director of the Office of Management and Budget, and the State Energy Office (collectively the "State Agencies"). The IRP is a document that reflects the end result of an integrated resource planning process by DP&L during which it has systematically evaluated all actions or options for procuring, creating, or load-managing electric supply to meet, at minimal cost, the needs of its Standard Offer Service ("SOS") retail customers over a ten-year planning period. DP&L filed its initial IRP with the State Agencies on December 1, 2006.

In order to comply with the new legislation, on December 4, 2007, the Commission promulgated regulations intended to govern DP&L's IRP process pursuant to the Act. The Proposed Regulations and a notice regarding the Proposed Regulations were published in the Delaware Register of Regulations.

Following publication of the Proposed Regulations, the Commission Staff and certain interested parties have made material revisions to the Proposed Regulations. Accordingly, the Commission entered PSC Order No. 7628, requiring that the revised Proposed Regulations be re-published for public comment. The Commission hereby solicits written comments, suggestions, compilations of data, briefs and other written materials concerning the revised Proposed Regulations. Ten (10) copies of such material shall be filed with the Commission at its offices

located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware 19904. **All such materials shall be filed with the Commission on or before October 5, 2009.**

The revised Proposed Regulations and the materials submitted in connection therewith will be available for public inspection and copying at the Commission's Dover office during normal business hours. The fee for copying is \$0.25 per page. The regulations may also be reviewed, by appointment, at the office of the Division of the Public Advocate located at the Carvel State Office Building, 4<sup>th</sup> Floor, 820 North French Street, Wilmington, Delaware 19801 and will also be available for review on the Commission's website: [www.state.de.us/delpsc](http://www.state.de.us/delpsc).

Any individual with disabilities who wishes to participate in these proceedings should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, by telephone, or otherwise. The Commission's toll-free telephone number (in Delaware) is (800) 282-8574. Any person with questions may also contact the Commission Staff at (302) 736-7500 or by Text Telephone at (302) 739-4333. Inquiries can also be sent by Internet e-mail to [Katie.rochester@state.de.us](mailto:Katie.rochester@state.de.us).

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## **DEPARTMENT OF TRANSPORTATION**

### **DIVISION OF MOTOR VEHICLES**

#### **Rules and Regulations Pertaining to the Regulation of Public Carriers**

#### **PUBLIC NOTICE**

Under Title 2 of the **Delaware Code**, Section 1802, as well as 29 **Delaware Code** Section 8404, the Delaware Department of Transportation (DelDOT), is empowered to adopt regulations concerning public carriers, such as taxicabs, limousines, and charter buses operated by private entities. The Department has now drafted revisions to its existing Public Carrier regulations. A copy of the proposed changes accompanies this notice.

The Department will take written comments on the draft changes to the Delaware Public Carrier Regulations from September 1, 2009 through September 30, 2009.

Questions or comments regarding these proposed changes should be directed to: Michael Harrell, Administrator, DelDOT DMV Transportation Services, P.O. Drawer E, Dover, DE 19903 (302) 744-2730 (telephone) (302) 739-6299 (fax) [michael.harrell@state.de.us](mailto:michael.harrell@state.de.us).

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