
Delaware Register of Regulations

Issue Date: October 1, 2007

Volume 11 - Issue 4, Pages 366 - 538



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Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before September 15, 2007.

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

9 **DE Reg.** 1036-1040 (01/01/06)

Refers to Volume 9, pages 1036-1040 of the *Delaware Register* issued on January 1, 2006.

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
November 1	October 16	4:30 p.m.
December 1	November 15	4:30 p.m.
January 1	December 15	4:30 p.m.
February 1	January 15	4:30 p.m.
March 1	February 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.

Emergency Regulations

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

§ 10119. Emergency regulations.

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

- (1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable;
- (2) The order adopting, amending or repealing a regulation shall state, in writing, the reasons for the agency's determination that such emergency action is necessary;
- (3) The order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days;
- (4) When such an order is issued without any of the public procedures otherwise required or authorized by this chapter, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and
- (5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the Register of Regulations. (60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 71 Del. Laws, c. 48, § 10.)

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

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

PUBLIC NOTICE**Pharmaceutical Services Program – Tamper-Resistant Prescription Pads****NATURE OF THE PROCEEDINGS:**

This emergency regulation is being promulgated to amend the Delaware Medical Assistance Program (DMAP) Provider Manuals to bring Medicaid regulations into compliance with a new Federal law. Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) must take this action on an emergency basis to ensure access to quality healthcare. The Department has determined that a threat to the public welfare exists if it is not implemented without prior notice or hearing.

NATURE OF PROPOSED AMENDMENT:

Agency rules are revised to comply with Public Law 110-28 known as the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007 requiring prescriptions in written form to be executed on tamper-resistant prescription pads in order to qualify for reimbursement by the Delaware Medical Assistance Program (DMAP). Currently, there is no rule in place to require certain types of paper for prescriptions. This federal requirement mandates that written prescriptions be printed on certain types of paper which cannot be copied. The requirement does not apply to prescriptions transmitted by telephone, facsimile, or electronic prescribing. Effective October 1, 2007, federal financial participation (FFP) will not be available for written prescriptions to eligible Medicaid beneficiaries that are not written on tamper-resistant prescription pads.

SUMMARY OF THE PROPOSED AMENDMENT:

A. Beginning October 1, 2007, DMAP will require that a tamper-resistant prescription pad must contain at least one of the following three CMS defined characteristics:

1. One or more industry-recognized features designed to prevent unauthorized copying of a completed or blank prescription form;
2. One or more industry-recognized features designed to prevent the erasure or modification of information written on the prescription by the prescriber;
3. One or more industry-recognized features designed to prevent the use of counterfeit prescription forms.

B. Appropriate DMAP Provider Manuals will be updated to provide additional detail including examples of features, which comply with the above requirements.

Delaware Medical Assistance Program (DMAP) provider manuals and official notices are available for downloading from the DMAP website: www.dmap.state.de.us or EDS Pharmacy Services may be contacted at (800) 999-3371- Select #0, then #1.

This emergency regulation is also published concurrently herein under "Proposed Regulations" to allow for public comment.

FINDINGS OF FACT:

The Department finds that a compelling public interest exists which necessitates promulgation of an emergency regulation and requests emergency approval of rule revisions to comply with Public Law 110-28 known as the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007 which requires that all prescription drugs in written form be executed on tamper-resistant prescription pads in order to qualify for reimbursement under federal Medicaid guidelines. Rule revisions are necessary since federal financial participation will not be available for written prescriptions for eligible Medicaid beneficiaries on or after October 1, 2007, that are not written on tamper-resistant prescription pads. Accordingly, beginning October 1, 2007, DMAP will require that a tamper-resistant prescription pad must contain at least one of the following three CMS defined characteristics: (1) One or more industry-recognized features designed to prevent unauthorized copying of a completed or blank prescription form; (2) One or more industry-recognized features designed to prevent the erasure or modification of information written on the prescription by the prescriber; and, (3) One or more industry-recognized features designed to prevent the use of counterfeit prescription forms. The Department will receive, consider, and respond to petitions by any interested person for the reconsideration or revision thereof.

THEREFORE, IT IS ORDERED, that the proposed revisions to the Delaware Medical Assistance Program (DMAP) provider manuals to comply with the tamper-resistant prescription pad provisions of Public Law 110-28 known as the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007 be adopted on an emergency basis without prior notice or hearing, and shall become effective October 1, 2007.

Vincent P. Meconi, Secretary, DHSS
9-14-07

DMMA EMERGENCY ORDER REGULATION #07-48 REVISIONS:

(Regulation Number will be assigned pending further review and analysis by Department staff)

Effective October 1, 2007, Section 1903(i) of the Social Security Act requires that written (non-electronic) prescriptions for covered outpatient drugs for Medicaid clients be executed on a tamper-resistant pad in order to be eligible for federal matching funds. To meet this requirement, DMAP will only reimburse for covered Medicaid outpatient drugs when the written (non-electronic) prescription is executed on a tamper-resistant pad, or the prescription is electronic, faxed, or verbal.

Symbol Key

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

Proposed Regulations

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

DELAWARE RIVER BASIN COMMISSION**PUBLIC NOTICE****Water Quality Regulations, Water Code and Comprehensive Plan to Classify the Lower Delaware River as Special Protection Waters**

The Delaware River Basin Commission ("Commission" or "DRBC") is a federal-state regional agency charged with managing the water resources of the Delaware River Basin without regard to political boundaries. Its members are the governors of the four Basin states - New Jersey, New York, Pennsylvania and Delaware - and a federal representative appointed by the President of the United States. The Commission is not subject to the requirements of the Delaware Administrative Procedures Act. This notice is published by the Commission for informational purposes.

Summary: The Commission will hold a public hearing to receive comments on proposed amendments to the Commission's Water Quality Regulations, Water Code and Comprehensive Plan to establish numeric values for existing water quality for the reach of the main stem Delaware River known as the "Lower Delaware" and to assign this reach the SPW classification "Significant Resource Waters" (SRW). The Lower Delaware extends from the southern boundary of the Delaware Water Gap National Recreation Area at River Mile ("RM") 209.4 to the head of tide at Trenton, New Jersey, RM 144.4. Although no area of the State of Delaware falls within the portion of the Basin subject to the proposed regulations, as a member of the Delaware River Basin Commission, Delaware participates in cooperative management of the Basin's water resources and has a role in deciding whether the proposed rules are adopted.

The Lower Delaware River has carried the SPW-SRW classification on a temporary basis since January of 2005, making this reach and its drainage area subject for the past three years to those provisions of the Commission's SPW regulations that do not depend for implementation upon the use of numeric values for existing water quality. The amendments that currently are proposed would make projects within the Lower Delaware drainage subject to all applicable SPW requirements, including those for "no measurable change" to existing water quality as defined by the rule. The amendments also would incorporate language intended to clarify aspects of the SPW regulations that have been a source of confusion for some DRBC docket holders and applicants since the program was originally adopted in 1992 for point sources and in 1994 for non-point sources. Notably, a new term - "substantial alterations or additions" - is proposed to be added to the Definitions section of the regulations and to

be inserted in other sections of the rule to clarify which types of additions or alterations to existing wastewater treatment facilities will trigger certain SPW requirements that are deemed appropriate in connection with capital investment projects. A new paragraph also is proposed to expressly authorize effluent trading between point sources to satisfy the requirement for no measurable change to existing water quality under certain circumstances.

Background: The Special Protection Waters regulations, consisting of Section 3.10.3.A.1. of the Commission's Water Quality Regulations, are intended to maintain the quality of interstate waters where existing water quality is better than the established stream quality objectives. They include rules that discourage new and increased discharges to designated waters. Where such discharges are permitted, the rules ensure that incremental pollutant loadings and visual impacts are minimized, that minimum standards of treatment are applied, and that new loadings cause no measurable change from existing water quality, as defined by the rule, except toward natural conditions. The SPW regulations currently include a table establishing the numeric values that define existing water quality in the stream reaches permanently designated by the Commission as SPW in 1992. These reaches include the main stem Delaware River from Hancock, New York, to the downstream boundary of the Delaware Water Gap National Recreation Area as well as the portions of intrastate tributaries to the Delaware located within the boundaries of the Upper Delaware Scenic and Recreational River Corridor and the Middle Delaware Scenic and Recreational River (Delaware River between River Miles 250.1 and 209.5). The locations of water quality control points between Hancock and River Mile 209.5 are provided in a second table. The water quality control points are the locations used to assess water quality for purposes of defining and protecting it. No changes are proposed to the permanent designations and water quality control points that were established in 1992.

Since 2005, the SPW regulations have listed the Lower Delaware River as "Significant Resource Waters" (SRW) on a temporary basis and have applied to this reach only a portion of the SPW regulations, pending the development of numeric values for existing water quality in the Lower Delaware; a determination as to whether the SRW classification should be assigned to the entire reach or whether the alternative classification, "Outstanding Basin Waters" (OBW), should be used for those portions eligible for that classification by virtue of their inclusion in the National Wild and Scenic Rivers System; and resolution of a number of questions relating to implementation of the program. The proposed amendments would permanently classify the entire Lower Delaware reach as SRW. By incorporating into the regulation numeric values for existing water quality at a set of Lower Delaware River water quality control points, the amendments also would allow all applicable provisions of the SPW regulations to apply to projects within the Lower Delaware drainage.

Key provisions of the SPW regulations that will continue to apply within the drainage area to the Lower Delaware River if the proposed amendments are approved include the following: sections 3.10.3 A.2.c.1. through 3., in part requiring that no new or expanded wastewater discharges may be permitted in waters classified as SPW until all non-discharge-load reduction alternatives have been fully evaluated and rejected because of technical or financial infeasibility; sections 3.10.3 A.2.d.1. through 7., setting forth requirements for wastewater treatment facilities; and sections 3.10.3 A.2.e.1. and 2., conditioning project approval on the existence of an approved Non-Point Source Pollution Control Plan for the project area and requiring that approval of a new or expanded withdrawal and/or wastewater discharge project be subject to the condition that new connections to the project system be limited to service areas regulated by a non-point source pollution control plan approved by the Commission.

If the proposed amendments are adopted, numeric values for twenty parameters will be established, defining existing water quality by rule for purposes of the SPW program at 24 water quality control points in the Lower Delaware River. The parameters include: ammonia-ammonium NH₃-NH₄ (mg/l), chloride (mg/l), chlorophyll a (mg/m³), dissolved oxygen (mg/l), dissolved oxygen saturation (%), E. coli (colonies/100 ml), enterococcus (colonies/100 ml), fecal coliform (colonies/100 ml), nitrate NO₃-N (mg/l), orthophosphate (mg/l), pH, specific conductance (umhos/cm), total dissolved solids (mg/l), total Kjeldahl nitrogen (mg/l), total nitrogen (mg/l), total phosphorus (mg/l), total suspended solids (mg/l), turbidity (NTU), alkalinity (mg/l), and hardness (mg/l). The proposed values are based upon five years of ambient water quality monitoring, from 2000 through 2004.

Adoption of numeric values for existing water quality and creation of a set of Boundary Control Points in the Lower Delaware River will mean that applicants seeking approval to construct new facilities or to expand existing facilities in the Lower Delaware drainage will be required for the first time to demonstrate that their new or increased discharges will cause no measurable degradation of existing water quality at the established water quality control points (sections 3.10.3 A.2.b.2. and 3.10.3 A.2.f.). As in the upper and middle portions of the non-tidal Delaware, the "no measurable change" requirement will apply whether a project discharges directly to the

main stem or to a tributary. For certain main stem discharges, if minimum treatment standards alone do not ensure no measurable change at the downstream water quality control point, additional treatment may be required (section 3.10.3 A.2.b.2. in combination with section 3.10.3A.2.d.6.).

Importantly, the proposed amendments, if approved, will add language to clarify that for projects involving existing facilities discharging to SPW - whether in the upper, middle or lower portion of the Delaware River - only substantial additions or alterations as defined by the rule will trigger the requirements that no such project may be approved until (1) all non-discharge load reduction alternatives have been fully evaluated and rejected because of technical or financial infeasibility (section 3.10.3.A.2.c.1.) (OBW and SRW discharges); (2) the applicant has demonstrated the technical and/or financial infeasibility of using natural wastewater treatment technologies for all or a portion of the incremental load (section 3.10.3.A.2.d.5.) (OBW, SRW and tributary discharges); (3) the Commission has determined that the project is demonstrably in the public interest as defined by the rule (section 3.10.3.A.2.c.3.) (SRW discharges); and (4) the minimum level of treatment to be provided for such projects is Best Demonstrable Technology as defined by the rule (section 3.10.3.A.2.d.6.) (direct OBW and SRW discharges). The proposed amendments further clarify that alterations limited to changes in the method of disinfection and/or the addition of treatment works for nutrient removal at existing facilities are not deemed to be "substantial alterations or additions" triggering the foregoing requirements.

The proposed amendments include clarification as to the baseline to be used in measuring predicted changes to existing water quality, and the effect of discharge/load reduction alternatives and/or natural treatment alternatives for projects that involve substantial alterations or additions to existing facilities.

Previous register notices concerning designation of the Lower Delaware River as Special Protection Waters include notices published in the *Delaware Register of Regulations* on Friday, October 1, 2004 (8 DE Reg. 513-515) (proposed designation) and in the Federal Register on September 23, 2004 (69 FR 57008) (proposed designation), August 22, 2005 (70 FR 48923) (proposed extension), August 21, 2006 (71 FR 48497) (proposed extension), and August 22, 2007 (72 FR 46931) (proposed extension). The proposed and final versions of the initial designation and the subsequent extensions also were published on the Commission's website, www.drbc.net.

Dates: The public hearing will be held on December 4, 2007, at the Commission's office building, located at 25 State Police Drive, West Trenton, New Jersey. Driving directions are available on the Commission's website, www.drbc.net. Please do not rely on Internet mapping services as they may not provide accurate directions to the DRBC. The hearing will begin at 2:30 P.M. and will continue until all those who wish to testify are afforded an opportunity to do so. Persons wishing to testify at the hearing are asked to register in advance by phoning Ms. Paula Schmitt at 609-883-9500, ext. 224. Written comments will be accepted through the close of business on December 6, 2007. Written comments may be submitted by email to paula.schmitt@drbc.state.nj.us; by fax to Commission Secretary at 609-883-9522; by U.S. Mail to Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628-0360; or by overnight mail to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628-0360. In all cases, please include the commenter's name, address and affiliation if any in the comment document and include "SPW" in the subject line.

Further Information: The current rule and the full text of the proposed amendments are posted on the Commission's website, www.drbc.net, along with supporting data, reports, maps and related documents. Hard copies may be obtained by contacting Ms. Paula Schmitt at 609-883-9500, ext. 224. The Commission will hold two informational meetings on the proposed rulemaking. The first will take place on Thursday, October 25, 2007 from 7:00 P.M. to 9:00 P.M. at the office of the Delaware and Raritan Canal Commission at the Prallsville Mills Complex, 33 Risler Street (Route 29) in Stockton, New Jersey. The second will be held on Thursday, November 1, 2007 from 7:00 P.M. to 9:00 P.M. in Room 315 of the Acopian Engineering Building at Lafayette College, located at High Street, Easton, Pennsylvania. Please contact Commission Secretary Pamela Bush, 609-883-9500 ext. 203 with questions about the proposed rule or the rulemaking process.

Pamela M. Bush, Esquire, Commission Secretary
September 14, 2007

DELAWARE STATE FIRE PREVENTION COMMISSION

Statutory Authority: 16 Delaware Code, Section 6603 (16 Del.C. §6603)

Delaware State Fire Prevention Regulations Part X, Ambulance Service Regulations

NOTICE OF PUBLIC HEARING

The Delaware State Fire Prevention Commission will hold a hearing pursuant to 16 Del.C. §6603 and 29 Del.C. §101 on Tuesday, November 20, 2007, at 1:00 P.M. in the Commission Chamber, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware. The Commission is proposing changes to the following Regulations.

Persons may view the proposed changes to the Regulations between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, at the Delaware State Fire Prevention Commission, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware, 19904, or Office of the State Fire Marshal located at the Delaware Fire Service Center, 1537 Chestnut Grove Road, Dover, Delaware, 19904, or the Regional State Fire Marshal's Offices located 2307 MacArthur Road, New Castle, Delaware and 22705 Park Avenue, Georgetown, Delaware, 19947. You can find the meeting announcement and proposed changes on the Delaware Website <http://www.delaware.gov/egov/calendar.nsf> or on the Delaware State Fire Marshal's Office webpage at www.statefiremarshal.delaware.gov under the tabs "Services" and "Proposed Changes".

Persons may present their views in writing by mailing their views to the Commission at the above addresses prior to the hearing, and the Commission will consider those responses received before 9:00 a.m. on November 20, 2007, or by offering testimony at the Public Hearing. If the number of persons desiring to testify at the Public Hearing is large, the amount of time allotted to each speaker will be limited. There will be a reasonable fee charge for copies of the proposed changes or retrieve from the webpage for free.

Summary of changes proposed on August 21, 2007 to the State Fire Prevention Commission for consideration.

1. Part X, Chapter III (Definitions) – revised Ambulance Attendant for the purpose of clarity.
2. Part X, Chapter IX has been rewritten for better clarity.
3. Part X, Chapter XIV modified to address the reinstatement procedures for Delaware EMT-B/Ambulance Attendant.
4. Part X, Chapter XV modified to address requirements to the Criminal History Background Checks.
5. Part X, Chapter XVI modified to address requirements to the First Responder.

2006 Delaware State Fire Prevention Regulations Part X Ambulance Service Regulations

1.0 Purpose

The purpose of this regulation is to ensure a consistent and coordinated high quality level of ambulance service throughout the state, focusing on timeliness, quality of care and coordination of efforts.

2.0 Application

2.1 This regulation shall apply to any person, firm, corporation or association either as owner, agent or otherwise providing either prehospital or interhospital ambulance service meeting the definitions of either "BLS Ambulance Service" or "Non-Emergency Ambulance Service" within the State of Delaware. The following are exempted from this regulation:

2.1.1 Privately owned vehicles not ordinarily used in the business of transporting persons who are sick, injured, wounded or otherwise incapacitated or helpless.

2.1.2 A vehicle rendering service as an ambulance in case of a major catastrophe or emergency when the ambulances with permits and based in the locality of the catastrophe or emergency are insufficient to render the services required.

2.1.3 Ambulances based outside the State rendering service in case of a major catastrophe or emergency when the ambulances with permits and based in the locality of the catastrophe or emergency are insufficient to render the services required.

- 2.1.4 Ambulances owned and operated by an agency of the United States Government.
- 2.1.5 Ambulances based outside the State engaged strictly in interstate transportation.
- 2.1.6 A vehicle which is designed or modified and equipped for rescue operations to release

persons from entrapment and which is not routinely used for emergency medical care or transport of patients.

7 DE Reg. 1649 (06/01/04)

3.0 Definitions

For the purpose of this policy the following definitions are used:

Advanced Life Support (ALS) - The advanced level of pre-hospital and inter hospital emergency care that includes basic life support functions including cardiopulmonary resuscitation, plus cardiac monitoring, cardiac defibrillation, telemetered electrocardiography, administration of anti arrhythmic agents, intravenous therapy, administration of specific medications, drugs and solutions, use of adjunctive medical devices, trauma care and other authorized techniques and procedures.

Advertising - Information communicated to the public, or to an individual concerned by any oral, written, or graphic means including, but not limited to, handbills, newspapers, television, billboards, radio, and telephone directories.

Ambulance - Any publicly or privately owned vehicle, as certified by the Delaware State Fire Prevention Commission, that is specifically designed, constructed or modified and equipped, and intended to be used for and is maintained or operated for the transportation upon the streets and highways of this state for persons who are sick, injured, wounded or otherwise incapacitated or helpless.

Ambulance Attendant - A person trained in emergency medical care procedures and currently certified by the Delaware State Fire Prevention Commission as an EMT-B in accordance with standards prescribed by the Delaware State Fire Prevention Commission. Ambulance Attendant remains in this document for the purpose of clarity and is to be construed interchangeably with EMT-B.

Ambulance Service District - A geographical area with boundaries which are typically (but not always) aligned to fire service districts within the state as identified and certified by the Delaware State Fire Prevention Commission.

BLS Run Report - Standardized Patient Care Report provided by the State EMS office, paper or computerized.

Basic Life Support (BLS) - The level of capability which provides EMT-B/Ambulance Attendant emergency patient care designed to optimize the patient's chances of surviving an emergency situation.

BLS Ambulance Service - Ambulance service which provides BLS level intervention both through the level of personnel and training provided.

BLS Ambulance Service Contract - A written contract between either a Primary or Secondary Ambulance Service Provider and an individual, organization, company, site location or complex or other entity for BLS ambulance service.

BLS Run Report - Standardized Patient Care Report provided by the State EMS office, paper or computerized.

Cardiopulmonary Resuscitation (CPR) - A combination of chest compressions and rescue breathing used during cardiac and respiratory arrest to keep oxygenated blood flowing to the brain. (AHA Manual)

Center For Medicare/Medicaid Services (CMS) - The Federal Agency which oversee Medicare Billing and Ambulance Standard.

Certification - An initial authorization by the Delaware State Fire Prevention Commission to practice the skills of an EMT-Basic/Ambulance Attendant or First Responder specifying that the individual has successfully completed and passed the approved curriculum and evaluation process.

Delaware State Fire Prevention Commission (DSFPC) - The State Governing Body mandated in Title 16, Delaware Code whom Regulates the Basic Life Support System in Delaware.

Delaware Refresher Course - A course of instruction for re-certification required by the Delaware State Fire Prevention Commission for EMT-B/Ambulance Attendants and First Responders that meet the guidelines of the DOT Curriculum.

Delaware State Fire School (DSFS) - An agency of the Delaware State Fire Prevention Commission which is designated as its duly authorized representative to administer the provisions of the Ambulance Service Regulations.

Delaware Training Standard For Delaware Emt-B/Ambulance Attendants & First Responders - The

current of United States Department of Transportation Curriculum.

Emergency - The BLS and ALS response to the needs of an individual for immediate medical care in order to prevent loss of life or aggravation or physiological or psychological illness or injury.

Emergency Medical Dispatch System - Means an approved protocol system used by an approved dispatch center to dispatch aid to medical emergencies which must include:

- Systematized caller interrogation questions
- Systematized pre-arrival instruction; and
- Protocols matching the dispatcher's evaluation of injury or illness severity with vehicle response mode and configuration.

Emergency Medical Services (EMS) Provider – Individual providers certified by the Delaware State Fire Prevention Commission to perform pre hospital care. For the purposes of this regulation this includes EMT-B/ Ambulance Attendant and First Responders.

Emergency Medical Technician – Basic (EMT-B) – The individual as defined in Title 16 of Delaware Code who provides patient care on an ambulance and has completed the National Department of Transportation curriculum and initially certified as a National Registered and Delaware Emergency Medical Technician-Basic and upon re-certification chooses to meet the State of Delaware requirements.

First Responder - An individual who has to take the First Responder Course that meets the DOT curriculum.

HIPAA - Health Insurance Probability and Accountability Act of 1996.

Hospital - An institution having an organized medical staff which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic and therapeutic services or rehabilitation services for the care or rehabilitation of injured, disabled, pregnant, diseased, sick or mentally ill persons. The term includes facilities for the diagnosis and treatment of disorders within the scope of specific medical specialties, but not facilities caring exclusively for the mentally ill.

Medical Command Facility - The distinct unit within a hospital which meets the operational, staffing and equipment requirements established by the Secretary, Delaware Health and Social Services for providing medical control to the providers of advanced life support services. Any hospital that operates an emergency medical facility and desires to be designated as a medical command facility shall maintain and staff such facility on its premises and at its own expense with exception of base station communication devices which shall be an authorized shared expense pursuant to the provisions of Title 16, Chapter 98.

Medical Control - shall mean directions and advice normally provided from a centrally designated medical facility operating under medical supervision, supplying professional support through radio or telephonic communication.

Medical Control Physician - Any physician board-certified or board-prepared in emergency medicine, or a physician certified on advanced trauma life support (ATLS) and advanced cardiac life support (ACLS) who is credentialed by the hospital within which a medical command facility is located, and who is authorized by the medical command facility to give medical commands via radio or other telecommunication devices to a paramedic. When a medical control physician establishes contact with a paramedic, and provides medical control instructions that exceed or otherwise modify the standing orders of the statewide standard treatment protocol, the paramedic shall, solely for the purpose of compliance with the Medical Practices Act, be considered to be operating under the license of said medical control physician.

National Department Of Transportation (DOT) – Emergency Medical Technician Curriculum - A curriculum developed and adopted by the Federal Government as a recommended guide for people providing emergency care in the field.

National Registry Of Emergency Medical Technicians (NREMT) - The nationally recognized organization for the testing and registering of persons who have completed DOT, EMT-Basic and First Responder Courses.

National Registered Emergency Medical Technician – Basic (NREMT-B) - a person who completed the DOT curriculum and passed the National Registry of Emergency Medical Technicians Examination.

Non-emergency Ambulance Service - Ambulance service which provides routine transport of persons who are sick, convalescent, incapacitated and non-ambulatory but do not ordinarily require emergency medical treatment while in transit.

Office Of Emergency Medical Services (OEMS) - The State Agency Mandated in Title 16 that serves as the designated representative of the NREMT; provides medical advise and direction; regulates the statewide

automatic external defibrillator program; and coordinates data collection activities for the EMS system.

Patient - An individual who is sick, injured, wounded or otherwise incapacitated or helpless and/or seeks immediate medical attention.

Pre-hospital Care - Any emergency medical service, including advanced life support, rendered by an emergency medical unit before and during transportation to a hospital or other facility.

Primary Ambulance Service - BLS Ambulance Service provided by the Primary Ambulance Service Provider certified by the Delaware State Fire Prevention Commission within a specific ambulance service district.

Primary Ambulance Service Provider - An organization or company which has been designated by the Delaware State Fire Prevention Commission as having primary responsibility for providing BLS ambulance service within a specific ambulance service district.

Protocols - shall mean written and uniform treatment and care plans for emergency and critical patient statewide that constitutes the standing order of basic life support provider. The treatment protocols shall be prepared by the Board of Medical Practice as defined by House Bill 332 of the 140th General Assembly.

Recertification Training - A defined curriculum that once completed allows the individual to continue practicing as an EMT-B/Ambulance Attendant or First Responder for a specific period of time as determined by the Delaware State Fire Prevention Commission.

Response Time - The time the ambulance is notified by dispatch until the ambulance arrives on scene.

Responsible Charge - The individual who is identified as having both the responsibility and authority to ensure full and complete compliance with all requirements of this regulation.

Secondary Ambulance Service - Ambulance Service provided under contract to specific locations within a primary ambulance service district by a BLS Ambulance Service Provider other than the primary provider.

Secondary Ambulance Service Provider - An organization or company which provides supplemental BLS ambulance service anywhere in the state and always under specific contractual agreements.

Semi Automatic External Defibrillation (AED) – An external computerized defibrillator designed for use in unresponsive victims with no breathing or signs of circulation (AHA Manual).

State Board Of Medical Practice (Board) - The Board of Medical Practice is charged with protecting the consumers of the Delaware healthcare system through the proper licensing and regulation of physicians and other health care professionals.

7 DE Reg. 1649 (06/01/04)

BLS AMBULANCE SERVICE

4.0 BLS Ambulance Service Permits

4.1 Any person, firm, corporation or association either as owner, agent or otherwise who furnish, conduct, maintain, advertise or otherwise engage in or profess to be engaged in the business or service of providing BLS Ambulance Service upon the streets or highways of this state shall hold a valid permit as either a Primary or Secondary Ambulance Service Provider issued by the Delaware State Fire Prevention Commission. Application for this permit shall be upon forms provided by the Delaware State Fire Prevention Commission.

4.2 The issuance of a permit hereunder shall not be construed so as to authorize any person, firm, corporation or association to provide ambulance services or to operate any ambulance without compliance with all ordinances and regulations enacted or promulgated by any state, county or municipal government concerning ambulances.

4.3 Prior to issuing an original or renewal permit, the Delaware State Fire Prevention Commission shall determine that all requirements of this regulation are fully met. Additionally, the Delaware State Fire Prevention Commission has the authority to ensure continued compliance with these regulations through the periodic review of records and operations.

4.4 Only companies holding a current, valid BLS Ambulance Service Provider Permit shall be authorized to respond and provide BLS Ambulance Service within the state.

4.5 A Primary or Secondary Ambulance Service Provider may not discontinue BLS ambulance service until a replacement provider has been selected and can assume service with no reduction in service.

7 DE Reg. 1649 (06/01/04)

5.0 BLS Ambulance Service Districts

5.1 The Delaware State Fire Prevention Commission shall have the authority to establish Ambulance

Service Districts as per Title 16 Delaware Code, Section 1617(a).

5.2 The role of Primary Ambulance Service Provider shall be assigned to those fire departments providing BLS Ambulance Service at the time this regulation was initially adopted in 1997. The ambulance service district for these providers shall correspond to their established fire districts as certified by the Delaware State Fire Prevention Commission.

5.3 In those areas in which fire departments were not providing BLS Ambulance Service at the time this regulation was officially adopted in 1997, the organization who was providing BLS Ambulance Service shall be designated as the Primary Ambulance Service Provider. The ambulance service district for these providers shall correspond to their current boundaries.

7 DE Reg. 1649 (06/01/04)

6.0 Primary and Secondary BLS Ambulance Service Providers

6.1 BLS Ambulance Service may be provided by Primary Ambulance Service Providers within their ambulance service district or in the course of providing mutual aid within other ambulance service districts provided:

6.1.1 They have a current permit

6.1.2 They are assigned by the Delaware State Fire Prevention Commission as a Primary Ambulance Service Provider

6.2 The Delaware State Fire Prevention Commission shall be authorized to select a new Primary Ambulance Service Provider at such time that:

6.2.1 The current Primary Ambulance Service Provider chooses to discontinue service

6.2.2 Failure to meet one or more elements of these regulations creates a threat to public safety

6.3 Any organization desiring to assume the role of Primary Ambulance Service Provider will be required to apply to the Delaware State Fire Prevention Commission showing adequate cause in the interest of public safety to justify the change.

6.4 BLS Ambulance Service may be provided by Secondary Ambulance Service Providers only to those with whom they have a contract for such service provided they:

6.4.1 Have a current permit.

6.4.2 Have a written contract to provide BLS Ambulance Service to that specific location or site.

6.4.3 Provide the names, locations and conditions of all Secondary Ambulance Service contracts to the Delaware State Fire Prevention Commission within 20 days of contract finalization.

7 DE Reg. 1649 (06/01/04)

7.0 BLS Ambulance Service Provider Permit Requirements

7.1 BLS Administrative Requirements.

7.1.1 Procedures for securing a BLS ambulance service primary or secondary ambulance service permit include:

7.1.1.1 The owner or registered agent must apply to the Delaware State Fire Prevention Commission upon forms provided and according to procedures established by the Delaware State Fire Prevention Commission.

7.1.1.2 The Primary or Secondary Ambulance Service Provider shall either be based in Delaware or maintain an office in Delaware with a full time individual domiciled at that office who is in "Responsible Charge".

7.1.1.3 All requirements set forth in this regulation must be met before issuance of permit.

7.1.1.4 The Primary or Secondary Ambulance Provider must provide proof of liability insurance in the amount of \$1 Million blanket liability coverage.

7.1.1.5 The Primary or Secondary Ambulance Provider must provide proof of automobile liability insurance in the amount of \$1 Million individual, \$3 Million aggregate per occurrence.

7.1.2 Permits shall be valid for a period of one year from the permits effective date. Effective date runs for a calendar year.

7.1.3 The Delaware State Fire Prevention Commission may issue temporary permits when determined to be in the interest of public safety per Title 16.

7.1.4 On an on-going basis throughout the term of the permit, the owner or individual in

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“responsible charge” shall be available upon reasonable notification for the purpose of providing documentation on any provisions of this regulation and permitting physical inspection of all facilities and vehicles.

7.1.5 No ambulance service provider shall advertise or represent that it provides any ambulance service other than authorized to provide under this regulation.

7.1.6 All individuals or ambulance service providers shall be required to participate in the Delaware State Fire Prevention Commission approved ambulance data collection system which includes:

7.1.6.1 A BLS run report will be completed on all dispatched responses.

7.1.6.2 EMT-B/Ambulance Attendants must complete, without exception, a written/computer report on each patient contact. Reports must be completed in a timely fashion.

7.1.6.3 When available, the report will be entered electronically and forwarded to the state EMS office.

7.1.6.4 Failure to comply with data submission will result in loss of ambulance provider license or EMT-B/Ambulance Attendant Certification.

7.1.6.5 Submit any other data to the designated agencies as required by the Delaware State Fire Prevention Commission.

7.1.7 The ambulance company shall provide on an annual basis a financial statement to the Delaware State Fire Prevention Commission. The Delaware State Fire Prevention Commission has the option to withhold funding as per HB 332 for failing to report the financial statement.

7.2 BLS Operational Requirements

7.2.1 Vehicle Standards

7.2.1.1 All ambulances shall be registered and licensed in the State of Delaware by the Delaware Motor Vehicle Department.

EXCEPTIONS:

7.2.1.1.1 Those vehicles to which the international registration plan applies

7.2.1.1.2 Those vehicles properly registered in some other state.

7.2.1.2 Vehicles shall have clearly visible letters on both sides and the rear identifying the name of the organization or corporation or the vehicle’s specific identifier as specified under permit documentation. The letters shall be at least three inches in height.

7.2.1.3 Vehicle patient compartment shall conform with the criteria within the GSA Federal Specifications for ambulances (KKK-1822C).

7.2.2 Equipment Standards

Every ambulance shall be equipped with equipment and supplies as specified by the Delaware State Fire Prevention Commission and updated annually following recommendations from the Delaware State Fire School Director with concurrence from the Delaware State Fire Prevention Commission’s Medical Director.

7.2.3 Staffing Requirements

7.2.3.1 Minimum acceptable crew staffing when transporting a patient shall consist of a driver and one EMT-B/Ambulance Attendant.

7.2.3.2 A minimum of one EMT-B/Ambulance Attendant shall always be in the patient compartment when a patient is present.

7.2.3.3 BLS ambulance drivers are required to have completed the “Emergency Vehicle Operators” course conducted by the Delaware State Fire School or an equivalent program approved by the Delaware State Fire Prevention Commission.

7.2.4 Quality Assurance

7.2.4.1 Each Primary and Secondary Ambulance Service Provider shall be responsible for monitoring quality assurance in the form of patient care and both mobilization and response times. The method in which this is accomplished is the authority and responsibility of the Primary or Secondary Ambulance Service Provider per the Quality Assurance and Improvement Program adopted by the Delaware State Fire Prevention Commission and the Office of Emergency Medical Services.

7.2.5 Communications Requirements

7.2.5.1 Dispatch Centers

7.2.5.1.1 Dispatch centers for both Primary and Secondary Ambulance Service Providers shall meet the criteria established by the Delaware State Fire Prevention Commission.

7.2.5.1.2 Secondary ambulance service providers dispatch centers shall be

responsible for following call taking protocols as established by the Delaware State Fire Prevention Commission. Calls determined to be ALS in nature shall be transferred to the appropriate public safety answering point (PSAP) within 30 seconds of taking the call utilizing a dedicated phone line to that PSAP.

7.2.5.1.3 Calls determined to be BLS in nature shall not be required to be forwarded to the PSAP.

7.2.5.1.4 Dispatch centers shall follow an Emergency Medical Dispatch System approved by the Delaware State Fire Prevention Commission.

7.2.5.2 Ambulances

7.2.5.2.1 All Ambulances shall be equipped with reliable communications systems which permit direct communications with their dispatch center and all medical command facilities with which the ambulance will or may operate.

7.2.6 SAED Requirements: Upon placing an SAED on any ambulance, the ambulance service provider will comply with the Delaware Early Defibrillation Program Administrative Policies as established by the Office of Emergency Medical Services.

7.2.7 Infection Control: All ambulance service providers will comply with the infection control requirements in chapter 12A, Title 16 of the Delaware code.

7.2.8 Medical Control: Ambulance service providers shall be required to follow all orders issued.

7.2.9 Center for Medicare Medicaid Services (CMS): All ambulance services providers will comply with the Final Rule in the Federal Register (64F.R3637) revising the Medicare policies for ambulance services adopted February 24, 1999.

7.2.10 Health Insurance Portability and Accountability Act of 1996 (HIPAA) All ambulance service providers will comply with the HIPAA of 1996.

7 DE Reg. 1649 (06/01/04)

8.0 Compliance

8.1 The owner or registered agent of every ambulance service provider shall provide ambulance service in accordance with the requirements set forth in this regulation and the contractual agreements established as either a primary or secondary Ambulance Service Provider and filed with the Delaware State Fire Prevention Commission in accordance with the provisions set forth in these regulations. Failure to provide this service shall be grounds for suspension or revocation of permit.

8.2 Grievances - All grievances relative to ambulance service shall follow procedures established within the Delaware State Fire Prevention Regulations, Part IX "Fire Service Standards".

8.3 Penalties - Following review of a valid complaint or upon failure to comply with any provision of this regulation, the Delaware State Fire Prevention Commission, following procedures established within the Delaware State Fire Prevention Regulations, shall have the authority to issue corrective orders, suspend or revoke the provider's permit.

8.4 Whenever there is reason to believe that any provisions of this regulation have been violated, the ambulance service provider shall be immediately notified. Violations shall require correction within five (5) working days of receipt of notice with the exception of those violations which represent an imminent danger to the public.

8.5 For those violations representing an imminent danger to the public, the Delaware State Fire Prevention Commission shall issue and deliver an order to cease and desist any further ambulance service until such time as the violation has been verified as being corrected and corrective measures accepted by the Delaware State Fire Prevention Commission.

8.6 The continued violation of any element of this regulation or failure or refusal to comply with any order to correct a violation or failure to obey a cease and desist order by any ambulance service provider shall be cause for revocation or suspension of permit by the Delaware State Fire Prevention Commission after determination that the provider is guilty of such violation.

8.7 In addition to 8.6, it shall be cause for revocation or suspension of a permit after determining the ambulance service provider:

8.7.1 Has practiced any fraud, misrepresentation, or deceit in obtaining or renewing a permit

8.7.2 Is guilty of gross negligence, incompetence or misconduct in providing services

8.7.3 Is guilty of a violation of the codes and regulations adopted by the Delaware State Fire Prevention Commission

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8.7.4 Has been found guilty of an unfair or deceptive trade practice

8.7.5 Has violated any contractual agreement related to providing ambulance service

8.8 Upon issuance of an order, the ambulance service provider accused may request a review of the order by the Delaware State Fire Prevention Commission. All hearings shall be conducted in conformity with procedures established by the Delaware State Fire Prevention Commission.

8.9 Any person aggrieved by a violation or order may file an appeal to the Delaware State Fire Prevention Commission pursuant to 16 Del.C. Ch. 66, §6608.

7 DE Reg. 1649 (06/01/04)

9.0 Basic Life Support Data Assessment Committees

~~9.1 Members:—The Delaware State Fire Prevention Commission hereby establishes Basic Life Support (BLS) Data Assessment Committees, hereinafter referred to as the Committees.~~

~~9.1.1 There shall be three committees, one in each county of the State of Delaware. Members shall consist of representatives from the County Volunteer Firemen's Association, the County Fire Chief's Association, the County Ambulance Association, County and/or State EMS Medical Directors, and the County or local Fire and Emergency Medical (EMS) Dispatch Center dispatching the respective Company's EMS calls.~~

~~9.1.2 The President of his or her respective Association shall appoint each representative. The manager of the Fire and EMS Dispatch Center dispatching the Company's BLS incidents shall appoint the Dispatch Center representative.~~

~~9.1.3 The representative from each Association shall serve on their respective Committee until a letter of appointment is received from the respective Association or Dispatch Center indicating replacement of their current representative.~~

~~9.2 Duties:—Each Committee shall meet at least biannually, or as necessary, to review their respective County's Fire and EMS Dispatch Center's Basic Life Support (BLS) data. They shall review the monthly data for each Ambulance Provider, hereinafter referred to as Provider, in their County. Criteria for review shall include numbers of dispatched calls, scratches, and special circumstances. Each committee shall submit biannually a written report to the Delaware State Fire Prevention Commission, reporting on their reviews, and any suggestions they might have to improve the BLS system or committee procedures.~~

~~9.2.1 If the Committee deems that a Provider needs improvement in an area, the Committee shall schedule a meeting with that Provider to determine if they can support the Provider in solving the identified problem(s). When meeting with the Provider, the Committee, by consensus, shall select a Chair to mediate discussions presented by the Committee to the Provider.~~

9.0 Statewide Basic Life Support Quality Assurance/Quality Improvement

9.1 The Delaware State Fire Prevention Commission hereby establishes a Statewide Basic Life Support (BLS) Quality Assurance and Quality Improvement Committee hereinafter referred to as the Committee.

9.2 Purpose

The Quality Assurance/Quality Improvement (QA/QI), under direction of the State Medical Director is responsible for assuring and improving the quality of Basic Life Support within EMS systems that are served by the State Of Delaware.

9.3 Definitions

Quality Assurance is the retrospective review or inspection of services or processes that is intended to identify problems.

Quality Improvement is the continuous study and improvement of a process, system or organization

9.4 Objectives

9.4.1 Conduct medical incident reviews (QA)

9.4.2 Collect patient care statistics to evaluate system effectiveness and identify trends (QI)

9.4.3 Provide constructive feedback on quality improvement to all EMS professionals within the

State of Delaware

9.4.4 To coordinate the findings of quality assurance activities with the content of EMS continuing education programs

9.4.5 To provide assistance to EMS providers with local agency QA/QI programs.

9.5 EMS Agencies Quality Assurance and Improvement Requirements

9.5.1 EMS agencies should appoint a Quality Assurance Manager

9.5.2 The Quality Assurance Manager is charged with the responsibility of assuring that reasonable standards of care and professionalism are met within their respective EMS agency.

9.5.3 The Quality Assurance Manager should attend a Quality Management Training Program.

9.5.4 The Quality Assurance Manager shall implement a Quality Assurance and Improvement Program within their agency, department.

9.5.5 The Quality Assurance Manager shall perform monthly reviews of their data collection and conduct formal reviews with their personnel.

9.5.6 The Quality Assurance Manager will work closely with the Statewide QA/QI Committee on EMS policies, guidelines, protocols and system performance.

9.5.7 The Quality Assurance manager will consult with their County and State EMS Medical Director.

9.5.8 The Quality Assurance manager will consult with the Delaware State Fire School Director or their designee.

9.6 Statewide QA/QI Improvement Committee

The statewide BLS QA/QI committee shall be comprised of one BLS representative from each county (appointed by the County Fireman's Association), The BLS Medical Advisor, The State Medical Director, one representative from the State Fire Prevention Commission, one representative from the Delaware State Fire School, one representative from the Office of EMS, one representative from the Delaware Volunteer Fireman's Association, a dispatch center representative and an EDIN representative. The goal of this committee is to make sure BLS is meeting all State standards and is providing the best patient care to the citizens and visitors of Delaware.

9.7 Committee Responsibilities

- Responsible to assure reasonable standards of care and professionalism are met within the State of Delaware's BLS system.
- Participate in Patient Care Report review audits, data collection, and evaluation of system performance.
- Maintain strict confidentiality of patient information, personnel and Q/A topics.
- Each committee member MUST sign a confidentiality statement.
- Make sure information disseminated is protected from discovery of protected healthcare information.
- Make recommendations for changes to policies, guidelines and protocols.
- Attend a quarterly meeting to discuss QA/QI issues.
- Design and implement QI projects that are practical and able to collect patient care statistics to evaluate system effectiveness and identify trends in patient care.
- Establish clinical benchmarks to measure the State's BLS system.

9.8 Medical Incident Review and Analysis

9.8.1 The QA/QI process evaluates all aspects of patient care and EMS performance in the BLS system. The committee will concentrate on the following areas:

9.8.1.1 Time Elements

9.8.1.1.1 Hour of day

9.8.1.1.2 Day of week

9.8.1.1.3 Response times (dispatched-arrival)

9.8.1.1.4 Scene time (arrival-left scene)

9.8.1.1.5 Transport time (left scene-at hospital)

9.8.1.2 Patient Assessment

9.8.1.2.1 Chief complaint

9.8.1.2.2 Mechanism of injury

9.8.1.2.3 History

9.8.1.2.4 Vital Signs

9.8.1.2.5 Physical Examination

9.8.1.3 Patient Treatment

9.8.1.3.1 Treatment protocol followed

9.8.1.3.2 Appropriate protocol followed

PROPOSED REGULATIONS

9.8.1.3.3 If no. was deviation justified

9.8.1.3.4 Patient response to treatment adequately documented

9.8.1.4 Refused transport

9.8.1.4.1 Disposition appropriate

9.8.1.4.2 Appropriate releases signed

9.8.1.5 Documentation

9.8.1.5.1 Overall documentation adequate

9.8.1.6 System issues

9.8.1.6.1 Recourses (equipment and personnel)

9.8.1.6.2 Priority Medical Dispatch

9.8.1.6.3 Hospital Diversion

9.8.1.6.4 Scratch Rate

9.8.1.6.5 ALS cancellations

9.8.1.6.6 Air medical utilization

9.8.1.6.7 Funding

9.8.1.7 Outcomes

9.8.2 Quarterly reports will be developed through the states patient care reporting system, EDIN. A percentage of the patient care reports will be reviewed using a designated and approved auditing tool.

9.8.3 The QA/QI committee shall review these reports during the quarterly meeting.

9.8.4 The primary goal is to identify and address any problem or improvement areas and recommend potential solutions:

- Knowledge or skill issues
- Documentation issue
- Resource issue
- Protocol issue
- Communication issue
- Statewide system issue
- Conduct issue

9.8.5 The QA/QI committee shall provide constructive feedback and recommendations to improve the State's BLS system.

- Recommend changes to policy, procedures, or protocols
- Recommend changes in operational procedures or equipment
- Recommend training

9.8.6 All committee recommendations will be forwarded to the appropriate agency(s) for consideration.

9.3 9 Grievance Procedure

In the event that the Committee has problems with the Provider, or the Provider has problems with the Committee, either may forward the problem to the Delaware State Fire Prevention Commission through the normal Grievance Procedures, previously adopted by the Delaware State Fire Prevention Commission.

7 DE Reg. 1649 (06/01/04)

NON-EMERGENCY AMBULANCE SERVICE

10.0 Non-emergency Ambulance Service Permits

10.1 Any person, firm, corporation or association either as owner, agent or otherwise who furnish, conduct, maintain, advertise or otherwise engage in or profess to be engaged in the business or service of providing non-emergency ambulance service upon the streets or highways of this state shall hold a valid permit issued by the Delaware State Fire Prevention Commission. Application for this permit shall be upon forms provided by the Delaware State Fire Prevention Commission.

10.2 The issuance of a permit hereunder shall not be construed so as to authorize any person, firm, corporation or association to provide ambulance services or to operate any ambulance without compliance with all ordinances and regulations enacted or promulgated by any state, county or municipal government concerning ambulances.

10.3 Prior to issuing an original or renewal permit, the Delaware State Fire Prevention Commission

shall determine that all requirements of this regulation are fully met. Additionally, the Delaware State Fire Prevention Commission has the authority to ensure continued compliance with these regulations through the periodic review of records and operations.

10.4 Only companies holding a current, valid non-emergency ambulance service provider permit shall be authorized to respond and provide non-emergency ambulance service within the state.

11.0 Non-emergency Ambulance Service Provider Permit Requirements

11.1 Administrative Requirements

11.1.1 Procedures for securing a non-emergency ambulance service permit include:

11.1.1.1 The owner or registered agent must apply to the Delaware State Fire Prevention Commission upon forms provided and according to procedures established by the Delaware State Fire Prevention Commission.

11.1.1.2 The non-emergency ambulance service provider shall either be based in Delaware or maintain an office in Delaware with a full time individual domiciled at that office who is in "Responsible Charge".

11.1.1.3 All requirements set forth in this regulation must be met before issuance of permit.

11.1.1.4 The non-emergency ambulance service provider must provide proof of liability insurance in the amount of \$1 Million blanket liability coverage.

11.1.1.5 The non-emergency ambulance service provider must provide proof of automobile liability insurance in the amount of \$1 Million individual, \$3 Million aggregate per occurrence.

11.1.2 Permits shall be valid for a period of one year from the permits effective date.

11.1.3 The Delaware State Fire Prevention Commission may issue temporary permits when determined to be in the interest of public safety per Title 16.

11.1.4 On an on-going basis throughout the term of the permit, the owner or individual in "responsible charge" shall be available upon reasonable notification for the purpose of providing documentation on any provisions of this regulation and permitting physical inspection of all facilities and vehicles.

11.1.5 No ambulance service provider shall advertise or represent that it provides any ambulance service other than authorized to provide under this regulation.

11.2 Operational Requirements

11.2.1 Vehicle Standards

11.2.1.1 All ambulances shall be registered and licensed in the State of Delaware by the Delaware Division of Motor Vehicle Department.

EXCEPTIONS:

11.2.1.1.1 Those vehicles to which the international registration plan applies.

11.2.1.1.2 Those vehicles properly registered in some other state.

11.2.1.2 Vehicles shall have clearly visible letters on both sides and the rear identifying the name of the organization or corporation or the vehicle's specific identifier as specified under permit documentation. The letters shall be at least three inches in height.

11.2.1.3 Vehicle patient compartment shall conform with the criteria within the GSA Federal Specifications for ambulances (KKK-A-1822C).

11.2.2 Equipment Standards

Every ambulance shall be equipped with equipment and supplies as specified by the Delaware State Fire Prevention Commission and updated annually considering recommendations from the Delaware State Fire School Director with concurrence from the Delaware State Fire Prevention Commission's Medical Director.

11.2.3 Staffing Requirements

11.2.3.1 Minimum acceptable crew staffing when transporting a patient shall consist of a driver and one EMT-B/Ambulance Attendant.

11.2.3.2 A minimum of one EMT-B/Ambulance Attendant shall always be in the patient compartment when a patient is present.

11.2.4 Communications Requirements Ambulances

All Ambulances shall be equipped with a reliable communications systems which permit direct communications with all medical command facilities with which the ambulance will or may operate.

11.2.5 SAED Requirements

Upon placing an SAED on any ambulance, the ambulance service provider will comply with the Delaware Early Defibrillation Program Administrative Policies as established by the Office of Emergency Medical Services

11.2.6 Infection Control

All ambulance service providers will comply with the infection control requirements in Chapter 11A, Title 16 of the Delaware code.

11.2.7 Center for Medicare Medicaid Services (CMS)

All ambulance services providers will comply with the Final Rule in the Federal Register (64F.R3637) revising the Medicare policies for ambulance services adopted February 24, 1999.

11.2.8 Health Insurance Portability and Accountability Act of 1996 (HIPAA) All ambulance service providers will comply with the HIPAA of 1996.

7 DE Reg. 1649 (06/01/04)

12.0 Compliance

12.1 The owner or registered agent of every ambulance service provider shall provide ambulance service in accordance with the requirements set forth in this regulation and the contractual agreements established as either a primary or secondary Ambulance Service Provider and filed with the Delaware State Fire Prevention Commission in accordance with the provisions set forth in these regulations. Failure to provide this service shall be grounds for suspension or revocation of permit.

12.2 Grievances - All grievances relative to ambulance service shall follow procedures established within the Delaware State Fire Prevention Regulations, Part IX "Fire Service Standards".

12.3 Penalties - Following review of a valid complaint or upon failure to comply with any provision of this regulation, the Delaware State Fire Prevention Commission, following procedures established within the Delaware State Fire Prevention Regulations, shall have the authority to issue corrective orders, suspend or revoke the provider's permit.

12.4 Whenever there is reason to believe that any provisions of this regulation have been violated, the ambulance service provider shall be immediately notified. Violations shall require correction within five (5) working days of receipt of notice with the exception of those violations which represent an imminent danger to the public.

12.5 For those violations representing an imminent danger to the public, the Delaware State Fire Prevention Commission shall issue and deliver an order to cease and desist any further ambulance service until such time as the violation has been verified as being corrected and corrective measures accepted by the Delaware State Fire Prevention Commission.

12.6 The continued violation of any element of this regulation or failure or refusal to comply with any order to correct a violation or failure to obey a cease and desist order by any ambulance service provider shall be cause for revocation or suspension of permit by the Delaware State Fire Prevention Commission after determination that the provider is guilty of such violation.

12.7 In addition to 12.6, it shall be cause for revocation or suspension of a permit after determining the ambulance service provider:

12.7.1 Has practiced any fraud, misrepresentation, or deceit in obtaining or renewing a permit

12.7.2 Is guilty of gross negligence, incompetence or misconduct in providing services

12.7.3 Is guilty of a violation of the codes and regulations adopted by the Delaware State Fire Prevention Commission

12.7.4 Has been found guilty of an unfair or deceptive trade practice

12.7.5 Has violated any contractual agreement related to providing ambulance service

12.7 Upon issuance of an order, the ambulance service provider accused may request a review of the order by the Delaware State Fire Prevention Commission. All hearings shall be conducted in conformity with procedures established by the Delaware State Fire Prevention Commission.

12.8 Any person aggrieved by a violation or order may file an appeal to the Delaware State Fire Prevention Commission pursuant to 16 Del.C., Ch. 66, §6608.

7 DE Reg. 1649 (06/01/04)

13.0 Discontinuation Of Service By Ambulance Providers

13.1 STEP 1: Any fire department and/or ambulance company desiring to terminate ambulance service

in the state of Delaware must notify the Delaware State Fire Prevention Commission in writing 120 days before terminating service.

13.2 STEP 2: Immediately upon notification of a fire department and/or ambulance company's desire to terminate service, the Chairman or the Vice Chairman of the Delaware State Fire Prevention Commission shall notify the president of the county firemen's association in which the fire department and/or ambulance company provides service to the residences and visitors of the state of Delaware for that district.

13.3 STEP 3: Immediately upon receiving notification of a fire department and or ambulance company's desire to terminate service the county firemen's association president shall appoint a committee. The committee shall include, but not be limited to: two members shall be the President's of the County Fire Chief's and County Ambulance Associations or their designees. The County President shall have the right to appoint other members to this committee, as he and/or she may deem necessary.

13.3.1 To communicate and offer assistance to the terminating company in an effort to help them continue service.

13.3.2 In the event that the county committee is unable to get the company to continue service, they shall then contact the surrounding departments and ascertain and/or develop a plan for those departments to divide the district and continue service.

13.3.3 In the event that steps one and two fail the county committee may put forth any and all suggestions they deem viable in order to provide ambulance service to the residences and visitors of the state of Delaware for that district.

13.3.4 The committee, through the County Firemen's Association President, shall report to the Delaware State Fire Prevention Commission within 60 days with their recommendations and/or findings.

7 DE Reg. 1649 (06/01/04)

14.0 Training/Certification

All individuals who successfully complete initial EMT-B/Ambulance Attendant training shall be eligible for and must successfully pass the NREMT examination to receive Delaware EMT-B/Ambulance Attendant certification.

14.1 Eligibility For Certification/EMT-B/Ambulance Attendant

14.1.1 Apply to the Delaware State Fire Prevention Commission on the approved application form provided by the Delaware State Fire School.

14.1.2 An individual may apply for and receive certification as an EMT-B/Ambulance Attendant provided that.

14.1.2.1 They are a member in good standing of a Delaware Fire Department, an Ambulance Organization, a Private Ambulance Provider or any other group, business or industry certified by the Delaware State Fire Prevention Commission to provide ambulance service.

14.1.2.2 They have obtained EMT-B, EMT-I or EMT-P registration from the NREMT.

14.1.2.3 The Chief, CEO, or head of the respective organization signs the application.

14.1.2.4 They are compliant with criminal history background check legislation.

14.1.2.5 Must be 18 years of age.

14.1.2.6 Comply with the State of Delaware Immunization policy.

14.2 Certification

14.2.1 Certification will be obtained by completing a state approved EMT-B/Ambulance Attendant Course and passing the National Registry of Emergency Medical Technicians Exam. Registration & Certification will be issued for the time period to coincide with the NREMT registration cycle. This is typically a two-year period. Individuals will be issued a Delaware EMT-B/Ambulance Attendant certification upon successful completion of the NREMT registration process.

14.2.2 Individuals who take EMT-B/Ambulance Attendant class from approved provider other than the Delaware State Fire School are required to meet all Delaware State Fire Prevention Commission requirements for certification.

14.2.2.1 It is the responsibility of the individual applying for certification to provide criminal history background check as specified by Delaware State Fire Prevention Commission.

14.2.1.2 It is the responsibility of the individual applying to provide all necessary

documentation for certification to include AED/CPR, protocol training and NREMT-B card.

14.3 Recertification as DELAWARE EMT-B/Ambulance Attendant]

14.3.1 Individuals will be re-certified for a two-year period.

14.3.2 The re-certification requirements for a Delaware EMT-B/Ambulance Attendant will be determined by the Delaware State Fire Prevention Commission, with recommendations of their medical advisor/director.

14.3.3 Requirements for re-certification are:

14.3.3.1 Individuals must submit a request for re-certification to the Delaware State Fire School documenting completion of requirements.

14.3.3.1.1 Requirements

- Attend a prescribed DOT/EMT-B/Ambulance Attendant refresher
- Current CPR/AED certificate

14.3.4 Re-registration as an NREMT-B: The registration requirements for a National Registry of Emergency Medical Technician – Basic will be determined by the National Registry of Emergency Medical Technicians.

14.3.4.1 Continuing education classes to achieve re-registration through the NREMT will be reviewed for approval by the Office of Emergency Medical Services in accordance with NREMT policy and procedures.

14.3.5 Active duty military personnel not able to re-certify due to deployment may request for an extension of certification until they are able to return and complete necessary requirements. Upon return the individual shall have 90 days to complete re-certification requirements.

14.4 Decertification

14.4.1 An EMT-B/Ambulance Attendant will lose their Delaware EMT-B/Ambulance Attendant Certification to provide patient care if:

14.4.1.1 They do not meet the re-certification requirements as defined by the Delaware State Fire Prevention Commission.

14.4.1.2 De-certification by the Delaware State Fire Prevention Commission following procedures and in compliance with Delaware State Fire Prevention Regulations, Part IX Fire Service Standards.

14.4.2 National Registry of Emergency Medical Technicians will revoke certification based upon their national policy. If an individual has their certification revoked by the National Registry of Emergency Medical Technicians the Delaware State Fire Prevention Commission may also decertify their Delaware EMT-B/Ambulance Attendant Certification.

14.4.3 The individual is convicted of an offense as specified in 16 Del C. §6712(b) while currently certified and the procedures in Part X, Section XV, Criminal History Background Check.

14.5 Reinstatement For Delaware EMT-B/Ambulance Attendant

14.5.1 Individual desiring to regain certification as a Delaware EMT-B/Ambulance Attendant, after the expiration of their certification may do so provided the following conditions are met.

- Their card has been expired ~~48~~ 24 months or less.
- They must attend an approved EMT-B/Ambulance Attendant refresher course.
- ~~They must take and pass the Delaware Protocol examination.~~
- They must show proof of a current AED and CPR certification.
- They must take and pass the current ~~protocol self study course available from the Delaware State Fire School~~ Delaware Protocol examination. The protocol self study course available from the Delaware State Fire School.
- They must acquire a Delaware and Federal Background Check at their expense.
- They must submit all required paperwork and application for certification to the Delaware State Fire School.

14.5.2 Individuals whose card has expired ~~48~~ 24 months or more must take the entire EMT-B/Ambulance Attendant course and National Registry Examination.

14.5.3 Individuals desiring to regain registration as an NREMT-B must follow the policies of the National Registry Organization.

14.6 Testing Procedures For National Registry

Initial testing and re-testing for National Registered EMT-B will follow the guidelines set forth by the

National Registry of Emergency Medical Technicians.

14.7 Reciprocity

14.7.1 Emergency Medical Technicians, paramedics, nurses, or physicians who enter Delaware with a National Registry EMT-B, EMT-I or EMT-P certification will receive reciprocity as EMT-B/Ambulance Attendant in the Delaware System provided that.

Delaware. 14.7.1.1 They become a member of a certified ambulance service provider in

School. 14.7.1.2 They submit the required application form to the Delaware State Fire

certification. 14.7.1.3 They have a current National Registry EMT-B, EMT-I or EMT-P

Commission. 14.7.1.4 CPR and AED as approved by the Delaware State Fire Prevention

14.7.1.5 Challenge practical exams as required.

14.7.1.6 ~~Challenge~~ Successfully completed Delaware Protocol Examination.

14.7.1.7 Provide mandated State & Federal background checks.

14.7.1.8 Applicants will be advised of the appeal process of Part X, Section XV,

Criminal History Background Check if reciprocity is denied because of criminal history background check.

14.7.2 Applicants certified from other states without at least a Nationally Registered EMT-B certification must obtain National Registry prior to applying for Delaware Certification.

14.7.3 The Delaware State Fire Prevention Commission reserves the right to administer a written examination if deemed necessary.

7 DE Reg. 1649 (06/01/04)

15.0 Criminal History Background Check

15.1 Authorized Governmental Designee for the Delaware State Fire Prevention Commission

15.1.1 The Delaware State Fire Prevention Commission authorizes the Director of the Delaware State Fire School to be its governmental designee to acquire and review State and Federal criminal history background checks submitted by the State Bureau of Identification for an applicant applying to become a Delaware EMT-B/Ambulance Attendant an Ambulance Attendant/ Delaware Emergency Medical Technician and to interview the applicant, if necessary.

15.2 Evaluation Procedure for Criminal History Background Checks

15.2.1 The Director of the Delaware State Fire School shall evaluate the criminal history background checks using the criteria established in 16 **Del.C.** §6712(b). All criminal history background checks will be forwarded by the State Bureau of Identification to the Director of the Delaware State Fire School.

15.2.2 Should the Director of the Delaware State Fire School as a result of the criminal history background check find cause to recommend to the Delaware State Fire Prevention Commission that it deny the application of the person seeking certification as an EMT-B/Ambulance Attendant, the Director shall notify the Delaware State Fire Prevention Commission of this decision.

15.2.3 ~~The Delaware State Fire Prevention Commission~~ Director of the Delaware State Fire School shall advise the applicant that ~~it intends to deny the application~~ the application is denied and state the reason therefor. ~~The Delaware State Fire Prevention Commission~~ Director of the Delaware State Fire School will also advise the applicant of the right to review all information reviewed by the Director ~~of the Delaware State Fire School~~ and the right to appeal the ~~Delaware State Fire Prevention Commission's~~ decision by requesting a hearing before the Delaware State Fire Prevention Commission.

15.3 Appeal Process for Denial of Certification or De-certification because of Criminal Conviction

15.3.1 Any Delaware EMT-B/Ambulance Attendant applicant or certificate holder notified by the Delaware State Fire Prevention Commission and or the Delaware State Fire School that the Delaware State Fire Prevention Commission intends to deny the application or decertify the certificate holder because of criminal history background check information may appeal the denial to the Delaware State Fire Prevention Commission. The process is:

15.3.1.1 Within 10 days after the postmark on the notification of the intent to deny certification or decertify a certificate holder, the applicant shall submit a written request for a hearing to the Delaware State Fire Prevention Commission stating the reason(s) supporting the appeal.

15.3.1.2 Notice of the hearing shall be given at least 20 days before the day of the hearing and comply with the provisions of 29 **Del.C.** §10122.

15.3.1.3 The grievance hearing before the Delaware State Fire Prevention Commission will be conducted in accordance with the *Delaware Administrative Procedures Act* 29 **Del.C.** Ch. 101.

15.3.1.4 The hearing will be closed to the public unless the applicant requests an open hearing. After the hearing, the Delaware State Fire Prevention Commission will inform the applicant of its decision.

15.4 Requirements for Certification

15.4.1 Persons seeking certification as an Ambulance Attendant/Delaware Emergency Medical Technician must be eighteen (18) years of age at the time of application.

15.4.1.1 Individuals entering an EMT-B/Ambulance Attendant course must be eighteen (18) years of age at the start of the course.

15.4.2 An individual applying for certification must meet the requirement of Part X, of the Delaware State Fire Prevention Regulations "Ambulance Service Regulations".

15.4.3 Persons seeking certification must meet the criminal history background check as mandated in 16 **Del.C.** §6712(b), effective July 12, 2001 and follow the procedures outlined in this policy.

15.5 Administrative Policy Pertaining to Criminal History Background Checks

15.5.1 Delaware State Fire School training announcements for EMT-B/Ambulance Attendant courses will include the statement "Criminal History Background checks will be required ~~on or before the first night of class~~ as per the regulations".

15.5.2 All Chiefs of Departments, Presidents or Ambulance Captains of volunteer rescue or ambulance squads or Operating Officers of private corporations which have students pre-registered for the class will be sent a notice to inform the student that a criminal history background checks ~~will be done on the first night of class and fingerprinting~~ will be required. It will be the responsibility of private EMT-B/Ambulance Attendant training institution to make their students aware that a Criminal History Background Check is required to become a State of Delaware EMT-B/Ambulance Attendant and the Criminal History Background Check be available in order to receive certification.

15.5.3 Any student not pre-registered for the class will not be accepted as a walk-in.

15.5.4 All EMT-B/Ambulance Attendant students will sign a release provided by the State Bureau of Identification authorizing the criminal history background check. Any student failing to sign the designated form will not be allowed to participate in the course.

15.5.5 Students who are members of a private ambulance service are required to pay the course tuition prior to the first night of class. The tuition is non-refundable unless the student drops out prior to the first night of class. The tuition includes the cost of the criminal history background check which will be paid to the State Bureau of Identification on the student's behalf by the Delaware State Fire School.

15.5.6 Any volunteer fire, rescue or ambulance company registering a student who is denied certification pursuant to the provision of 16 **Del.C.** §6712(b), shall be responsible to reimburse the Delaware State Fire Prevention Commission for the cost of the criminal history background check.

15.5.7 Any student accepted into the course who does not complete the course will be required to reimburse the Delaware State Fire Prevention Commission the cost of the criminal history background check and course ~~textbook materials~~.

15.6 Condition and Duration of Certification/De-certification

15.6.1 The Delaware State Fire Prevention Commission shall issue initial certification as an Ambulance Attendant/Delaware Emergency Medical Technician – Basic as prescribed in Part X, of the Delaware State Fire Prevention Regulations provided that:

15.6.2 Procedure for De-certification for Criminal Offense

15.6.2.1 The Delaware State Fire Prevention Commission may decertify any currently certified EMT-B/Ambulance Attendant when it has reason to believe that the person has been convicted of a crime within the scope of §6712 of Title 15.

15.6.2.2 Upon receiving a written notice that an EMT-B/Ambulance Attendant was convicted of a crime within the provisions of §6712, Title 16 the Delaware State Fire Prevention Commission shall:

15.6.2.2.1 Immediately suspend the individual's certification pending an investigation into the allegations.

15.6.2.2.2 Notify the individual in writing of the allegations and suspensions

and allow the certificate holder an informal opportunity to contest the allegations of a conviction.

15.6.2.2.3 Require the individual to obtain a current Criminal History background check at their expense.

15.6.2.2.3.1 Criminal History Background check information will be sent to and reviewed by the Director of the Delaware State Fire School, who will make determination if cause for de-certification exists. The Director of the Delaware State Fire School will notify the Delaware State Fire Prevention Commission of the findings.

15.6.2.2.4 Based on the information provided by the Director of the Delaware State Fire School, the Delaware State Fire Prevention Commission will either inform the certificate holder of the intent to de-certify the individual or lift the individual's suspension.

15.6.2.3 The individuals may appeal the de-certification using the procedure under Part X, Section XV, Criminal History Background Check, Appeal Process.

15.6.3 Funding of Reciprocity Criminal History Background Checks

15.6.3.1 All applicants will pay for the criminal history background check at the time of their request.

15.6.3.1.1 It is the responsibility of the private providers, private individuals or City of Wilmington to pay all costs – they are not eligible for reimbursement.

15.6.3.1.2 Upon successful completion of the reciprocity process the Delaware State Fire Prevention Commission will reimburse the individual or the individual's volunteer fire, rescue or ambulance organization for the cost of the criminal history background check.

15.6.4 Reciprocity for University of Delaware Students

15.6.4.1 The Delaware State Fire Prevention Commission will waive the criminal history background check requirements for all University of Delaware Students applying for certification as an Ambulance Attendant/Delaware Emergency Medical Technician.

15.6.4.1.1 The University Police Department will provide the Director of the Delaware State Fire School with a written document listing all eligible students and a statement that they have passed an internal background check at least equal to the requirement of 16 **Del.C.** §6712.

15.6.5 Confidentiality Of Criminal History Background Check Information

15.6.5.1 Information obtained pursuant to the criminal history background check is confidential and except as provided in Section ~~6~~ 4 below, shall not be released from the Delaware State Fire School under any circumstances to anyone.

15.6.5.2 All criminal history background check information that is reviewed by the Director of the Delaware State Fire School shall be retained in a locked file cabinet in the custody of the Director for a two (2) year period.

15.6.5.3 When a denial for certification is made, ~~the information will be turned over to the Delaware State Fire Prevention Commission where it will be advised by the Director of the Delaware State Fire School and the Background Check~~ will be secured for at least 60 days or until the appeal process is completed.

15.6.5.3.1 If an appeal is not filed at the end of 60 days, the information is to be returned to the Director of the Delaware State Fire School normal file system.

15.6.5.4 Per 16 **Del.C.** §6712 the individual may meet with the Director of the Delaware State Fire School and after providing proof of identification including a photo identification, review their information. Copies will not be provided to anyone.

7 DE Reg. 1649 (06/01/04)

16.0 First Responder

First Responders do not meet the requirements of EMT-B/Ambulance Attendant and cannot transport a patient without a Delaware EMT-B/Ambulance Attendant present and in the patient care compartment.

16.1 Eligibility for Delaware First Responder Certification

16.1.1 16 years of age

16.1.2 Complete Approved DOT First Responder Curriculum

16.1.3 National Registry First Responder Certification is optional

16.1.4 Submit required applications and paperwork to Delaware State Fire School

16.2 Certification is valid for 2 years with a re-certification date of September.

PROPOSED REGULATIONS

- 16.3 Re-certification
- 16.3.1 Must re-certify as mandated by the Delaware State Fire Prevention Commission.
- 16.3.1.1 DOT First Responder Refresher, AED and CPR.
- 16.3.1.2 National Registry – As determined by National Registry.
- 16.4 De-certification
- 16.4.1 May have their certification revoked by the Delaware State Fire Prevention Commission in compliance with the Delaware State Fire Prevention Regulations Part IX “Fire Service Standards”.
- 16.5 Expired First Responder Certifications
- 16.5.1 Individuals desiring certification as a First Responder after the expiration date of their certification may do so providing the following conditions are met.
- 16.5.1.1 Card expired ~~48~~ 24 months or less
- 16.5.1.2 Attend approved refresher course
- 16.5.1.3 Show proof of current AED/CPR Certification
- 16.5.1.4 Submit all required applications and paperwork to Delaware State Fire School
- 16.5.2 Individuals whose card has expired more than ~~48~~ 24 months must attend a complete First Responder Training course.
- 16.5.3 Individuals desiring to regain National Registry Registration must follow the policies of the National Registry.
- 16.6 Testing procedures Delaware First Responder
- 16.6.1 Initial testing and retesting for First Responders will follow the guidelines set forth by Delaware State Fire School.
- 16.7 Reciprocity
- 16.7.1 First Responders from other state must submit a request
- 16.7.2 Show proof of attending a DOT curriculum
- 16.7.3 Obtain CPR/AED as approved by Delaware State Fire Prevention Commission
- 16.7.4 Challenge practical examinations as determined by the Delaware State Fire School
- 16.7.5 Challenge the State First Responder Examination
- 7 DE Reg. 1649 (6/1/04)**

DEPARTMENT OF AGRICULTURE THOROUGHBRED RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 10005; 29 Delaware Code, 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 Delaware Thoroughbred Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to add rules 13.8.2, 13.13.2, 13.13.3, and 13.13.4 to reflect current policies, practices, and procedures. The Commission will hold a public hearing on the proposed rule change on October 23, 2007. Written comments should be sent to John F. Wayne, Executive Director, Delaware Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, DE 19804.

1001 Thoroughbred Racing Rules and Regulations

(Break in Continuity of Sections)

13.0 Claiming Races

- 13.1 Owners Entitled:

13.1.1 In claiming races, any horse is subject to claim for its entered price by any Owner in good standing, who has horses stabled on the Licensee's grounds, and who has started a horse at the race meeting at which the claim is made.

13.1.2 An Owner may claim out of the race in which he first starts a horse. Owners shipping in from other stable areas who have a horse claimed shall be allowed one claim to replace the horse lost via claiming.

13.1.3 A new Owner, i.e., an individual, partnership, corporation or any other authorized racing interest who has not held an Owner's license in any racing jurisdiction during the prior year, is eligible to claim by obtaining an "Open Claiming License" from the Commission.

13.1.4 In order to obtain an open claiming license and file an open claim, an individual must comply with the following procedures:

13.1.4.1 Depositing an amount no less than the minimum claiming price of the intended claim at that meet with the Horsemen's Bookkeeper. Such amount shall remain on account until a claim is in fact made. In the event of withdrawal of such fund, any license issued hereunder shall be automatically revoked and terminated.

13.1.4.2 Securing an Owner or authorized racing interest license by the Commission. Such license will be conditioned upon the making of a claim and shall be revoked if no such claim is, in fact, made within thirty (30) racing days after issuance or if the deposit above required is withdrawn prior to completion of a claim.

13.1.4.3 Naming a Trainer licensed by the Commission who will represent him once said claim is made.

13.2 Claim by Agent:

13.2.1 A claim may be made by an authorized agent, but an agent may claim only for the account of those for whom he is authorized and registered as agent and the name of the authorized agent, as well as the name of the Owner for whom the claim is being made, shall appear on the claim slip.

13.3 Claiming Own Horse Prohibited:

13.3.1 No person shall claim his own horse or cause his own horse to be claimed, directly or indirectly, for his own account. No claimed horse shall remain in the same stable or under the care or management of the Owner or Trainer from whom claimed.

13.4 Limits on claims:

13.4.1 No person shall claim more than one horse from any one race. No authorized agent, although representing several Owners, shall submit more than one claim for any race. When a stable consists of horses owned by more than one person, trained by the same Trainer, not more than one claim may be entered on behalf of such stable in any one race. An Owner who races in a partnership may not claim except in the interest of the partnership, unless he has also started a horse in his own individual interest. An owner who races in a partnership may claim in his or her individual interest if the individual has started a horse in the partnership. The individual must also have an account with the horsemen's bookkeeper that is separate from the partnership account.

13.5 Twenty Day Prohibition -- Sale of Claimed Horse:

13.5.1 A claimed horse shall not run for twenty days after being claimed in a race in which the determining eligibility price is less than twenty-five percent more than the price for which the horse was claimed. The day claimed shall not count but the following calendar day shall be the first day, and the horse shall be entitled to enter whenever necessary so that it may start on the twenty-first calendar day following the claim. This provision shall not apply to starter handicaps, allowance and starter allowance races.

13.6 Thirty Day Prohibition -- Sale of Claimed Horse:

13.6.1 No horse claimed in a claiming race shall be sold or transferred, wholly or in part, to anyone within thirty (30) days after the day it was claimed, except in another claiming race. No claimed horse shall race elsewhere until sixty (60) calendar days after the date on which it was claimed or until after the close of the meeting at which it was claimed, whichever comes first. The day claimed shall not count, but the following calendar day shall be the first day and the horse shall be entitled to enter elsewhere whenever necessary so the horse may start on the 61st calendar day following the claim. The Stewards shall have the authority to waive this rule upon application, so as to allow a claimed horse to race in a stakes race. The Stewards may also permit a horse claimed in a steeplechase or hurdle race to race elsewhere in a steeplechase or hurdle race after the close of the steeplechase program, if such a program ends before the close of the meeting at which it is claimed.

PROPOSED REGULATIONS

Revised: 7/16/86

13.7 Form of Claim:

13.7.1 Each claim shall be made in writing on a form and in an envelope supplied by Licensee. Both form and envelope must be filled out completely and must be accurate in every detail.

13.8 Procedure for Claim:

13.8.1 Claims must be deposited in the claim box at least ten (10) minutes before post time of the race from which the claim is being made. No money or its equivalent shall be put in the claim box. For a claim to be valid, the claimant must have, at the time of filing the claim, a credit balance in his account with the Horsemen's Bookkeeper of not less than the amount of the claim.

Revised: 8/15/95

13.8.2 Officials and employees of the association shall not provide any information as to filing of claims until after the race has been run except as is necessary for processing of the claim.

13.9 Stewards' Duties:

13.9.1 The Stewards, or their designated representatives, shall open the claim envelopes for each race as soon as the horses leave the paddock en route to the post. They shall thereafter check with the Horsemen's Bookkeeper to ascertain whether the proper credit balance has been established with the Licensee and with the Racing Secretary as to whether the claimant has claiming privileges at Licensee's meeting.

13.10 Conflicting claims:

13.10.1 If more than one valid claim is filed for the same horse, title to the horse shall be determined by lot under the supervision of the Stewards or their designated representative.

13.11 Delivery of Claimed Horse:

13.11.1 Any horse that has been claimed shall, after the race has been run, be taken to the paddock for delivery to the claimant, who must present written authorization for the claim from the Racing Secretary. No person shall refuse to deliver to the person legally entitled thereto a horse claimed out of a claiming race and, until delivery is made, the horse in question shall be disqualified from further racing.

13.12 Nature and Effect of a Claim:

13.12.1 Claims are irrevocable except as otherwise provided for in these Rules. Title to a claimed horse shall be vested in the successful claimant from the time the said horse is a starter and said claimant shall then become the Owner of the horse, whether it be alive or dead, sound or unsound, or injured, during the race or after it. A claimed horse shall run in the interest of and for the account of the Owner from whom claimed.

13.12.2 A post-race test may be taken from any horse claimed out of a claiming race. The trainer of the horse at the time of entry for the race from which the horse was claimed shall be responsible for the claimed horse until the post-race sample is collected. Any claimed horse not otherwise selected for testing by the stewards shall be tested if requested by the claimant at the time the claim form is submitted in accordance with these Rules. The successful claimant shall have the right to void the claim should the forensic analysis be positive for any prohibited substance, an illegal level of a permitted medication, or if a blood sample exhibits a positive response to the Erythropoietin (EPO) antibody test.

13.13 Prohibited Practices:

13.13.1 No person shall offer or enter into an agreement to claim or not to claim or to attempt to prevent another person from claiming any horse in a claiming race. No person shall attempt, by intimidation, to prevent anyone from running a horse in any claiming race. No Owner or Trainer shall make an agreement with another Owner or Trainer for the protection of each other's horses in a claiming race.

13.13.2 A person shall not claim a horse in which the person has a financial or beneficial interest as on owner or trainer.

13.13.3 A person shall not cause another person to claim a horse for the purpose of obtaining or retaining an undisclosed financial or beneficial interest in the horse.

13.13.4 A person shall not claim a horse or enter into any agreement to have a horse claimed on behalf of an ineligible person.

13.14 Invalidation of Claim:

13.14.1 Claims which are not made in keeping with the Rules shall be void. The Stewards may, at any time in their discretion, require any person filing a claim to furnish an affidavit in writing that he is claiming in accordance with these Rules. The Stewards shall be the judges of the validity of the claim and, if they feel that a "starter" was nominated for the purpose of making its Owner eligible to claim, they may invalidate the claim.

13.15 Necessity to Record Lien:

13.15.1 Any person holding a lien of any kind against a horse entered in a claiming race must record the same with the Racing Secretary and/or Horsemen's Bookkeeper at least thirty (30) minutes before post time for that race. If none is so recorded, it shall be conclusively assumed, for claiming purposes, that none exists.

13.16 Claiming Privileges -- Eliminated Stable:

13.16.1 If a person's stable shall be eliminated with thirty (30) racing days or less remaining in the current racing season, and such person is unable to replace the horse(s) lost via a claim by the end of the racing season, such person may apply to the Stewards for an additional thirty (30) racing days of eligibility to claim in the new race meeting as long as the person owns no other horses at the start of the next race meeting. Should a stable at a meeting be eliminated by sale or removal from the grounds, the right to claim is void. After claiming a horse under the conditions of this Rule, the Owner shall be required to reinstate his eligibility to claim pursuant to these Rules before being eligible to make another claim.

13.17 Claim Embraces Horse's Prior Engagements:

13.17.1 The engagements of a claimed horse pass automatically with the horse to the claimant.

13.18 Caveat Emptor:

13.18.1 Notwithstanding any designation of sex or age appearing on the racing program or in any racing publication, the claimant of a horse shall be solely responsible for determining the age or sex of the horse claimed.

13.19 Racing Claimed Horse: Repealed

1 DE Reg. 713 (12/1/97)

2 DE Reg. 373 (9/1/98)

2 DE Reg. 2043 (5/1/99)

5 DE Reg. 849 (10/1/01)

5 DE Reg. 1710 (3/1/02)

6 DE Reg. 1205 (3/1/03)

7 DE Reg. 316 (9/1/03)

7 DE Reg. 1540 (5/1/04)

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

<http://regulations.delaware.gov/AdminCode/title3/1000/1001/index.shtml>

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 601

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

601 School Police Relations

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 601 School Police Relations by adding definitions, a training component for school administrators involved in reporting school crimes, and specific incidents of misconduct. In addition, a compliance component was added in Section 7.0 that if a school fails to comply with the reporting mandates it shall be subject to identification as a "Persistently Dangerous School" 14 DE

Admin. Code 608.

In addition, a section was added that indicates that a school that is not in comply with the reporting mandates will be subject to identified as "persistently dangerous" 14 **DE Admin. Code 608.**

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 5, 2007 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, DE 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? This regulation is related to school and law enforcement relations, and not student achievement as measured against state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? This regulation is related to school and law enforcement relations and not related to students receiving an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This regulation is related to school climate and should help ensure that all students' health and safety are adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? This regulation is related to school climate and should help ensure all students' legal rights are adequately protected.

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

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

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 make changes to current decision making authority or accountability.

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

9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method of addressing school and law enforcement agency relations at this time.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are not additional costs to the State or local school boards for compliance to this amended regulation.

601 School Police Relations

1.0 ~~Policy on School Police Relations~~

~~All local school districts, charter schools and alternative schools or consortia shall establish a policy on school police relations. Each school district, charter school and alternative school or consortium shall develop a Memorandum of Agreement (MOA) with each police department which provides services to it. Each MOA shall be in a form substantially similar to a Model MOA as developed, approved and from time to time revised by the Department of Education.~~

2.0 ~~School Employees Responsibilities for Reporting Crimes~~

~~Each school district, charter school and alternative school or consortium shall, at the time of hiring and at the beginning of each school year thereafter, advise each school employee (as that term is defined in 14 **Del.C.** §4112) of his/her duty to report school crimes and the penalty for failure to so report.~~

3.0 ~~Reporting of Crimes to the Delaware Department of Education~~

~~The Superintendent of each school district and program administrator for each charter school and alternative school, or his/her designee, shall report to the Department of Education all school crimes required to be~~

~~reported pursuant to 14 Del.C. §4112, and any subsequent amendment thereto. Such reports shall be made on forms as designated by the Department of Education and filed with the Department of Education within the time prescribed by statute.~~

4.0 Reporting Specific Incidents of Misconduct

~~In addition to those school crimes required to be reported pursuant to statute, the Superintendent of each school district and program administrator for each charter school and alternative school or consortia shall report to the Department of Education incidents of misconduct 4.1 through 4.7. Such reports shall be made on forms as designated by the Department of Education and filed with the Department of Education not later than five working days following the incident.~~

- ~~4.1 Pornography, possession and production~~
- ~~4.2 Bomb threats~~
- ~~4.3 Criminal mischief (vandalism)~~
- ~~4.4 Tampering with public records~~
- ~~4.5 Alcohol, possession and use~~
- ~~4.6 Felony theft (\$1,000 or more)~~
- ~~4.7 Bullying~~

5.0 Definition

~~For purposes of the reporting required pursuant to 4.7 of this regulation, "Bullying" is defined as when one person, or a group of persons, targets another person with repeated direct or indirect negative actions over a period of time which are harmful to the victim either emotionally or physically. A negative action occurs when a person knowingly inflicts, or attempts to inflict, physical or emotional injury or discomfort upon another person.~~

~~1 DE Reg. 511 (11/1/97)~~

~~6 DE Reg. 775 (12/1/02)~~

601 Schools and Law Enforcement Agencies

1.0 Purpose

~~The purpose of this regulation is to ensure that effective communication and working relationships exist between public schools and law enforcement agencies.~~

2.0 Definitions

~~"Alternative Program" mean a program established pursuant to 14 Del.C., Chapter 16.~~

~~"School Employee" for purposes of this regulation shall mean all persons 18 years of age or older hired by a school district, attendance zone, or charter school; subcontractors such as bus drivers or security guards; employees of an Alternative Program provider; substitute employees; and persons hired by or subcontracted by other state agencies to work on school property. This definition shall be consistent with 14 Del.C. §4112.~~

3.0 Written Policy and Memorandum of Agreement (MOA)

~~3.1 All local school districts, charter schools, and Alternative Programs shall establish a written policy on effectively communicating and working with law enforcement agencies. Each school district, charter school and Alternative Program shall develop a Memorandum of Agreement (MOA) with each law enforcement agency which provides services to it. Each MOA shall be in a form substantially similar to a Model MOA as developed, approved and from time to time revised by the Department of Education.~~

4.0 Training Component

~~4.1 Any school administrator responsible for reporting school crimes or reporting school conduct incidents to law enforcement and to the Department of Education; or any school administrator responsible for reporting suspension and expulsion data to the Department; or any school administrator responsible for any disciplinary process involving staff or students shall complete Department of Education approved training and any such additional training the Department of Education may prescribe from time to time.~~

~~4.2 The approved training shall be primarily provided by staff at the Department of Education. The training may be provided by a school administrator at the district, charter school, or Alternative Program who is~~

PROPOSED REGULATIONS

qualified to provide such training by having completed the Department of Education approved training. The district, charter school, or Alternative Program shall provide the name(s) of the trainer(s) conducting the training and the name(s) of those school administrator(s) attending the training if such training was provided by the district, charter school, or Alternative Program.

4.3 Each school district, charter school, and Alternative Program shall, at the time of hiring and at the beginning of each school year thereafter, advise each School Employee of his/her duty to report school crimes and the penalty for failure to so report as prescribed in 14 **Del.C.** §4112 (e).

5.0 Reporting of Crimes to the Delaware Department of Education

5.1 The superintendent or head administrator of each school district, charter school, and Alternative Program or his/her designee, shall ensure each school within his/her jurisdiction reports to the Department of Education all school crimes required to be reported pursuant to 14 **Del.C.** §4112, and any subsequent amendment thereto. Such reports shall be submitted in a format as designated by the Department of Education and filed with the Department of Education within the time prescribed by Delaware statutes.

6.0 Reporting Specific Incidents of Misconduct

6.1 In addition to those school crimes required to be reported pursuant to statute, the superintendent or head administrator of each school district, charter school, and Alternative Program, or his/her designee, shall report to the Department of Education incidents of misconduct 6.1.1 through 6.1.12. Such reports shall be submitted in a format as designated by the Department of Education and filed with the Department of Education not later than five working days following the incident.

6.1.1 Pornography, possession and production

6.1.2 Criminal mischief (vandalism)

6.1.3 Tampering with public records

6.1.4 Alcohol, possession and use

6.1.5 Felony theft (\$1,000 or more)

6.1.6 Bullying

6.1.7 Offensive Touching (student victim)

6.1.8 Terroristic Threatening (student victim)

6.1.9 Sexual Harassment

6.1.10 Fighting/Disorderly Conduct

6.1.11 Inhalants

6.1.12 Drug Paraphernalia

7.0 Compliance Component

7.1 A school that fails to comply with the reporting mandates as set forth herein shall be subject to identification as a "Persistently Dangerous School" as this term is defined in 14 **DE Admin. Code** 608. A school identified as Persistently Dangerous will retain that designation for the entire fiscal year.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 734

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

734 District School Board and Charter School Board Member Financial Responsibility Training

A. Type of Regulatory Action Required

New Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 **DE Admin. Code** by adding a new regulation titled 734

District School Board and Charter School Board Member Financial Responsibility Training. This regulation is required by passage of Senate Bill 308 from the 143rd General Assembly. This regulation outlines the financial responsibility training required for district and charter school board members.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 5, 2007 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, DE 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? This regulation outlines the financial responsibility training of school board members and does not specifically address student achievement as measured against the state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? This regulation outlines the financial responsibility training of school board members and does not specifically address the assurance that all students receive and equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This regulation outlines the financial responsibility training of school board members and does not specifically address the health and safety of students.

4. Will the amended regulation help to ensure that all students' legal rights are respected? This regulation outlines the financial responsibility training of school board members and does not specifically address the assurance that all students' legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? This regulation outlines the financial responsibility training of school board members and does not change any of the authority or flexibility of decision making at the local board or school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? This regulation outlines the mandated financial responsibility training of school board members and does not change any of the reporting or administrative requirements upon local or school level decision makers.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? This regulation outlines the mandated financial responsibility training of school board members and does not change the entity where decision making authority or accountability currently lies.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? This regulation outlines the mandated financial responsibility training of school board members and is not an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? This regulation outlines the mandated financial responsibility training of school board members.

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

734 District School Board and Charter School Board Member Financial Responsibility Training**1.0 Purpose**

The purpose of this regulation is to outline the criteria and process for the required financial responsibility training for members of district school boards including vocational technical school boards and the boards of charter schools pursuant to 14 Del.C. §1803. The purpose of the training is to instruct members of school boards in properly discharging their responsibility to insure that public funds, including both state and local funds, are appropriately managed and expended, and shall include training on state and local funding of public education.

2.0 Definitions

"Certificate of Completion" means the document provided by the Department of Education indicating the individual has attended and completed the School Board Financial Training.

PROPOSED REGULATIONS

"Charter School Board" shall mean the charter school board of directors pursuant to 14 Del.C. §§503, 504.

"District School Board" shall mean reorganized school district boards and vocational technical school district boards duly appointed or elected pursuant to Chapter 10 of Title 14 of the Delaware Code.

"School Board Member" shall mean a District School Board or Charter School Board member whether that person is elected, appointed, or is a volunteer.

"Trainer" means an individual approved by the Secretary of Education to provide the School Board Financial Training.

3.0 School Board Financial Training

3.1 The School Board Financial Training or Training means the educational programs, developed by the Department of Education, approved by the Office of Management and Budget and Controller General's Office for District School Board and Charter School Board members. This Training shall, at a minimum, consist of two (2) hours and cover the following topics:

3.1.1 Overview of education budget process and timelines;

3.1.2 Instruction in the basic rules of budgeting, including State of Delaware funds, local funds, and federal funds;

3.1.3 State Financial Management System; and

3.1.4 Reporting requirements.

4.0 District School Board and Charter School Board Financial Responsibility Training Requirement

4.1 Each member of a District School Board or Charter School Board shall attend and receive a Certificate of Completion for the School Board Financial Training within one (1) year of election, appointment, or voluntary service to a District School Board or Charter School Board.

4.2 An individual that attends Training and receives a Certificate of Completion shall be considered to meet the requirement of 4.1.

5.0 Schedule of School Board Financial Training

5.1 The Department shall annually publish a list of date(s) for Training. The Training shall be conducted by a Trainer as defined in this regulation.

6.0 Notification of Attendance

6.1 The Department shall periodically, but not less than annually, provide a list of those School Board Members that have not satisfied the requirement of 4.1 to their respective District School Board or Charter School Board President, the Office of Management and Budget, and Controller General's Office.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))
14 DE Admin. Code 1522

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

1522 Elementary School Counselor

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 **DE Admin. Code 1522**

Elementary School Counselor. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation given that the existing regulation reverted to **DE Admin. Code** 1505 Standard Certificate in June of 2006. This regulation sets forth the requirements for an Elementary School Counselor.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday October 31, 2007 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.

1522 Elementary School Counselor**1-0 Content**

~~This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Counselor Elementary School (Required in grades 1 to 6 and valid in a middle level school, grades 5 to 8).~~

~~7-DE Reg. 775 (12/1/03)~~

2-0 Definitions

~~2.1 The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:~~

PROPOSED REGULATIONS

~~“Department” means the Delaware Department of Education.~~

~~“License” means a credential which authorizes the holder to engage in the practice for which the license is issued.~~

~~“Standard Certificate” means a credential issued to certify 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.~~

~~7-DE-Reg-775 (12/1/03)~~

~~3.0 Standard Certificate~~

~~In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Counselor-Elementary School to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:~~

~~3.1 Master's degree from a regionally accredited college or university in an approved program in Elementary School Counseling and;~~

~~3.2 A minimum of three years' professional experience in an elementary school setting; or three years of appropriate experience as approved by the Department of Education; or a supervised school counseling internship of one full year in an elementary school setting which is part of a graduate degree program in elementary school counseling, or arranged by the Department of Education. The internship may be completed over a two year period on a half time basis or;~~

~~3.3 A Master's degree from a regionally accredited college in any field and;~~

~~3.4 A minimum of 27 semester hours of graduate course work in the areas of: Principles and Practices of the Guidance Program, Individual Counseling Skills, Group Counseling Skills, Human Development, Developmental Group Guidance, Individual and Group Testing for Counselors, Supervised Practicum in Elementary School Counseling, Counseling Theory, Consultation, and~~

~~3.5 Experience as in 3.2.~~

~~7-DE-Reg-775 (12/1/03)~~

~~4.0 Effective Date~~

~~This regulation shall be effective through June 30, 2006 only. Applicants who apply for a Standard Certificate as a Counselor-Elementary School after that date must comply with the requirements set forth in 14 DE Admin. Code 1505.~~

~~7-DE-Reg-775 (12/1/03)~~

~~1.0 Content~~

~~1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Elementary School Counselor. This certification is required for grades 1 to 6, and is valid in grades 5 to 8 in a Middle Level school.~~

~~1.2 Except as otherwise provided, the requirements set forth in 14 DE Admin Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

~~2.0 Definitions~~

~~2.1 The definitions set forth in 14 DE Admin Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.~~

~~3.0 Standard Certificate~~

~~3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as an Elementary School Counselor to an educator who has met the following:~~

~~3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,~~

~~3.1.2 Has met the requirements as set forth in 14 DE Admin Code 1505, Standard Certificate including any subsequent amendment or revision thereto; and~~

~~3.1.3 Has satisfied the additional requirements in this regulation.~~

4.0 Additional Requirements

An educator must also meet the following:

4.1. Has satisfied at least one of the following additional education requirements:

4.1.1 Graduated from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards, offered by a regionally accredited college or university, with a Masters degree in Elementary School Counseling; or

4.1.2 Graduated from a regionally accredited college or university with a Masters degree in any content area and satisfactory completion of 27 semester hours of graduate course work in the areas of:

4.1.2.1 Principles and Practices of the School Counseling Program

4.1.2.2 Individual Counseling Skills

4.1.2.3 Group Counseling Skills

4.1.2.4 Human Development

4.1.2.5 Developmental Group Guidance

4.1.2.6 Individual and Group Testing for Counselors

4.1.2.7 Supervised Practicum in Elementary Counseling

4.1.2.8 Counseling Theory

4.1.2.9 Consultation; and

4.2 Has met at least one of the following experience requirements:

4.2.1 A minimum of three years professional experience in an elementary school setting; or,

4.2.2 A minimum of three years of equivalent experience as approved by the Department of Education; or,

4.2.3 A supervised school counseling internship of one full year in an elementary school setting which is part of a graduate degree program in Elementary School Counseling or arranged by the Department of Education. The internship may be completed over a two year period on a half-time basis.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1530

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

1530 Middle Level Teacher

A. Type of Regulatory Action Requested

Repeal

B. Synopsis of Subject Matter of Regulation

The Professional Standards Board in cooperation and collaboration with the Department of Education seeks the approval of the State Board of Education to repeal Regulation 14 **DE Admin. Code** 1530 Middle Level Teacher as each of four core academic subject areas are regulated by individual certification regulations.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on October 31, 2007 to Mr. Charlie Michels, Executive Director, Delaware Professional Standards Board, 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 repeal of the regulation help improve student achievement as measured against state achievement standards? The repealed regulation concerns certification for educators, not student achievement.

2. Will the repeal of the regulation help ensure that all students receive an equitable education? The repealed regulation concerns certification regulations for educators, not equitable education for students.

3. Will the repeal of the regulation help to ensure that all students' health and safety are adequately protected? The repealed regulation concerns certification of educators, not students' health and safety.
4. Will the repeal of the regulation help to ensure that all students' legal rights are respected? The repealed regulation address educator certification, not students' legal rights.
5. Will the repealed regulation preserve the necessary authority and flexibility of decision makers at the local board and school level? The repeal of the regulation will preserve the authority and flexibility of decision makers at the local board and school level.
6. Will the repealed regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The repeal of the 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 regulation to be repealed rests with the Professional Standards Board, in collaboration and cooperation with the Department of Education, and with the consent of the State Board of Education.
8. Will the repeal of the 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 repeal of the 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 repeal of regulation? The repeal of regulation is designed to reduce the burden placed on school districts.
10. What is the cost to the state and to the local school boards of compliance with the repeal of the regulation? There will be no cost to the state or to local school boards resulting from the repeal of the regulation.

1530 Middle Level Teacher

1.0 Content

~~1.1 This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Middle Level Teacher (Grades 6 to 8).~~

~~7-DE-Reg. 775 (12/1/03)~~

~~7-DE-Reg. 1749 (6/1/04)~~

2.0 Definitions

~~2.1 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.~~

~~“License” means a credential which authorizes the holder to engage in the practice for which the license is issued.~~

~~“Major or Its Equivalent” means a minimum of thirty (30) credits in the content area to be taught.~~

~~“Standard Certificate” means a credential issued to certify 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.~~

~~7-DE-Reg. 775 (12/1/03)~~

~~7-DE-Reg. 1749 (6/1/04)~~

3.0 Standard Certificate

~~In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Middle Level Teacher to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:~~

~~3.1 Degree Requirement~~

~~3.1.1 Bachelor's degree from a regionally accredited college or university with a major or its~~

equivalent in the content area to be taught; and

~~3.1.1.1 Appropriate pedagogical content courses consistent with the NASDTEC or NCATE specialty organization standards for middle school or the content specialization to be taught; or~~

~~3.1.2 Bachelor's degree from a regionally accredited college or university in an NCATE specialty organization or state approved program, where the state employed the appropriate NASDTEC or NCATE specialty organization standards in Elementary or Middle School Education.~~

~~7-DE Reg. 775 (12/1/03)~~

~~7-DE Reg. 1749 (6/1/04)~~

4.0 Effective Date

~~This regulation shall be effective through June 30, 2006 only. Applicants who apply for a Standard Certificate as a middle level teacher after that date must comply with the requirements set forth in 14-DE Admin. Code 1505.~~

~~7-DE Reg. 775 (12/1/03)~~

~~7-DE Reg. 1749 (6/1/04)~~

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))
14 DE Admin. Code 1531

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

1531 Middle Level English Language Arts Teacher

A. Type of Regulatory Action Requested

New 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 adopt regulation **DE Admin. Code 1531** Middle Level English Language Arts Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to adopt this regulation in order to complete the compilation of certification regulations of the Middle Level core academic subjects, and to align the certification with the Delaware English Language Arts Standards' grade level delineations and the corresponding Grade Level Expectations (GLE's). This regulation sets forth the requirements for a Middle Level English Language Arts Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday October 31, 2007 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 adopted regulation help improve student achievement as measured against state achievement standards? The adopted 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 adopted regulation help ensure that all students receive an equitable education? The adopted 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.

PROPOSED REGULATIONS

3. Will the adopted regulation help to ensure that all students' health and safety are adequately protected? The adopted regulation addresses educator certification, not students' health and safety.
4. Will the adopted regulation help to ensure that all students' legal rights are respected? The adopted regulation addresses educator certification, not students' legal rights.
5. Will the adopted regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The adopted regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.
6. Will the adopted regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The adopted 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 adopted 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 adopted 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.

1531 Middle Level English Language Arts Teacher

1.0 Content

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Middle Level English Language Arts Teacher. This certification is required for grades 6, 7 and 8 in a Middle Level school.

1.2 Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

2.1 The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

3.0 Standard Certificate

3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Middle Level English Language Arts Teacher to an educator who has met the following:

3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,

3.1.2 Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))
14 DE Admin. Code 1532

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

1532 Middle Level Mathematics Teacher

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 **DE Admin. Code 1532 Middle Level Mathematics Teacher**. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It is necessary to amend this regulation in order to align the certification with the Delaware Mathematics Standards' grade level delineations and the corresponding Grade Level Expectations (GLE's). This regulation sets forth the requirements for a Middle Level Mathematics Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday October 31, 2007 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.

1532 Middle Level Mathematics Teacher

1.0 Content

This regulation shall apply to the requirements for a Standard Certificate, pursuant to ~~14 Del.C. §1220(a), for Mathematics Teacher Middle Level (required for grades 7 to 8, and valid in grades 5 to 6 in a middle level school.~~

~~7-DE-Reg-775 (12/1/03)~~

2.0 Definitions

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

“Certification” means the issuance of a certificate, which may occur regardless of a recipient's assignment or employment status.

“Department” means the Delaware Department of Education.

“Educator” means a person licensed and certified by the State under ~~14 Del.C. §1202~~ 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. The term ‘educator’ does not include substitute teachers.

“Examination of Content Knowledge” means a standardized test which measures knowledge in a specific content area, such as PRAXIS™ II.

“Fifteen (15) Credits or Their Equivalent in Professional Development” means college credits or an equivalent number of hours, with one (1) credit equating to fifteen (15) hours, taken either as part of a degree program or apart from it, from a regionally accredited college or university or a professional development provider approved by the employing school district or charter school.

“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.

“License” means a credential which authorizes the holder to engage in the practice for which the license is issued.

“Major or Its Equivalent” means a minimum of thirty (30) semester hours of course work in a particular content area.

“NASDTEC” means The National Association of State Directors of Teacher Education and Certification. The organization represents professional standards boards, commissions and departments of education in all 50 states, the District of Columbia, the Department of Defense Dependent Schools, the U.S. Territories, New Zealand, and British Columbia, which are responsible for the preparation, licensure, and discipline of educational personnel.

“NCATE” means The National Council for Accreditation of Teacher Education, a national accrediting body for schools, colleges, and departments of education authorized by the U.S. Department of Education.

“Standard Certificate” means a credential issued to certify 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.~~

“Valid and Current License or Certificate from Another State” means a current full or permanent certificate or license issued by another state. It does not include temporary, emergency or expired certificates or licenses issued from another state.

~~7-DE-Reg. 775 (12/1/03)~~

~~10-DE-Reg. 100 (07/01/06)~~

3.0 Standard Certificate

The Department shall issue a Standard Certificate as a Mathematics Teacher Middle Level to an educator who holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003 who has met the following requirements:

3.1 Acquired the prescribed knowledge, skill or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by:

3.1.1 Obtaining National Board for Professional Teaching Standards certification in the area, subject, or category for which a Standard Certificate is requested; or

3.1.2 Graduating from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards, offered by a regionally accredited college or university, with a major or its equivalent in Mathematics; or

3.1.3 Satisfactorily completing the Alternative Routes for Licensure and Certification Program, the Special Institute for Licensure and Certification, or such other alternative educator preparation programs as the Secretary may approve; or

3.1.4 Holding a bachelor's degree from a regionally accredited college or university in any content area and for applicants applying after June 30, 2006 for their first Standard Certificate, satisfactory completion of fifteen (15) credits or their equivalent in professional development related to their area of certification, of which at least six (6) credits or their equivalent must focus on pedagogy, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; and

3.2 For applicants applying after December 31, 2005, where a Praxis™ II examination in the area of the Standard Certificate requested is applicable and available, achieving a passing score as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board, on the examination; or

3.3 Meeting the requirements for licensure and holding a valid and current license or certificate from another state in Mathematics;

3.3.1 The Department shall not act on an application for certification 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; or

3.4 Meeting the requirements for a Meritorious New Teacher Candidate Designation adopted pursuant to 14 Del.C. §1203.

~~7-DE-Reg. 775 (12/1/03)~~

~~10-DE-Reg. 100 (07/01/06)~~

4.0 Multiple Certificates

Educators may hold certificates in more than one area.

~~7-DE-Reg. 775 (12/1/03)~~

~~10-DE-Reg. 100 (07/01/06)~~

5.0 Application Requirements

An applicant for a Standard Certificate shall submit:

5.1 Official transcripts; and

5.2 Official scores on the Praxis II examination if applicable and available; or

5.3 Evidence of passage of the National Board for Professional Teaching Standards Certificate, if applicable; or

5.4 An official copy of the out of state license or certification, if applicable.

5.5 If applied for simultaneously with application for an Initial License, the applicant shall provide all required documentation for that application in addition to the documentation cited above.

~~6.0 Application Procedures for License Holders~~

~~If an applicant holds a valid Initial, Continuing, or Advanced Delaware License; or a Limited Standard, Standard or Professional Status Certificate issued prior to August 31, 2003 and is requesting additional Standard Certificates, only that documentation necessary to demonstrate acquisition of the prescribed knowledge, skill or education required for the additional Standard Certificate requested is required.~~

~~7.0 Effect of Regulation~~

~~This regulation shall apply to all requests for issuance of a Standard Certificate, except as specifically addressed herein. Educators holding a Professional Status Certificate or a Standard Certificate issued on or before August 31, 2003 shall be issued a Continuing License upon the expiration of their current Professional Status Certificate or Standard Certificate. The Standard Certificate for each area in which they held a Professional Status Certificate or a Standard Certificate shall be listed on the Continuing License or the Advanced License. The Department shall also recognize a Limited Standard Certificate issued prior to August 31, 2003, provided that the educator successfully completes the requirements set forth in the prescription letter received with the Limited Standard Certificate. Requirements must be completed by the expiration date of the Limited Standard Certificate, but in no case later than December 31, 2008.~~

~~8.0 Validity of a Standard Certificate~~

~~A Standard Certificate is valid regardless of the assignment or employment status of the holder of a certificate or certificates, and is not subject to renewal. It shall be revoked in the event the educator's Initial, Continuing, or Advanced License or Limited Standard, Standard, or Professional Status Certificate is revoked in accordance with 14 DE Admin. Code 1514. An educator whose license or certificate is revoked is entitled to a full and fair hearing before the Professional Standards Board. Hearings shall be conducted in accordance with the Standards Board's Hearing Procedures and Rules.~~

~~9.0 Secretary of Education Review~~

~~The Secretary of Education may, upon the written request of the superintendent of a local school district or charter school administrator or other employing authority, review credentials submitted in application for a Standard Certificate on an individual basis and grant a Standard Certificate to an applicant who otherwise does not meet the requirements for a Standard Certificate, but whose effectiveness is documented by the local school district or charter school administrator or other employing authority.~~

~~7-DE-Reg-775 (12/1/03)~~

~~10-DE-Reg-100 (07/01/06)~~

1.0 Content

1.1 This regulation shall apply to the issuance of a Standard Certificate pursuant to 14 Del.C. §1220(a), for Middle Level Mathematics Teacher. This certification is required for grades 6, 7 and 8 in a Middle Level school.

1.2 Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

2.1 The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

3.0 Standard Certificate

3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Middle Level Mathematics Teacher to an educator who has met the following:

3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,

3.1.2 Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))
14 DE Admin. Code 1533

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

1533 Middle Level Science Teacher

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 **DE Admin. Code 1533 Middle Level Science Teacher**. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It is necessary to amend this regulation in order to align the certification with the Delaware Science Standards' grade level delineations and the corresponding Grade Level Expectations (GLE's). This regulation sets forth the requirements for a Middle Level Science Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday October 31, 2007)) 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.

1533 Middle Level Science Teacher

1.0 Content

This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Science Teacher Middle Level (required for grades 7 to 8, and valid in a middle level school, grades 5 to 6).

2.0 Definitions

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

“Certification” means the issuance of a certificate, which may occur regardless of a recipient's assignment or employment status.

“Department” means the Delaware Department of Education.

“Educator” means a person licensed and certified by the State under 14 **Del.C.** §1202 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. The term ‘educator’ does not include substitute teachers.

“Examination of Content Knowledge” means a standardized test which measures knowledge in a specific content area, such as PRAXIS™ II.

“Fifteen (15) Credits or Their Equivalent in Professional Development” means college credits or an equivalent number of hours, with one (1) credit equating to fifteen (15) hours, taken either as part of a degree program or apart from it, from a regionally accredited college or university or a professional development provider approved by the employing school district or charter school.

“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;

“License” means a credential which authorizes the holder to engage in the practice for which the license is used.

“Major or its Equivalent” means a minimum of thirty (30) semester hours of course work in a particular content area.

“NASDTEC” means The National Association of State Directors of Teacher Education and Certification. The organization represents professional standards boards, commissions and departments of education in all 50 states, the District of Columbia, the Department of Defense Dependent Schools, the U.S. Territories, New Zealand, and British Columbia, which are responsible for the preparation, licensure, and discipline of educational personnel.

“NGATE” means The National Council for Accreditation of Teacher Education, a national accrediting body for schools, colleges, and departments of education authorized by the U.S. Department of Education.

“Science Discipline” means those areas of science for which Delaware content standards have been established.

“Standard Certificate” means a credential issued to certify 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.

“Valid and Current License or Certificate from Another State” means a current full or permanent certificate or license issued by another state. It does not include temporary, emergency or expired certificates or licenses issued from another state.

10-DE-Reg. 100 (7/1/06)

3-0 Standard Certificate

The Department shall issue a Standard Certificate as a Middle School Science Teacher to an educator who holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003 who has met the following requirements:

3.1 Acquired the prescribed knowledge, skill or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students by:

3.1.1 Obtaining National Board for Professional Teaching Standards certification in the area, subject, or category for which a Standard Certificate is requested; or

3.1.2 Graduating from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards, offered by a regionally accredited college or university, with a major or its equivalent in any science discipline; or

3.1.3 Satisfactorily completing the Alternative Routes for Licensure and Certification Program, the Special Institute for Licensure and Certification, or such other alternative educator preparation programs as the Secretary may approve; or

3.1.4 Holding a bachelor's degree from a regionally accredited college or university in any content area and for applicants applying after June 30, 2006 for their first Standard Certificate, satisfactory completion of fifteen (15) credits or their equivalent in professional development related to their area of certification, of which at least six (6) credits must focus on pedagogy, selected by the applicant with the approval of the employing school district or charter school which is submitted to the Department; and

3.2 For applicants applying after December 31, 2005, where a Praxis™ II examination in the area of the Standard Certificate requested is applicable and available, achieving a passing score as established by the Standards Board, in consultation with the Department and with the concurrence of the State Board, on the examination; or

3.3 Meeting the requirements for licensure and holding a valid and current license or certificate from another state in Middle School Science;

3.3.1 The Department shall not act on an application for certification 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; or

3.4 Meeting the requirements for a Meritorious New Teacher Candidate Designation adopted pursuant to 14 Del.C. §1203.

10-DE-Reg. 100 (7/1/06)

4-0 Multiple Certificates

Educators may hold certificates in more than one area.

7-DE-Reg. 775 (12/1/03)

8-DE-Reg. 1139 (2/1/05)

10-DE-Reg. 100 (7/1/06)

5-0 Application Requirements

An applicant for a Standard Certificate shall submit:

5.1 Official transcripts; and

5.2 Official scores on the Praxis II examination if applicable and available; or

5.3 Evidence of passage of the National Board for Professional Teaching Standards Certificate, if applicable; or

5.4 An official copy of the out-of-state license or certification, if applicable.

5.5 If applied for simultaneously with application for an Initial License, the applicant shall provide all required documentation for that application in addition to the documentation cited above.

10-DE-Reg. 100 (7/1/06)

6-0 Application Procedures for License Holders

~~If an applicant holds a valid Initial, Continuing, or Advanced Delaware License; or a Limited Standard, Standard or Professional Status Certificate issued prior to August 31, 2003 and is requesting additional Standard Certificates, only that documentation necessary to demonstrate acquisition of the prescribed knowledge, skill or education required for the additional Standard Certificate requested is required.~~

~~10-DE-Reg-100 (7/1/06)~~

7.0 Effect of Regulation

~~This regulation shall apply to all requests for issuance of a Standard Certificate, except as specifically addressed herein. Educators holding a Professional Status Certificate or a Standard Certificate issued on or before August 31, 2003 shall be issued a Continuing License upon the expiration of their current Professional Status Certificate or Standard Certificate. The Standard Certificate for each area in which they held a Professional Status Certificate or a Standard Certificate shall be listed on the Continuing License or the Advanced License. The Department shall also recognize a Limited Standard Certificate issued prior to August 31, 2003, provided that the educator successfully completes the requirements set forth in the prescription letter received with the Limited Standard Certificate. Requirements must be completed by the expiration date of the Limited Standard Certificate, but in no case later than December 31, 2008.~~

~~10-DE-Reg-100 (7/1/06)~~

8.0 Validity of a Standard Certificate

~~A Standard Certificate is valid regardless of the assignment or employment status of the holder of a certificate or certificates, and is not subject to renewal. It shall be revoked in the event the educator's Initial, Continuing, or Advanced License or Limited Standard, Standard, or Professional Status Certificate is revoked in accordance with 14 DE Admin. Code 1514. An educator whose license or certificate is revoked is entitled to a full and fair hearing before the Professional Standards Board. Hearings shall be conducted in accordance with the Standards Board's Hearing Procedures and Rules.~~

~~10-DE-Reg-100 (7/1/06)~~

9.0 Secretary of Education Review

~~The Secretary of Education may, upon the written request of the superintendent of a local school district or charter school administrator or other employing authority, review credentials submitted in application for a Standard Certificate on an individual basis and grant a Standard Certificate to an applicant who otherwise does not meet the requirements for a Standard Certificate, but whose effectiveness is documented by the local school district or charter school administrator or other employing authority.~~

~~10-DE-Reg-100 (7/1/06)~~

1.0 Content

1.1 This regulation shall apply to the issuance of a Standard Certificate pursuant to 14 Del.C. §1220(a), for Middle Level Science Teacher. This certification is required for grades 6, 7 and 8 in a Middle Level school.

1.2 Except as otherwise provided, the requirements set forth in 14 DE Admin Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

2.1 The definitions set forth in 14 DE Admin Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

3.0 Standard Certificate

3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Middle Level Science Teacher to an educator who has met the following:

3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and,

3.1.2 Has met the requirements as set forth in 14 DE Admin Code 1505 Standard Certificate, including any subsequent amendment or revision thereto.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 Del.C. §1205(b))
14 DE Admin. Code 1534

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

1534 Middle Level Social Studies Teacher

A. Type of Regulatory Action Requested

New 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 adopt regulation DE Admin. Code 1534 Middle Level Social Studies Teacher. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 Del.C. §1220(a). It is necessary to adopt this regulation in order to complete the compilation of certification regulations of the Middle Level core academic subjects, and to align the certification with the Delaware Social Studies Standards' grade level delineations and the corresponding Grade Level Expectations (GLE's). This regulation sets forth the requirements for a Middle Level Social Studies Teacher.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday October 31, 2007 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 adopted regulation help improve student achievement as measured against state achievement standards? The adopted 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 adopted regulation help ensure that all students receive an equitable education? The adopted 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 adopted regulation help to ensure that all students' health and safety are adequately protected? The adopted regulation addresses educator certification, not students' health and safety.

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

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

6. Will the adopted regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The adopted 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 adopted 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 adopted 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.

1534 Middle Level Social Studies Teacher

1.0 Content

1.1 This regulation shall apply to the issuance of a Standard Certificate pursuant to 14 **Del.C.** §1220(a), for Middle Level Social Studies Teacher. This certification is required for grades 6, 7 and 8 in a Middle Level school.

1.2 Except as otherwise provided, the requirements set forth in 14 **DE Admin Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

2.1 The definitions set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

3.0 Standard Certificate

3.1 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a Standard Certificate as a Middle Level Social Studies Teacher to an educator who has met the following:

3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and.

3.1.2 Has met the requirements as set forth in 14 **DE Admin. Code** 1505 Standard Certificate, including any subsequent amendment or revision thereto.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1545

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

1545 Secondary School Counselor

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 **DE Admin. Code** 1545 Secondary School Counselor. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation given that the existing regulation reverted to **DE Admin. Code** 1505 Standard Certificate in June of 2006. This regulation sets forth the requirements for a Secondary School Counselor.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Wednesday October 31, 2007 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.

1545 Secondary School Counselor**1-0 Content**

~~This regulation shall apply to the requirements for a Standard Certificate, pursuant to **14 Del.C. §1220(a)**, for Counselor Secondary School (Required in grades 9 to 12 and valid in a middle level school, grades 5 to 8).~~

~~**7-DE-Reg. 775 (12/1/03)**~~

2-0 Definitions

~~2.1 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.~~

~~“**License**” means a credential which authorizes the holder to engage in the practice for which the license is issued.~~

~~“**Standard Certificate**” means a credential issued to certify 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.~~

~~**7-DE-Reg. 775 (12/1/03)**~~

3.0 Standard Certificate

~~In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Counselor Secondary School to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:~~

~~3.1 Master's degree from a regionally accredited college or university in an approved program in Secondary School Counseling and;~~

~~3.2 A minimum of three years' professional experience in a secondary school setting; or three years of appropriate experience as approved by the Department of Education; or a supervised school counseling internship of one full year in a secondary school setting which is part of a graduate degree program in secondary school counseling, or arranged by the Department of Education. The internship may be completed over a two year period on a half time basis or;~~

~~3.3 A Master's degree from a regionally accredited college in any field and;~~

~~3.4 A minimum of 27 semester hours of graduate course work in the areas of: Principles and Practices of the Guidance Program, Individual Counseling Skills, Group Counseling Skills, Career Development, Individual and Group Testing for Counselors, Human Development, Supervised Practicum in Secondary School Counseling, Counseling Theory, Consultation and;~~

~~3.5 Experience as in 3.2.~~

~~7-DE-Reg-775 (12/1/03)~~

4.0 Effective Date

~~This regulation shall be effective through June 30, 2006 only. Applicants who apply for a Standard Certificate as a Counselor Secondary after that date must comply with the requirements set forth in 14 DE Admin. Code 1505.~~

~~7-DE-Reg-775 (12/1/03)~~

1.0 Content

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 Del.C. §1220(a), for Secondary School Counselor. This certification is required for grades 9 to 12 and is valid in grades 5 to 8 in a Middle Level school.

1.2 Except as otherwise provided, the requirements set forth in 14 DE Admin. Code 1505, Standard Certificate including any subsequent amendment or revision thereto, are incorporated herein by reference.

2.0 Definitions

2.1 The definitions set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto, are incorporated herein by reference.

3.0 Standard Certificate

3.1 In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Secondary School Counselor to an educator who has met the following:

3.1.1 Holds a valid Delaware Initial, Continuing, or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued by the Department prior to August 31, 2003; and.

3.1.2 Has met the requirements as set forth in 14 DE Admin. Code 1505 Standard Certificate, including any subsequent amendment or revision thereto; and.

3.1.3 Has satisfied the additional requirements in this regulation.

4.0 Additional Requirements

An educator must also meet the following:

4.1. Has satisfied at least one of the following additional education requirements:

4.1.1 Graduated from an NCATE specialty organization recognized educator preparation program or from a state approved educator preparation program, where the state approval body employed the appropriate NASDTEC or NCATE specialty organization standards, offered by a regionally accredited college or university, with a Masters degree in Secondary School Counseling; or

4.1.2 Graduated from a regionally accredited college or university with a Masters degree in any

content area and satisfactory completion of 27 semester hours of graduate course work in the areas of: 4.1.2 Graduated from a regionally accredited college or university with a Masters degree in any content area and satisfactory completion of 27 semester hours of graduate course work in the areas of:

4.1.2.1 Principles and Practices of the School Counseling Program

4.1.2.2 Individual Counseling Skills

4.1.2.3 Group Counseling Skills

4.1.2.4 Human Development

4.1.2.5 Career Development

4.1.2.6 Individual and Group Testing for Counselors

4.1.2.7 Supervised Practicum in Elementary Counseling

4.1.2.8 Counseling Theory

4.1.2.9 Consultation; and

4.2 Has met at least one of the following experience requirements:

4.2.1 A minimum of three years professional experience in a secondary school setting; or,

4.2.2 A minimum of three years of equivalent experience as approved by the Department of Education; or,

4.2.3 A supervised school counseling internship of one full year in a secondary school setting which is part of a graduate degree program in Secondary School Counseling or arranged by the Department of Education. The internship may be completed over a two year period on a half-time basis.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF DEVELOPMENTAL DISABILITIES

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

PUBLIC NOTICE

Disabilities Services Eligibility Criteria

2100 Eligibility Criteria

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 Developmental Disabilities Services (DDDS) is proposing to amend the eligibility criteria related to DDDS services.

Any person who wishes to make written suggestions, compilations of data, written testimony, written briefs or other written materials concerning the proposed new regulations must submit same to Joseph B. Keyes, Ph.D., Applicant Services Unit; Division of Developmental Disabilities Services, 1052 S. Governor's Avenue, Suite 101, Dover, Delaware 19904 or by fax to (302) 744-9711 by November 2, 2007.

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 at the Public Hearing and written materials filed by other interested persons.

Summary of Proposed Changes

Statutory Authority

- Title 29, 7910
- Title 16, 5521, 5522

Summary of Proposed Changes

1) The definition/diagnosis of mental retardation has been modified to correspond with the American Association on Intellectual and Developmental Disabilities Classification Manual definition of 2002. The proposed

criteria, therefore, is consistent with the most current diagnostic nomenclature in the field of developmental disabilities.

2) Asperger's Disorder has been added to the eligibility criteria. Currently, DDDS includes Autism in the eligibility criteria. Recently, there has been a national effort at viewing autism as a spectrum of disorders of which both Autism and Asperger's are considered core disorders. From a programmatic and service delivery standpoint, Asperger's fits in the DDDS service system model. The addition of Asperger's Disorder to the Division's eligibility criteria is also consistent with what some other states are doing and with what the Department of Education did in adding Asperger's Disorder to its Autism special education classification.

3) Addition of two legal requirement statements: a) "citizen or a lawful alien of the United States"; b) "resident of the State of Delaware". This is consistent with **Delaware Code** regarding eligibility for state services and consistent with Department policy.

2100 Eligibility Criteria

~~The Division of Developmental Disabilities Services provides services to those individuals who meets all of the following conditions:~~

- ~~(A) (i) is attributable to mental retardation (1992 AAMR definition) and/or~~
- ~~(ii) Autism (DSM IV) and/or~~
 - ~~(iii) Prader Willi (documented medical diagnosis) and/or~~
 - ~~(iv) brain injury (individual meets all criteria of the 1992 AAMR definition including age manifestation) and/or~~
 - ~~(v) is attributable to a neurological condition closely related to mental retardation because such condition results in an impairment of general intellectual functioning and adaptive behavior similar to persons with mental retardation and requires treatment and services similar to those required for persons with impairments of general intellectual functioning:~~
 - ~~(B) is manifested before age 22~~
 - ~~(C) is expected to continue indefinitely;~~
 - ~~(D) results in substantial functional limitations in 2 or more of the following adaptive skill areas~~
 - ~~1) communication;~~
 - ~~2) self care;~~
 - ~~3) home living;~~
 - ~~4) social skills;~~
 - ~~5) community use;~~
 - ~~6) self direction;~~
 - ~~7) health and safety;~~
 - ~~8) functional academics;~~
 - ~~9) leisure;~~
 - ~~10) work; and~~
 - ~~(E) reflects the need for lifelong and individually planned services.~~
- ~~Intellectual functioning, and adaptive behavior is determined by using tests approved by the Division.~~
- 4-DE-Reg-228 (7/1/00)**

1.0 The Division of Developmental Disabilities Services provides services to those individuals with a developmental disability who meets all of the following criteria:

- 1.1 citizen or a lawful alien of the United States
- 1.2 a resident of the State of Delaware
- 1.3 a disability/disorder attributed to one or more of the following:
 - 1.3.1 Mental Retardation; defined as a significant generalized limitation in intellectual functioning. Significant generalized limitation in intellectual functioning is defined as IQ scores approximately two standard deviations below the mean. (American Association on Intellectual and Developmental Disabilities; Classification Manual, 2002); and/or
 - 1.3.2 Autistic Disorder (299.00; American Psychiatric Association; Diagnostic & Statistical Manual - IV, 1994); and/or

1.3.3 Asperger's Disorder (299.80; American Psychiatric Association; Diagnostic & Statistical Manual - IV, 1994); and/or

1.3.4 Prader-Willi Syndrome (documented medical diagnosis; World Health Organization; International Classification of Diseases - 9)

1.3.5 Brain injury or neurological condition related to mental retardation that meets: a) a significant generalized impairment in intellectual functioning (defined in 1.3.1); b) significant limitations in adaptive behavior functioning (defined in 1.4); and c) originates before age 22 (defined in 1.5)

1.4 significant limitations in adaptive behavior functioning

1.4.1 Significant limitations in adaptive behavior functioning is defined as performance that is at least two standard deviations below the mean of either:

1.4.1.1 Score on a standardized measure of conceptual, social, or practical skills; or

1.4.1.2 Overall score on a standardized measure of conceptual, social and practical skills

1.5 the disability originates before age 22

1.6 The requirements of 1.3 through 1.5 of this section shall not apply to any client who is receiving services on the effective date of these regulations and who meets the requirements of 1.1 and 1.2 of this section and the requirements of the regulations under which the client initially established eligibility.

2.0 Intellectual functioning, adaptive behavior functioning, Autistic Disorder, and Asperger's Disorder shall be established and based on the use of standardized assessment instruments accepted by the Division.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Pharmaceutical Services Program – Tamper-Resistant Prescription Pads

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 amending the Delaware Medical Assistance Program (DMAP) Provider Manuals to bring the Medicaid regulations into compliance with new Federal law.

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 October 31, 2007.

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

Public Law 110-28, *U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007*, signed into law on May 25, 2007

Background

The federal U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007 provides that effective October 1, 2007, federal Medicaid funding shall not be available

for any amounts expended for prescription drugs for which the prescription was executed in written and non-electronic form unless the prescription was executed on a tamper-resistant pad.

To be in compliance with the federal mandate, for prescription drug claims with dates of service on or after October 1, 2007, Delaware Medicaid must be in compliance with this section of the Social Security Act by requiring the use of tamper proof prescription pads: §1903(i) – Payment under the preceding provisions of this section shall not be made: “(23) with respect to amounts expended for medical assistance for covered outpatient drugs (as defined in section 1927(k)(2) for which the prescription was executed in written (and non-electronic) form unless the prescription was executed on a tamper-resistant pad.”

On August 17, 2007, the Centers for Medicare & Medicaid Services (CMS), issued a letter to State Medicaid Directors with guidance on implementing the new requirement. CMS has outlined three baseline characteristics of tamper-resistant prescription pads, but each State will define which features it will require to meet those characteristics in order to be considered tamper-resistant. The baseline characteristics are one or more industry-recognized features that: (1) prevent unauthorized copying of a completed or blank prescription form; (2) prevent the erasure or modification of information written on the prescription by the prescriber; (3) and prevent the use of counterfeit prescription forms. On October 1, 2007, States must require at least one of these baseline requirements. Then, no later than October 1, 2008, States must require all three characteristics on prescription pads in order to be considered tamper-resistant.

The letter to State Medicaid Directors outlines situations where the new requirement does and does not apply. The requirement does not apply: when the prescription is electronic, faxed, or verbal; when a managed care entity pays for the prescription; or in most situations when drugs are provided in certain institutional and clinical facilities. The letter also allows emergency fills as long as a prescriber provides a verbal, faxed, electronic, or compliant prescription within 72 hours. This restriction applies to all outpatient drugs, including over-the-counter drugs in States that reimburse for prescriptions for such items.

Summary of Proposed Regulation

The Delaware Medical Assistance Program (DMAP) provider policies are revised to comply with Public Law 110-28 known as the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007 requiring prescriptions in written form to be executed on tamper-resistant prescription pads in order to qualify for reimbursement by the DMAP. Currently, there is no rule in place to require that written prescriptions be printed on certain types of paper, which cannot be copied. The requirement does not apply to prescriptions transmitted by telephone, facsimile, or electronic prescribing.

A. Beginning October 1, 2007, DMAP will require that a tamper-resistant prescription pad must contain at least one of the following three CMS defined characteristics:

1. One or more industry-recognized features designed to prevent unauthorized copying of a completed or blank prescription form;
2. One or more industry-recognized features designed to prevent the erasure or modification of information written on the prescription by the prescriber;
3. One or more industry-recognized features designed to prevent the use of counterfeit prescription forms.

B. Appropriate DMAP Provider Manuals will be updated to provide additional detail including examples of features, which comply with the above requirements.

Delaware Medical Assistance Program (DMAP) provider manuals and official notices are available for downloading from the DMAP website: www.dmap.state.de.us or EDS Pharmacy Services may be contacted at (800) 999-3371- Select #0, then #1.

This proposed regulation is also published concurrently herein under “Emergency Regulations”.

DMMA PROPOSED REGULATION #07-49

REVISIONS:

(Regulation Number will be assigned pending further review and analysis by Department staff)

Effective October 1, 2007, Section 1903(i) of the Social Security Act requires that written (non-electronic) prescriptions for covered outpatient drugs for Medicaid clients be executed on a tamper-resistant pad in order to be eligible for federal matching funds. To meet this requirement, DMAP will only reimburse for covered Medicaid outpatient drugs when the written (non-electronic) prescription is executed on a tamper-resistant pad, or the prescription is electronic, faxed, or verbal.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Title XIX Medicaid State Plan Attachment 4.19-D Reimbursement Methodology for Nursing Facilities

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**), and 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 proposing to amend the Title XIX Medicaid State Plan regarding the reimbursement methodology for nursing facilities.

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 October 31, 2007.

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 CFR Part 447, Subpart B - Payment Methods- General Provisions;

42 CFR Part 447, Subpart C - Payment for Inpatient Hospital and Long-Term Care Facility Services; and,

42 CFR §447.205, Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates.

Summary of Proposed State Plan Amendment

The purpose of this amendment is to update the Prospective Reimbursement System for Long Term Care Facilities to be consistent with the policies of the Division of Medicaid and Medical Assistance (DMMA). DMMA is not changing existing policies or procedures, but clarifying the Medicaid State Plan to reflect current practices, as follows:

- To clarify the designations of Peer Groups consistently throughout Attachment 4.19-D.
- To allow public facilities to be included in Peer Groups A or B at the discretion of the Medicaid Director. This allows a public facility to be established as an individual per diem rate in Peer Groups A or B.
- To clarify existing regulatory language referring to Peer Group C's rate methodology.
- To provide language explaining the Medicaid Director's right to waive any provision of Attachment

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4.19-D if it is necessary to ensure the health and safety of nursing facility residents.

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

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METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES

PROSPECTIVE REIMBURSEMENT SYSTEM FOR LONG TERM CARE FACILITIES

STATE PLAN AMENDMENT 4.19-D

I. General Provisions

A. Purpose

This plan establishes a reimbursement system for long-term care facilities that complies with federal requirements, including but not limited to:

- Requirements of the Omnibus Reconciliation Act of 1981 that nursing facility provider reimbursements be reasonable and adequate to assure an efficient and economically operated facility.
- The requirement that Medicaid payments in the aggregate do not exceed what would have been paid by Medicare based on allowable cost principles.
- Limitations on the revaluation of assets subsequent to a change of ownership since July 18, 1984.
- Requirements of the Omnibus Reconciliation Act of 1987 to establish one level of nursing care, i.e., Nursing Facility Care, to eliminate the designation of Skilled and Intermediate Care, and to provide sufficient staff to meet these requirements.
- The requirement to employ only nurse aides who have successfully completed a training and competency evaluation program or a competency evaluation program.

B. Reimbursement Principles

1. Providers of nursing facility care shall be reimbursed prospectively determined per diem rates based on a patient based classification system. Providers of ICF-MR and ICF-IMD services shall be reimbursed prospectively determined per diem rates.

2. The Delaware Medicaid Program shall reimburse qualified providers of long-term care based on the individual Medicaid recipient's days of care multiplied by the applicable per diem rate for that patient's classification less any payments made by recipients or third parties.

II. Rate Determination for Nursing Facilities

A. Basis for Reimbursement

Per Diem reimbursement for nursing facility services shall be composed of five prospectively determined rate components that reimburse providers for primary patient care, secondary patient care, support services, administration, and capital costs.

The primary patient care component of the per diem rate is based on the nursing care costs related specifically to each patient's classification. In addition to assignment to case mix classifications, patients may qualify for supplementary primary care reimbursement based on their characteristics and special service needs. Primary care component reimbursement for each basic patient classification will be the same for each facility within a group. ~~A schedule of primary rates, including rate additions, is established for each of three groups of facilities:~~ For the purpose of establishing rates, nursing facilities shall be divided into groups of like facilities for which a schedule of primary rates, including rate additions, is established for each group:

- ~~Private facilities in New Castle County~~
- ~~Private facilities in Kent and Sussex Counties~~
- ~~Public facilities~~

<u>Peer Group A</u>	<u>Private facilities in New Castle County and public facilities located in New Castle County at the discretion of the Medicaid Director</u>
<u>Peer Group B</u>	<u>Private facilities in Kent and Sussex Counties and public facilities located in Kent and Sussex Counties at the discretion of the Medicaid Director</u>
<u>Peer Group C</u>	<u>Public facilities operated by the State of Delaware</u>

Payment for the secondary, support, administrative, and capital costs comprise the base rate, and is unique to each facility. Provider costs are reported annually to Medicaid and are used to establish rate ceilings for the secondary, support, and administrative cost centers in each provider group.

The sections that follow provide specific details on rate computation for each of the five rate components.

B. Rate Components

Payment for services based on the sum of five rate components. The rate components are defined as:

- **Primary Patient Care.** This cost center encompasses all costs that are involved in the provision of basic nursing care for nursing home patients and is inclusive of nursing staff salaries, fringe benefits, and training costs. All nurses' salaries, fringe benefits, and training for staff with duties

that count towards the minimum staff requirements will be included in this cost center.

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- **Secondary Patient Care.** This cost center encompasses other patient care costs that directly affect patient health status and quality of care and is inclusive of clinical consultants, social services, raw food, medical supplies, and non prescription drugs, dietitian services, dental services (in public facilities only), and activities personnel.
- **Support Services.** This cost center includes costs for departments that provide supportive services other than medical care and is inclusive of dietary, operation and maintenance of the facility, housekeeping, laundry and linen, and patient recreation.
- **Administrative.** This category includes costs that are not patient related and is inclusive of owner/administrator salary, medical and nursing director salary (excluding such time spent in direct patient care), administrative salaries, medical records, working capital, benefits associated with administrative personnel, home office expenses, management of resident personal funds, and monitoring and resolving patient's rights issues.
- **Capital.** This category includes costs related to the purchase and lease of property, plant and equipment and is inclusive of lease costs, mortgage interest, property taxes and depreciation.

C. Excluded Services

Those services to residents of private long term care facilities that are ordinarily billed directly by practitioners will continue to be billed separately and are not covered by the rate component categories. This includes prescription drugs, Medicare Part B covered services, physician services, hospitalization and dental services, laboratory, radiology, and certain ancillary therapies.

For public facilities, laboratory, radiology, prescription drugs, physician services, dental services, and ancillary therapies may be included in the per diem.

Costs of training and certification of nurse aides are billed separately by the facilities as they are incurred, and reimbursed directly by Medicaid.

D. Primary Payment Component Computations

The primary patient care rate component is based on a patient index system in which all nursing home patients are classified into patient classes. The lowest resource intensive clients are placed in the lowest class.

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The Department will assign classes to nursing home patients. Initial classification of patients occurs through the State's pre-admission screening program. These initial classifications will be reviewed by Department nurses within 31 to 45 days after assignment. Patient classification will then be reviewed twice a year. Facilities will receive notices from the Department concerning class changes and relevant effective dates.

1. In order to establish the patient classification for reimbursement, patients are evaluated and scored by Medicaid review nurses according to the specific amount of staff assistance needed in Activity of Daily Living (ADL) dependency areas. These

include Bathing, Eating, Mobility/Transfer/Toileting. Potential scores are as follows:

- 0 - Independent
- 1 - Supervision (includes verbal cueing and occasional staff standby)
- 2 - Moderate assistance (requires staff standby/physical presence)
- 3 - Maximum Assistance

Patients receiving moderate or maximum assistance will be considered "dependent" in that ADL area. Patients receiving supervision will not be considered dependent. Reimbursement is determined by assigning the patient to a patient classification based on their ADL scores or range of scores.

Each patient classification is related to specific nursing time factors. These time factors are multiplied by the 75th percentile nurse wage in each provider group to determine the per diem rate for each classification.

2. Patients receiving an active rehabilitative/preventive program as defined and approved by the Department shall be reimbursed an additional 20% of the primary care rate component.

To be considered for the added reimbursement allowed under this provision, a facility must develop and prepare an individual rehabilitative/preventive care plan. This plan of care must contain rehabilitative/preventive care programs as described in a Department approved list of programs. The services must seek to address specific activity of daily living and other functional problems of the patient. The care plan must also indicate specific six month and one-year patient goals, and must have a physician's approval.

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The Department will evaluate new facility-developed rehabilitative/preventive care plans during its patient classification reviews of nursing homes.

Interim provisional approval of plans can be provided by Department review nurses. When reviewed, the Department will examine facility documentation on the provision of rehabilitative/preventive services to patients with previously approved care plans as well as progress towards patient goals.

3. Patients exhibiting disruptive psycho social behaviors on a frequent basis as defined and classified by the Department shall receive an additional 10 percent of the primary care rate component for the appropriate classification

The specific psychosocial behaviors that will be considered for added reimbursement under this provision are those that necessitate additional nursing staff intervention in the provision of personal and nursing care. Such behaviors include: verbal and physically disruptive actions, inappropriate social behavior, non-territorial wandering, and any other similar patient problems as designated by the Department.

Facilities must have complete documentation on frequency of such behaviors in a patient's chart for the Department to consider the facility for added reimbursement under this provision. This documentation will be evaluated during patient classification reviews of a nursing home.

PROPOSED REGULATIONS

4. Patient class rates are determined based on the time required to care for patients in each classification, and nursing wage, fringe benefit, and training costs tabulated separately for ~~private facilities in New Castle County, private facilities in Kent and Sussex Counties, and public facilities statewide.~~ each facility peer group.

Primary rates are established by the following methodology:

- Annual wage surveys and cost reports required of each provider are used to determine 75th percentile hourly nursing wages for Peer Groups A and B. For Peer Group C, wage surveys and cost reports are combined and treated as one facility prior to determining the 75th percentile.

The cost report used in the calculations will represent the fiscal year ending June 30th of the previous reimbursement year. The Delaware reimbursement year, for purposes of rate setting, is from January 1 through December 31 ~~for private facilities and October 1 through September 30 for State facilities.~~ for Peer Groups A and B, and October 1 through September 30 for Peer Group C.

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This is calculated by first dividing total pay by total hours for each nursing classification (RN, LPN, Aide) in each facility, then arraying them to determine the 75th percentile within each provider group. Based on cost data from each provider group, hourly wage rates are adjusted to include hourly training and fringe benefit costs within each provider group.

- In each of the ~~three provider groups (private facilities in New Castle County, Kent and Sussex Counties, and public facilities),~~ provider peer groups the rates are established in the same manner.

The primary component of the Medicaid nursing home rate is determined by multiplying the 75th percentile hourly nursing wage for RNs, LPNs, and Aides by standard nursing time factors for each of the base levels of patient acuity.

- Providers will be reimbursed for agency nurse costs if their use of agency nurses does not exceed the allowable agency nurse cap determined each year by the Delaware Medicaid staff. Any nursing cost incurred in excess of the allowable cap will not be included in the nursing cost calculation.
- Within each of the patient classes, Medicaid provides "Incentive add-ons" to encourage rehabilitative and preventive programs. Rehabilitative and preventive services shall be reimbursed an additional 20% of the primary care rate component. Incentive payments discourage the deterioration of patients into higher classifications.
- Patients exhibiting disruptive psychosocial behaviors on a frequent basis as defined by the Department and are receiving an active rehabilitation/preventive program as defined and approved by the Department shall be reimbursed an additional 10% of the rehabilitative/preventive primary care rate component.

E. Non-primary Rate Component Computations

Facility rates for the four non-primary components of secondary, support, administrative, and capital are computed from annual provider cost report data on reimbursable costs. Reimbursable costs are

defined to be those that are allowable based on Medicare principles, according to HIM 15. Costs applicable to services, facilities, and supplies furnished to a provider by commonly owned, controlled or related organizations shall not exceed the lower cost of comparable services purchased elsewhere.

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The cost report used in the calculations will represent the fiscal year ending June 30th of the previous reimbursement year. The Delaware reimbursement year, for purposes of rate setting is from January 1 through December 31 for ~~private facilities and October 1 through September 30 for State facilities.~~ Peer Groups A and B and October 1 through September 30 for Peer Group C.

- Individual allowable cost items from cost reports for each facility comprising the base rate component are summed and divided by patient days. For established facilities, the patient day amount used in this computation equal actual patient days or estimated days based on a 90 percent occupancy of Medicaid certified beds, whichever is greater. The day amount for new facilities¹ equals actual patient days for the period of operation, or estimated days based on a 75 percent occupancy of Medicaid certified beds, whichever is greater. This applies to cost centers comprising the basic rate.

The discussion that follows explains rate computation for the secondary, support, administrative and capital payment centers.

1. Secondary patient care rates are reimbursed according to the cost of care determined prospectively up to a calculated ceiling (115 percent of median per diem costs). ~~Three steps~~ Using the same facility peer grouping that was determined for the calculation of the primary care payment component, the following steps are required:

- Facilities are grouped into three peer groups - private facilities in New Castle County, private facilities in Kent and Sussex Counties, and public facilities.
- Individual allowable cost items from cost reports for each facility comprising the secondary care component are summed and divided by patient days. For established facilities, the patient day amount used in this computation equals actual patient days or estimated days based on a 90 percent occupancy of Medicaid certified beds, whichever is greater. The day amount for new facilities¹ equals actual patient days for the period of operation, or estimated days based on a 75 percent occupancy of Medicaid certified beds, whichever is greater.
- The median per diem cost is determined for each category of facility and inflated by 15 percent. The secondary care per diem assigned to a facility is the actual allowable cost up to a maximum of 115 percent of the median.

2. Support service component rates are determined in a manner that parallels the secondary component rate calculation process. However, the ceiling is set at 110 percent of median support costs per day for the appropriate category of facility. In addition, facilities, which maintain costs below the cap, are entitled to an incentive payment 25 percent of the difference between the facility's actual per day cost and the applicable cap, up to a maximum incentive of 5 percent of the cap amount.

- * "New facility" is defined as: (1) New construction built to provide a new service of either intermediate or skilled nursing care for which the existing facility has never before been certified, or (2) construction of an entirely new facility totally and administratively independent of an existing facility.

3. Administrative component rates are determined in a manner parallel to the secondary component. However, the ceiling is set at 105 percent of median costs per day. A facility is entitled to an incentive payment of 50 percent of the difference between its actual costs and the cap. The incentive payment is limited to 10 percent of the ceiling amount.
4. Capital component rates are determined prospectively and are subject to a rate floor and rate ceiling. The dollar amounts representing the 20th percentile of actual per diem capital cost (floor) and the 80th percentile of actual per diem capital cost (ceiling) are calculated. If the facility's costs are greater than or equal to the floor, and less than or equal to the ceiling, the facility's prospective rate is equal to its actual cost. If the facility's costs are below the floor, the prospective rate is equal to the lower of the floor or actual cost plus twenty-five percent of actual cost. If the facility's costs are greater than the ceiling, the prospective rate is equal to the higher of the ceiling or ninety-five percent of actual cost. Costs associated with revaluation of assets of a facility will not be recognized.

The capital component is also subject to the occupancy standards as set forth in section II.E. of State Plan Amendment 4.19-D. The capital component rate is calculated on a statewide basis.

5. Where services are currently contracted by the nursing facility to a practitioner, additional services may be billed directly. These services are not covered by the rate component categories for private facilities, but may be included in the rate for public facilities. These services include therapies, physician services, dental services and prescription drugs.

F. Computation of Total Rate from Components

A facility's secondary, support, administrative, and capital payments will be summed and called its basic rate. The total rate for a patient is then determined by adding the primary rate for which a patient qualifies to the facility's basic rate component. The basic payment amount will not vary across patients in a nursing home. However, the primary payment will depend on a patient's class and qualification for added rehabilitative/preventive and/or psychosocial reimbursement.

G. OBRA '87 Additional Costs

1. Nurse Aide Training and Certification

Providers of long-term care services will be reimbursed directly for the reasonable costs of training, competency testing and certification of nurse aides in compliance with the requirements of OBRA '87. The training and competency testing must be in a program approved by the Delaware Department of Health and Social Services, Division of Public Health. A "Statement of Reimbursement Cost of Nurse Aide Training" is submitted to the state by each facility quarterly.

Costs reported on the Statement of Reimbursement Cost are reimbursed directly and claimed by the State as administrative costs. They include:

- Costs incurred in testing and certifying currently employed nurse aides, i.e., testing fees, tuition, books, and training materials.
- Costs of providing State approved training or refresher training in preparation for the competency evaluation testing to employed nurse aides who have not yet received certification.
- Salaries of in-service instructors to conduct State approved training programs for the portion of their time involved with training, or fees charged by providers of a State approved training program.
- Costs of transporting nurse aides from the nursing facility to a testing or training site.

The following costs of nurse aide training are considered operational, and will be reported annually on the Medicaid cost report. These costs will be reimbursed through the Primary cost component of the per diem rate.

- Salaries of nurse aides while in training or competency evaluation.
- Costs of additional staff to replace nurse aides participating in training or competency evaluation.
- Continuing education of nurse aides following certification.

2. Additional Nurse Staff Requirements

Additional nurse staff required by a nursing facility to comply with the requirements of OBRA '87 will be reimbursed under the provisions of the Delaware Medicaid Patient Index Reimbursement System (PIRS). This system makes no distinction between levels of care for reimbursement. Nursing costs are derived from average hourly wage, benefit, and training cost data provided on the Nursing Wage Survey submitted by each facility. Prospective rates for each patient acuity classification are calculated by these costs by the minimum nursing time factors. Although representative of actual costs incurred, these prospectively determined rates are independent of the number employed or the number of staff vacancies at any given time.

3. Additional Non-Nursing Requirements

The Delaware Medicaid reimbursement system will recognize the incremental costs of additional staff and services incurred by nursing facilities to comply with

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the mandates of OBRA '87. Prospective rate calculations will be adjusted to account for costs incurred on or after October 1, 1990.

Where services are currently contracted by the nursing facility to a practitioner, additional services may be billed directly. These services are not covered by the rate component categories (for private facilities, but may be included in the rate for public facilities.) These services include therapies, physician services, dental services, and prescription drugs.

A supplemental schedule to the Statement of Reimbursement Costs (Medicaid Cost

Report) will be submitted by each facility to demonstrate projected staff and service costs required to comply with OBRA'87. For the rate year beginning October 1, 1990, facilities may project full year costs onto prior year reported actual costs to be included in the rate calculation.

The supplemental schedule will be used to project costs incurred for programs effective October 1, 1990 into the prospective reimbursement rates. Where nursing care facilities indicate new and anticipated staff positions, those costs will be included with the actual SFY '90 costs when calculating the reimbursement rates effective October 1, 1990.

Additional staff requirements include dietitian, medical director, medical records, activities personnel, and social worker.

H. Hold Harmless Provision

For the first year under the patient index reimbursement system the Department will have in effect a hold-harmless provision. The purpose of the provision is to give facilities an opportunity to adjust their operations to the new system. Under this provision, no facility will be paid less by Medicaid under the patient index system than it would have been paid had Federal Fiscal Year 1988 rates, adjusted by an inflation factor, been retained.

For the period October 1, 1990 to September 30, 1991, the Department will have in effect a hold-harmless provision with respect to capital reimbursement rates. The purpose of this provision is to give facilities an opportunity to adjust their operations to the new system. Under this provision, facilities will be paid the greater of the rate under the prospective capital rate methodology or the rate based on reimbursable costs. Beginning October 1, 1991, all facilities will be subject to the prospective capital rate methodology described in Section II, E.4.

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I. Annual Rate Recalculation

1. Primary Payment Component

Rates for the primary patient care component will be rebased annually. Two sources of provider-supplied data will be used in this rate rebasing:

- An annual nursing wage and salary survey that the Department will conduct of all Medicaid-participating nursing facilities in Delaware.
- Nursing home cost report data on nurses' fringe benefits and training costs.

For Peer Groups A and B, the 75th percentile wages will be redetermined annually from the wage and salary survey, and the standard nurse time factors will be applied for each patient classification. The cost report and wage and salary survey will be for the previous year ending June 30. For Peer Group C, wage surveys and cost reports are combined and treated as one facility prior to determining the 75th percentile.

2. Non-Primary Payment Components

The payment caps for the secondary, support, and administrative components will be

rebased every fourth year using the computation methods specified in Section E above. For the interim periods between rebasing, the payment caps will be inflated annually based on reasonable inflation estimates as published by the Department. Facility-specific payment rates for these cost centers shall then be calculated using these inflated caps and cost report data from the most recently available cost reporting period.

The capital floor and ceiling will be rebased annually.

3. Inflation Adjustment

Per Diem caps for primary, secondary, support and administrative cost centers will be adjusted each year by inflation indices. The inflation indices will be obtained from a recognized source and based on an appropriate index for the primary cost center and the following cost centers: secondary, support and administrative.

The inflation factors are applied to the actual nursing wage rates to compensate for the annual inflation in nursing costs. This adjustment is made before the nurse training and benefits are added and the wages are multiplied by the standard nurse time factors.

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Examples of inflation ~~rates~~ indices that may be used includes but is not limited to:

1. Department of Economics, University of Delaware Health Care Index (or other similar university research centers' index)
2. U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index
3. CMS Prospective Payment System-Skilled Nursing Facility Input Price Index
4. CMS Excluded Hospital 2002 Input Price Index
5. CMS Excluded Hospital with Capital Input Price Index
6. CMS Rehabilitation, Psychiatric, and Long Term Care Hospital with Capital Input Price Index

Cost center caps are used to set an upper limit on the amount a provider will be reimbursed for the costs in the secondary, support, and administrative cost centers. Initially, these caps are computed by determining the median value of the provider's actual daily costs, then adjusting upwardly according to the particular cost center. The Secondary cost center cap is 115% of the provider group median, and Administrative costs are capped at 105% of the median. Delaware Medicaid will recalculate non-primary cost center caps every fourth year. The next rebase will be for rates effective January 1, 2008 for Peer Groups A and B and October 1, 2007 for Peer Group C. In interim rate years, these cost center caps will not be recomputed. Instead, cost center caps will be adjusted by inflation factors. The inflation index provided by a recognized source will be applied to the current cap in each cost center in each provider group to establish the new cap. The actual reported costs will be compared to the cap. Facilities with costs above the cap will receive the amount of the cap.

J. Medicare Aggregate Upper Limitations

The State of Delaware assures CMS that in no case shall aggregate payments made under this plan, inclusive of DEFRA capital limitations, exceed the amount that would have been paid under Medicare principles of reimbursement. As a result of a change of ownership, on or after July 18, 1984, the State will not increase payments to providers for depreciation, interest on capital and return on equity, in the aggregate, more than the amount that would be recognized under section 1861(v)(1)(0) of the Social Security Act. Average projected rates of payment shall be tested against such limitations. In the event that average payment rates exceed such limitations, rates shall be reduced for those facilities exceeding Medicare principles as applied to all nursing facilities.

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III. Rate Determination ICF/MR and ICF/IMD Facilities

Delaware will recalculate the prospective per diem rates for ICF/MRs and ICF/IMDs annually for the reimbursement year, January 1 through December 31 for ~~private facilities~~ Peer Groups A and B and October 1 through September 30 for ~~public facilities~~ Peer Group C. ~~ICF/MR and ICF/IMD facilities shall be reimbursed actual total per diem costs determined prospectively up to a ceiling. The ceiling is set at the 75th percentile of the distribution of costs of the facilities in each class. There are four (4) classes of facilities, which are: Within Peer Groups A, B, and C defined in section II.A., there are additional classifications of facilities that affect reimbursement. They are:~~

1. Public ICF/MR facilities of 8 beds or less.
2. Public ICF/MR facilities of greater than 8 beds.
3. Private ICF/MR facilities of 60 beds or less.
4. Public ICF/IMD facilities.

These facilities will fall into the peer group that matches their geographic location within the state. Facilities classified as ICF/MR or ICF/IMD shall be reimbursed their actual total per diem costs determined prospectively up to a ceiling. The ceiling is set at the 75th percentile of the distribution of costs of the facilities in each class.

An inflation factor (as described in II.H.1.3 above) will be applied to prior year's costs to determine the current year's rate.

IV. Rate Reconsideration

A. Primary Rate Component

Long-term care providers shall have the right to request a rate reconsideration for alleged patient misclassification relating to the Department's assignment of the case mix classification. Conditions for reconsideration are specified in the Department's nursing home appeals process as specified in the long-term care provider manual.

1. Exclusions from Reconsideration

Specifically excluded from patient class reconsiderations are:

- Changes in patient status between regular patient class reviews.
- Patient classification determinations, unless the loss of revenues for a month's period of alleged misclassification equals ten percent or more of the facility's Medicaid revenues in that month.

2. Procedures for Filing

Facilities shall submit requests for reconsiderations within sixty days after patient classifications are provided to a facility. All requests shall be submitted in writing and must be accompanied by supporting documentation as required by the Department.

3. Patient Reclassifications

Any reclassification resulting from the reconsideration process will become effective on the first day of the month following such reclassification.

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B. Non-Primary Rate Components

Long-term care providers shall have the right to request a rate reconsideration for any alleged Department miscalculation of one or more non-primary payment rates.

Miscalculation is defined as incorrect computation of payment rates from provider supplied data in annual cost reports.

1. Exclusions from Reconsideration

Specifically excluded from rate consideration are:

- Department classification of cost items into payment centers.
- Peer-group rate ceilings.
- Department inflation adjustments.
- Capital floor and ceiling rate percentiles.

2. Procedures for Filing

Rate reconsiderations shall be submitted within sixty days after payment rate schedules are provided to a facility. All requests shall be submitted in writing and must be accompanied by supporting documentation as requested by the Department.

3. Rate Adjustments

Any rate adjustments resulting from the reconsideration process will take place on the first day of the month following such adjustment. Rate adjustments resulting from this provision will only affect the facility that had rate miscalculations. Payment ceilings and incentive amounts for other facilities in a peer group will not be altered by these adjustments.

C. Waiver of Requirements

The Director of the Division of Medicaid and Medical Assistance may waive any provision of the State Plan related to "Methods and Standards for Establishing Payment Rates: Prospective Reimbursement System for Long Term Care Facilities": if a circumstance exists that could negatively affect the health, safety and welfare of residents in Delaware if the provision is not waived.

V. Reimbursement for Super Skilled Care

A higher rate will be paid for individuals who need a greater level of skilled care than that which is

currently reimbursed in Delaware nursing facilities. For patients in the Super Skilled program the rate will be determined as follows:

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A summary of each individual who qualified under the Medicaid program's criteria for a "Super Skilled" level of care will be sent to local nursing facilities, which have expressed an interest in providing this level of care. They will be asked to submit bids, within a specific time frame, for their per diem charge for caring for the individual. The Medicaid program will review the bids and select the one that most meets the needs of the patient at the lowest cost.

VI. Reporting and Audit Requirements

A. Reporting

All facilities certified to participate in the Medicaid program are required to maintain cost data and submit reports on the form and in the format specified by the Department. Such reports shall be filed annually. Cost reports are due within ninety days of the close of the state fiscal year. All Medicaid participating facilities shall report allowable costs on a state fiscal year basis, which begins on July 1 and ends the following June 30. The allowable costs recognized by Delaware are those defined by Medicare principles.

In addition, all facilities are required to complete and submit an annual nursing wage survey on a form specified by the Department. All facilities must provide nursing wage data for the time periods requested on the survey form.

For patients in the Super Skilled program, annual Super Skilled bids will be considered the cost report for Super Skilled services. The nursing facility cost report must be adjusted to reflect costs associated with care for Super Skilled patients.

Failure to submit timely cost reports or nursing wage surveys within the allowed time periods when the facility has not been granted an extension by the Department, shall be grounds for suspension from the program. The Department may levy fines for failure to submit timely data as described in Section II.D. of the General Instructions to the Medicaid nursing facility cost report.

B. Audit

The Department shall conduct a field audit of participating facilities, in accordance with Federal regulation and State law. Both cost reports and the nursing wage surveys will be subject to audit.

Overpayments identified and documented as a result of field audit activities, or other findings made available to the Department, will be recovered. Such overpayments will be accounted for on the Quarterly Report of Expenditures as required by regulation.

Rate revisions resulting from field audit will only affect payments to those facilities that had an identified overpayment. Payment ceilings and incentive payments for other facilities within a peer group will not be altered by these revisions.

C. Desk Review

All cost reports and nursing wage surveys shall be subjected to a desk review annually. Only desk reviewed cost report and nursing wage survey data will be used to calculate rates.

VII. Reimbursement for Out-of-State Facilities

Facilities located outside of Delaware will be paid the lesser of the Medicaid reimbursement rate from the state in which they are located or the highest rate established by Delaware for comparably certified non-state operated facilities as specified above.

VIII. Reimbursement of Ancillary Service ~~for Private Facilities~~

For Peer Groups A and B:

Oxygen, physical therapy, occupational therapy, and speech therapy will be reimbursed on a fee-for-service basis. The rates for these services are determined by a survey of all enrolled facilities' costs. The costs are then arrayed and a cap set at the median rate. Facilities will be paid the lower of their cost or the cap. The cap will be recomputed every three years based on new surveys.

The Delaware Medicaid Program's nursing home rate calculation, the Patient Index Reimbursement System, complies with requirements found in the Nursing Home Reform Act and all subsequent revisions. A detailed description of the methodology and analysis used in determining the adjustment in payment amount for nursing facilities to take into account the cost of services required to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident eligible for benefits under Title XIX is found in Attachment A.

For Peer Group C:

Ancillary Services are included in the per diem reimbursement.

IX. Reimbursement for Pediatric Nursing Facility Care

Certain Medicaid-eligible children under the age of 21 years require facility-based nursing care and would be best served in a specialized pediatric nursing facility (that is, other than a traditional nursing facility). In order to qualify for this care, clients must be determined to require this level of care by the DMMA Medical Evaluation Team.

The level of reimbursement for each client will be based on the level of care determined by the DMMA Medical Evaluation Team. A per diem rate shall be established for each level of care based on reasonable costs for comparable DMMA services that have a demonstrated cost history and that serve a similar population, adjusted as necessary to reflect substantive differences in program operation. Rates for each level of care shall be computed for a base year and may be inflated each year thereafter using a nationally recognized inflation index. In addition to all nursing and operational costs, per diem rates are inclusive of all services, including but not limited to all therapies, supplies, non-custom durable medical equipment and over-the-counter (OTC) drugs required to treat the child's medical condition but do not include custom durable medical equipment for the individual use of a client or prescription ("legend product") drugs, which will be billed directly to Medicaid by the

appropriate medical care provider in accordance with Medicaid policy.

Eligible recipients meeting the eligibility criteria for pediatric nursing facility care but who are being cared for in a facility other than a Pediatric Nursing Care Facility shall be reimbursed at the lowest appropriate Pediatric Nursing Facility rate after an assessment by the DMMA Medical Evaluation Team.

Eligible children in Pediatric Nursing Facilities located outside of Delaware are reimbursed at the lowest Delaware Pediatric Nursing Facility rate for each client category level to which they are assigned after being assessed by the DMMA Medical Evaluation Team.

In special cases, the State has the option to provide additional reimbursement if circumstances warrant, where such additional reimbursement is necessary to ensure that the appropriate level of care is given to assure that the child's health status is not jeopardized.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE**Acquired Brain Injury (ABI) §1915(c) Home and Community-Based Services Waiver Application**

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, and, in compliance with State Notice procedures as set forth in the Federal Register, September 27, 1994, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is submitting an Acquired Brain Injury (ABI) §1915(c) Home and Community-Based Services Waiver application to the Centers for Medicare and Medicaid Services (CMS).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning this waiver must submit same to Sharon L. Summers, Planning and 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 October 31, 2007. A copy of the waiver application is available upon request by contacting Lisa Bond, Division of Services for Aging and Adults with Physical Disabilities at (302) 255-9358.

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**

- Social Security Act §1915(c), *Provisions Respecting Inapplicability and Waiver of Certain Requirements of this Title*
- 42 CFR §441, Subpart G, *Home and Community-Based Services Waiver Requirements*

Background

The Medicaid Home and Community-Based Services (HCBS) waiver program is authorized in accordance with §1915(c) of the Social Security Act. The program permits a State to furnish an array of home and community-based services that assist Medicaid beneficiaries to live in the community and avoid institutionalization. The State has broad discretion to design its waiver program to address the needs of the waiver's target population. Waiver services complement and/or supplement the services that are available to participants through the Medicaid State plan and other federal, state and local public programs as well as the supports that families and communities

provide.

Summary of Proposal

This waiver will provide services for individuals aged 18 and above who have sustained an acquired brain injury (ABI) and who would otherwise require care in a nursing facility.

The goal of the waiver is to provide services to persons with ABI in a manner which responds to each consumer's abilities, assessed needs, and preferences, and which ensures maximum consumer self-sufficiency, independent functioning, and safety. This goal will be accomplished through the delivery of a range of home and community-based long-term cares services.

Services to be provided through the waiver include:

- Case Management
- Personal Care
- Adult Day Services
- Respite
- Cognitive Services
- Day Habilitation
- Personal Emergency Response System
- Assisted Living

The waiver will be administered by the Division of Medicaid and Medical Assistance (DMMA), the State Medicaid agency, and operated by the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD). The waiver period is December 1, 2007 through November 30, 2010.

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

An authenticated PDF version of the Acquired Brain Injury (ABI) §1915(c) Home and Community-Based Services Waiver Application is available here: [Waiver](#)

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

Food Stamp Program 9006.3 Exceptions From Notice

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 Food Stamp Program policies in the Division of Social Services Manual (DSSM) regarding exemptions from adverse action notices.

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 (new fax number) by October 31, 2007.

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

Statutory Authority

7 CFR 273.13(b), Exemptions from Notice

Summary of Proposed Change

DSSM 9006.3, Exemptions from Notice: The policies of the Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA) states that mail returned as undeliverable for whatever reason requires DSS to send a Request for Contact form to the household to clarify their living arrangement before DSS can close the case for whereabouts unknown. The agency is removing language in the current rule that requires terminating a case without timely notice when the post office returns mail with no forwarding address. This information is incorrect. This rule is also being amended to reflect typographical and rule number corrections.

DSS PROPOSED REGULATION #07-45

REVISIONS:

9006.2 Adequate Notice

The notice is considered adequate when:

- 1) It is in writing;
- 2) It is a clear expression of the proposed action;
- 3) It explains the proposed action and the reasons for it;
- 4) It explains that the household has a right to request a fair hearing;
- 5) It gives a telephone number and the name of a person to contact for further information;
- 6) It notifies the household of the circumstances under which the benefits may continue;
- 7) It notifies the household of its liability for any overissuance received while awaiting a fair hearing if the final hearing decision is adverse to the household;
- 8) It notifies the household of the availability of free legal services.

9006.3 ~~Exceptions~~ Exemptions From Notice

[273.13(b)]

Do not provide individual notices of adverse action when:

- 1) The State initiates a mass change (see DSSM 9086);
- 2) The Division determines, based on reliable information, that all members of a household have died or that the household has moved from the project area; ~~or DSS mail has been returned by the post office indicating no known forwarding address;~~
- 3) The household has been receiving an increased allotment to restore lost benefits, the restoration is complete, and the household was previously notified in writing of when the allotment would terminate;
- 4) The household's allotment varies from month to month within the certification period to take into account changes which were anticipated at the time of certification and the household was so notified at the time of certification;
- 5) The household jointly applied for TANF/ GA/RCA and food stamp benefits and has been receiving food stamp benefits pending the approval of the TANF/GA/RCA grant and was notified at the time of certification that food stamp benefits would be reduced upon approval of the TANF\GA grant;
- 6) A household member is disqualified for intentional Program violation in accordance with DSSM 2023, or the benefits of the remaining household members are reduced or terminated to reflect the disqualification of that household member. The notice requirements for individuals or households affected by intentional Program violation disqualifications are explained in DSSM 2023.

7) DSS has assigned a longer certification period to a household certified on an expedited basis and for whom verification was postponed, provided the household has received written notice that the receipt of benefits beyond the month of application is contingent on its providing the postponed verification and that DSS may act on the verified information without further notice as provided in DSSM 9041.

8) DSS must change the household's benefits back to the original benefit level as required in DSSM 9085.

9) DSS is terminating the eligibility of a resident of a drug or alcoholic treatment center or a group living arrangement if the facility loses either its certification from DHSS or has its status as an authorized representative suspended due to FNS disqualifying it as a retailer. Residents of group living arrangements applying on their own behalf are still eligible to participate.

10) Converting a household from cash repayment to benefit reduction as a result of failure to make agreed upon repayment as discussed in DSSM ~~7000~~ 7004.1.

11) The household voluntarily requests in writing or in the presence of a case worker, that its participation be terminated. If the household does not provide a written request, send the household a letter confirming the voluntary withdrawal. Written information does not entail the same rights as a notice of adverse action except that the household may request a fair hearing.

12) DSS determines, based on reliable information, that the household will not be residing in the project area and, therefore, will be unable to obtain its next allotment. Inform the household of its termination no later than its next scheduled issuance date. Do not delay terminating the household's participation in order to provide advance notice.

If the following conditions are met, dispense with the timely notice requirement in DSSM 9006.2. However, the household must be notified that its benefits will be reduced or terminated no later than the date the household receives, or would have received its allotment:

a) The household reports the information which results in the reduction or termination.

b) The reported information is in writing. Information reported on a TANF monthly report form will satisfy this requirement.

c) Based solely upon the household's written information, DSS can determine the household's allotment or ineligibility.

d) The household retains its right to a fair hearing.

e) The household retains its right to continued benefits by requesting a fair hearing within the time period provided by the notice of adverse action.

f) The Division continues the household's previous benefit level, if required, within five working days of the household's request for a fair hearing.

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

Food Stamp Program 9032.2 Alien Eligibility

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 Food Stamp Program policies in the Division of Social Services Manual (DSSM) regarding alien eligibility.

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 (new fax number) by October 31, 2007.

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

Statutory Authority

7 CFR 273.2(f)(1)(ii), Mandatory Verification, Alien Eligibility

Summary of Proposed Change

DSSM 9032.2, Alien Eligibility: The deleted paragraph does not belong in this section. The federal regulations do not have this paragraph in this section. For food stamp purposes, citizenship is not verified unless questionable. This language, phrased differently, is actually in another section of policy under DSSM 9033, Verifications of Questionable Information

DSS PROPOSED REGULATION #07-46

REVISION:

9032 Mandatory Verification

[273.2(f)(1)]

Verify the following information prior to certification of households initially applying:

9032.1 Income

Gross nonexempt income shall be verified for all households prior to certification.

Verify termination of employment. Acceptable documentation includes employer's statement, lay off notice, etc. In addition, if the household reports no income, explore past management and potential sources of income, e.g., UC benefits, OASDI, Workmen's Compensation, etc.

When all attempts to verify income have been unsuccessful because the person or organization providing the income has failed to cooperate with the household and DSS, and all other sources of verification are unavailable, determine an amount to use based on the best available information.

Sometimes the best available information may be from a collateral contact or just from a client.

9032.2 Alien Eligibility

A. DSS must verify the eligible status of applicant aliens. If an alien does not wish DSS to contact INS to verify his or her immigration status, DSS will give the household the option of withdrawing its application or participating without that member.

The following information may be relevant to the eligibility of some aliens: date of admission or date status was granted; military connection; battered status; if the alien was lawfully residing in the United States on August 22, 1996; membership in certain Indian tribes; if the person was 65 or older on August 22, 1996; if a lawful permanent resident can be credited with 40 qualifying quarters of covered work and if any Federal means-tested public benefits were received in any quarter after December 31, 1996; or if the alien was a member of certain Hmong or Highland Laotian tribes during a certain period of time or is the spouse or unmarried dependent of such a person. DSS must verify these factors if applicable to the alien's eligibility.

The SSA Quarters of Coverage History System (QCHS) is used to verify whether a lawful permanent resident has earned or can receive credit for a total of 40 qualifying quarters. The QCHS may not show all qualifying quarters because SSA records do not show current year's earnings and in some cases the last year's earnings, depending on the time of request. Sometimes an applicant may have work from an uncovered employment that is not documented by SSA, but is countable toward the 40 quarters test. In both cases the individual, rather than SSA, will need to provide the evidence needed to verify the quarters.

B. An alien is ineligible until acceptable documentation is provided unless:

1. DSS has submitted a copy of a document provided by the household to INS for verification. Pending such verification, DSS cannot delay, deny, reduce, or terminate the individual's eligibility for benefits on the basis of the individual's immigration status; or

2. The applicant of DSS has submitted a request to SSA for information regarding the

number of quarters of work that can be credited to the individual. SSA has responded that the individual has fewer than 40 quarters, and the individual provides documentation from SSA that SSA is conducting an investigation to determine if more quarters can be credited. DSS will certify the individual pending the results of the investigation for up to 6 months from the date of the original determination of insufficient quarters; or

3. The applicant or DSS has submitted a request to a Federal agency for verification of information which bears on the individual's eligible status. DSS will certify the individual pending the results of the investigation for up to 6 months from the date of the original request for verification.

C. DSS must provide alien applicants with a reasonable opportunity to submit acceptable documentation of their eligible status as of the 30th day following the date of application. A reasonable opportunity is at least 10 days from the date of DSS's request for an acceptable document. When DSS fails to provide an alien applicant with a reasonable opportunity as of the 30th day following the date of application, DSS must provide the household with benefits no later than 30 days following the date of application, provided the household is otherwise eligible.

~~D. DSS must verify a household member's citizenship or status as a non-citizen national. DSS will accept participation in another program as acceptable verification if verification of citizenship or non-citizen national was obtained for that program. If the household cannot obtain acceptable verification, DSS must accept a signed third-party statement, under penalty of perjury, which indicates a reasonable basis for personal knowledge that the member in question is a U. S. citizen or a non-citizen national.~~

(Inserted to Provide Context Only)

9033 Verification of Questionable Information

[273.2(f)(2)]

Eligibility factors other than those listed in DSSM 9032 will be verified only if questionable and if they affect a household's eligibility or benefit level.

Questionable information is information inconsistent with statements made by the applicant, with other information on the application or previous applications, or with information received by the agency. Procedures described below will apply when one of the following eligibility factors is questionable:

When expenses claimed by the household for purposes of determining allowable program deductions (per DSSM 9060) or those otherwise reported during the certification interview (e.g., car payments, credit card bills) exceed declared income, ask the household to verify how such expenses were paid. New applicants must satisfactorily explain past management. Possible methods to verify payments are as follows:

Income Source	Type of Verification
Loans and gifts	Statement from lender
Sale of personal property	Receipt from sale
Exchange of services/ in-kind benefits	Statement from landlord, etc.
Gambling proceeds	Lottery tickets
Odd jobs	Note from employer

Benefits may be authorized if the following conditions are met:

- a) A new household provides a satisfactory explanation of past management including any verification that is reasonably available to the household.
- b) A participating household satisfactorily verifies factors of past management. Verification must be from the month(s) immediately preceding certification/recertification.

Additionally, households where management has been questionable will be notified that they will be responsible for verifications of all cash outflow at times of recertification if management continues to appear questionable.

A. Household Composition. Verify factors affecting the composition of a household, if questionable. Individuals who wish to be a separate household from those with whom they reside will be responsible for proving a claim that they are a separate household to the satisfaction of the Division.

Individuals who claim to be a separate household from those with whom they reside based on the various age and disability factors for determining separateness will be responsible for proving a claim of separateness in accordance with DSSM 9032.11.

B. Citizenship. The household must provide acceptable verification for any member whose U.S. citizenship is questionable.

A claim to citizenship may be considered questionable if:

- 1) The claim of citizenship is inconsistent with statements made by the applicant or with other information on the application or on previous applications.
- 2) The claim of citizenship is inconsistent with information received from another source.
- 3) The individual does not have a Social Security Number.

When a household's statement that one or more of its members are U.S. citizens or has the status as a non-citizen national is questionable, ask the household to provide acceptable verification. Acceptable forms of verification include birth certificates, religious records, voter registration cards, certificates of citizenship or naturalization provided by INS, such as identification cards for use of resident citizens in the United States (INS form I 179 or INS form I 197), or U.S. passports. Participation in the TANF Program will also be considered acceptable verification if verification of citizenship or non-citizen national status was obtained for that program. If the above forms of verification cannot be obtained and the household can provide a reasonable explanation as to why verification is not available, accept a signed statement from a third party indicating a reasonable basis for personal knowledge that the member in question is a U.S. citizen. The signed statement must contain a warning of the penalties for helping someone commit fraud, such as: "If you intentionally give false information to help this person get food stamps, you may be fined, imprisoned, or both."

The member whose citizenship or non-citizen national status is in question will be ineligible to participate until proof of U.S. citizenship or non-citizen national status is obtained. Until proof of U.S. citizenship or non-citizen national status is obtained, the member whose citizenship or non-citizen national status is in question will have his or her income, less a pro rata share, and all of his or her resources considered available to any remaining household members as set forth in DSSM 9076.2.

C. Deductible expenses. If obtaining verification for a deductible expense may delay certification, advise the household that its eligibility and benefit level may be determined without providing a deduction for the claimed but unverified expense. This provision also applies to the allowance of medical expenses per DSSM 9032. Shelter costs would be computed without including the unverified components. The standard utility allowance will be used if the household is entitled to claim it.

If the expense cannot be verified within 30 days of the date of application, determine the household's eligibility and benefit level without providing a deduction of the unverified expense. If the household subsequently provides the missing verification, redetermine the household's benefits, and provide increased benefits, if any, in accordance with the timeliness standards in DSSM 9085. If the expense could not be verified within the 30 day processing standard because the Division failed to allow the household sufficient time per DSSM 9040 to verify the expense, the household will be entitled to the restoration of benefits retroactive to the month of application, provided that the missing verification is supplied in accordance with DSSM 9040. If the household would be ineligible unless the expense is allowed, the household's application will be handled as provided in DSSM 9040.

11 DE Reg. 216 (08/01/07)

DIVISION OF SUBSTANCE ABUSE AND MENTAL HEALTH

Statutory Authority: 16 Delaware Code, Sections 2207 and 2208 (16 **Del.C.** §§2207 and 2208)

PUBLIC NOTICE

6100 Substance Abuse Facility Licensing Standards

In compliance with the State's Administrative Procedures Act (APA – Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 16 of the **Delaware Code**, Chapter 22, Sections 2207 and 2208, Delaware Health and Social Services (DHSS)/Division of Substance Abuse and Mental Health (DSAMH) is proposing to establish updated licensure standards for Substance Abuse Treatment facilities to replace existing standards

promulgated in 1979.

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 Mr. Harris Taylor, Dir. of Program Accountability, Division of Substance Abuse and Mental Health, 1901 North DuPont Highway, Main Administration Building, New Castle, Delaware 19720 by October 31, 2007.

The action concerning the determination of whether to adopt the proposed regulations 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

Statutory Authority

Title 16 of the Delaware Code, Chapter 22, Sections 2207 and 2208.

Summary of Proposed Change

The proposed licensure standards will replace the existing licensure standards in their entirety. The existing standards were promulgated in 1979 and have been minimally modified since that time. The proposed standards reflect changes in substance abuse treatment system since the existing standards were implemented.

***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/october2007/proposed/11_DE_Reg_448_10-01-07.htm 6100
Licensing of Substance Abuse Treatment Facilities

An authenticated PDF version of the regulation is available at:

http://regulations.delaware.gov/register/october2007/proposed/11_DE_Reg_448_10-01-07.pdf 6100
Licensing of Substance Abuse Treatment Facilities

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314 and 2741 (18 Del.C. §§314 & 2741)
18 DE Admin. Code 606

PUBLIC NOTICE

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of intent to adopt proposed Department of Insurance Regulation 606 relating to the standardization of insurance identification cards and notification to the Division of Motor Vehicles of the termination of automobile insurance. The docket number for this proposed amendment is 526.

The purpose of the proposed regulation is to require standardized motor vehicle insurance identification cards, require notification to the Division of Motor Vehicles of the termination of motor vehicle insurance coverage and related changes in the existing Regulation. The text of the proposed amendment is reproduced in the October 2007 edition of the Delaware Register of Regulations. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:30 p.m., Monday November 5, 2007, and should be addressed to Mitchell G. Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover,

DE 19904, or sent by fax to 302.739.2021 or email to mitch.crane@state.de.us.

606 Proof of Automobile Insurance [Formerly Regulation 31]

1.0 Authority

1.1 This regulation is adopted under the authority of 18 ~~Del.C.~~ §§314 and ~~2304~~ 2741; 21 ~~Del.C.~~ §2118 as amended by S. B. 212, and adopted in cooperation with the Division of Motor Vehicles. This regulation is promulgated under the provisions of the Administrative Procedures Act, 29 ~~Del.C.~~, Ch.101.

2.0 Background Purpose

~~2.1 In support of the Delaware Motorist Protection Act (No-Fault Law) the Department of Insurance, in coordination with the Division of Motor Vehicles, has been authorized to adopt regulations to remove uninsured drivers from Delaware roads. This regulation is promulgated to carry out the Legislature's direction.~~

2.1 The purpose of this regulation is to

2.1.1 establish requirements to govern the form of the standardized insurance identification (ID) card for each insured vehicle pursuant to Delaware law;

2.1.2 establish the procedure by which automobile insurers shall notify the Division of Motor Vehicles when automobile insurance coverage is terminated or when insurers pay claims for uninsured motorists; and

2.1.3 provide procedures for the submission of insurance company data to the Division of Motor Vehicles for administrative efficiency.

3.0 Purpose Reserved

~~3.1 The purpose of this regulation is to define for insurers which write auto insurance policies in Delaware the requirements to issue a standardized insurance identification (ID) card for each insured vehicle, to establish the requirement for notification to the Division of Motor Vehicles under certain prescribed conditions when auto insurance coverage is terminated or when insurers pay claims for uninsured motorists and to provide for the submission of computer data to the Division of Motor Vehicles for administrative efficiency.~~

4.0 Insurance Identification Card

4.1 All companies licensed to write automobile insurance in the State of Delaware must furnish Insurance Identification Cards. At least one card must be issued for each vehicle for which liability insurance is in effect. ~~21 Del.C. §2118 (n) Delaware policyholders who are members of the military and are stationed outside of Delaware may be issued a card of that state provided their coverage meets Delaware requirements.~~

4.2 Insurers may use uniform ACORD format or may prepare the ACORD format as described below:

4.2.1 The size, weight, and color of the card shall be as below:

4.2.1.1 Size: Not smaller than 3-1/2" x 2-1/4" or larger than 3" x 5"

4.2.1.2 Weight: Optional

4.2.1.3 Color: White

4.2.1.4 ~~After September 1, 1993,~~ Each card shall be printed on paper stock which contains a clearly visible watermark, screened color, reflective ink, or laser-lock which prevents unauthorized or fraudulent reproduction. The watermark must be a company logo, ~~Delaware State Seal~~, or a generic insurance-specific logo which clearly identifies the watermark as issued by an insurance company. The ACORD "ghost script" anti-fraud paper with the ACORD watermark shall satisfy the watermark requirement.

4.2.2 The insurance card shall contain the following information:

4.2.2.1 The statement "The ID card must be carried in the vehicle at all times" shall be shown on the face of the card if space is available; otherwise this statement may appear on the back of the card.

4.2.2.2 Card shall be identified as "Identification Card."

4.2.2.3 ~~Company Name.~~ The insurer's insurance company name shall be shown printed on the face of the card. Group name may be shown instead if the card will identify the specific company involved. If the insurer is part of a group, the group name may be printed on the card so long as the card clearly identifies the name of the insurer issuing the insurance.

4.2.2.4 Insurer's five digit National Association of Insurance Commissioners ("NAIC") company identification number.

4.2.2.5 Named Insured. This name must be the named insured as carried in the insurer's records.

4.2.2.6 ~~Address.~~ Optional. The insurer may, at its option, include the address of the insured.

4.2.2.7 Policy Number.

4.2.2.8 Effective Date.

4.2.2.9 Expiration Date. The insurance identification card shall be valid for no more than the term stated in the policy but not to exceed 6 months. The expiration date for ID cards shall be no more than six months from the effective date, except that Notwithstanding the foregoing limitation, an insurance identification card may be issued for a period of 12 months if the premium has been written on an annual basis and the premium is being paid in installments of no more than for a 12 month period. ~~Any insured who has not been continuously insured by a licensed insurance company or a qualified self-insured during the six months preceding the effective date of an ID card under this regulation shall be issued an ID card with an expiration date no longer than the date for which premium has been paid or for six months whichever is shorter; provided, however, that any insured owning five or more vehicles may be issued an ID card which is effective for a six month period. The expiration date shall be stated by day, month and year or month, day and year, as long as in such manner that the exact date of expiration can be clearly identified. For purposes of this section, a policy renewed in the same company with a lapse in coverage of 30 days or less shall be considered to have been continuously insured by a licensed insurance company during the preceding six months.~~

4.2.2.10 Vehicle(s) Insured. Information shall be completed by indicating any of the following, depending on the type of policy or vehicle involved:

4.2.2.10.1 Year, Make, and Vehicle Identification Number ("VIN") of the vehicle(s) insured. Model of the vehicle may be shown as the Make. The Year, and Make of the vehicle may be abbreviated, but the complete VIN must be shown.

4.2.2.10.2 ~~"All Owned Vehicles" (five vehicles or more); or~~

4.2.2.10.3 ~~"Fleet" (five vehicles or more).~~

4.2.2.11 Items which are not obvious as to meaning shall be appropriately captioned.

4.2.3 The order of the information to be contained on the ID card may be rearranged at the option of the company, provided there is no drastic change and the rearrangement is necessary to accommodate a fixed printout system already established by a company.

4.2.4 At least one ID card shall be issued for each vehicle insured under the policy for which liability insurance is in effect.

4.2.5 If a vehicle is specifically described on the ID card, the company must issue a new card upon either a change of vehicle or the acquisition of any additional one. If a different policy number is assigned upon renewal, a new ID Card must also be issued. The expiration date requirement of section 4.2.2.9 above shall apply to an insured's replacement or additional insured vehicle in a manner similar to the previously owned or insured vehicle. The owner of the vehicle shall so inform the insurer of the additional or replacement vehicle. Only after the insurer is so informed, shall the insurer be obligated to issue an ~~insurance~~ ID card to the insured for the additional or replacement vehicle.

4.2.6 A letter or notification should accompany every ID card advising the insured that the card is required to register the vehicle, to obtain new tags, have his vehicle inspected, and to serve as evidence of insurance for the law enforcement authorities, e.g., in cases involving accidents, moving traffic violations or road spot checks. This notification may be printed on the back of the ID CARD card. ~~Delaware law requires the ID card to be in the vehicle when it is being operated.~~

4.2.7 The Division of Motor Vehicles will accept for registration purposes a copy of the application for insurance or the assignment notice or binder pending issuance of insurance or the assignment notice pending issuance of the ID card. However, such evidence of insurance will be accepted for registration purposes only if it has been dated prior to the date and no later than the day preceding the date of application for registration. For Assigned Risk coverage, insurers shall instruct their agents to place an insurer identification code of "99999" on applications to indicate placement with the Assigned Risk Plan.

PROPOSED REGULATIONS

4.2.8 Insurance ID cards shall be issued in conformance with section 4.2.2 above. The Insurance Commissioner may exercise his statutory authority to investigate and examine the compliance of insurance carriers with this regulation. The Insurance Commissioner may, after notice and hearing, impose and enter an order as follows:

4.2.8.1 For each occasion where the Insurance Commissioner determines that an ID card was issued inadvertently in non-compliance with section 4.2.2.9 above, the insurer shall be fined \$100. No fine, however, shall be imposed if the ID card was validly issued.

4.2.8.2 For each occasion where the Insurance Commissioner determines an ID card was issued with disregard of the requirements of Section ~~4-B-2(i)~~ 4.2.2.9 above, but with no pattern of conscious disregard, the insurer shall be fined \$1,000.

4.2.8.3 For each occasion where the Insurance Commissioner determines an ID card was issued as part of a pattern of conscious disregard of the requirements of section 4.2.2.9 above, the insurer shall be fined \$2,000.

4.2.9 "Date of issuance" of an insurance card shall be the effective date of that card.

Amended Section 4 became effective May 12, 1993.

5.0 Violations and Penalties

5.1 If an insurer shall violate the provisions of this regulation, the Commissioner shall give written notice to the insurer of the violation and said notice shall inform the insurer of the right to request a hearing pursuant to 18 Del.C. §323.

5.2 If an insurer shall be determined to be in violation by consent or after a hearing, the Commissioner may impose such penalties as permitted pursuant to the Insurance Code.

56.0 Notice of Cancellation or Termination

~~56.1 Whenever an assigned risk insurance policy is cancelled or terminated for any reason within two years of the original date of issuance, the company must file a Notice of Cancellation with the Division of Motor Vehicles. When a personal lines insurance policy is cancelled or terminated and that cancellation or termination is final under 18 Del.C. §3904 (a) (1) within 6 months of the original date of issuance, the insurer must file a Notice of Cancellation with the Division of Motor Vehicles.~~

~~56.2 The notice shall be filed with the Division of Motor Vehicles within 30 days following the effective date on which cancellation has become final. "Final" means the date after which coverage cannot be reinstated without lapse or the issuance of a new policy.~~

~~56.3 The notice shall be a two part form with the size, content, and format consistent with the attached forms and specifications as approved by the Division of Motor Vehicles (See Attachment A Specifications for Delaware Notice of Termination, Form FR 4.) The location of the window area for the insured's name and address is prescribed so the Division of Motor Vehicles can use the same window envelope for mailing notices from all companies. The Division of Motor Vehicles will use the same notice for forwarding mailing notices to the terminated policyholder. The notice shall be a form with the size, content, and format consistent with the attached forms or as otherwise approved by the Division of Motor Vehicles.~~

6.0 Compliance Date—Use of Old and New Forms

~~6.1 Companies may exhaust their present supply of ID cards by adding the NAIC Code Number. However, the new ID card which complies with the regulation shall be mailed to all Delaware policyholders by no later than October 1, 1990, regardless of whether a prior ID card indicating a later date of expiration has been issued and at least every six months thereafter. (New ID cards shall be issued for replacement vehicles.) In addition, use of the notice of cancellation shall begin no later than October 1, 1990.~~

~~6.2 Companies are responsible for providing all forms required under this Regulation. Amended Section 6 became effective January 1, 1991.~~

7.0 Furnishing Motor Vehicle Liability Insurance Information to the Division of Motor Vehicles

7.1 An insurer shall furnish within 30 days of a request by the Division of Motor Vehicles prescribed information on each motor vehicle insured in the State of Delaware. The information shall be provided ~~on computer tape(s)~~ as prescribed in Attachment B in the form and manner approved by the Division of Motor Vehicles.

~~7.2~~ Those insurers unable to provide the prescribed information by computer tape must obtain written approval from the Division of Motor Vehicles to provide the information in a prescribed paper listing. This approval must be obtained by January 1, 1991. (See Attachment C.)

8.0 Random Selection/Verification

~~8.1~~ Pursuant to ~~State Statute, 21 Del.C. §2118~~ the Division of Motor vehicles shall periodically randomly select on an annual basis at least 10 percent of the vehicle registrations and send them to the insurers of record for verification of liability insurance. ~~at intervals specified in section 8.4 below. This process shall be accomplished by computer tapes except where approved under section 7.2 of this regulation. The prescribed information and format of the data being furnished by the Division of Motor Vehicles to the insurers shall be as prescribed in Attachment D. Responses from the insurers shall be required only for those vehicles determined by the insurers to be not insured.~~

~~8.2~~ The prescribed information and format of data furnished to those nonautomated insurers as approved in section 7.2. shall be prescribed in Attachment E. Responses from the insurers who are non-automated shall be required only for those vehicles as determined by the insurer to be not insured.

~~8.3~~ All responses from the insurers shall be delivered to the Delaware Division of Motor Vehicles within 30 days of the mailing date of the verification request. All responses shall include a completed prescribed transmittal letter to indicate the completion of the specified verification project.

~~8.43~~ The random selection/verification process shall be done no more than twelve times and no less than four times annually.

9.0 Notification of Uninsured Drivers

~~9.1~~ Each insurer licensed to write automobile liability insurance in Delaware shall notify the Division of Motor Vehicles on a form approved by the Division of Motor Vehicles (~~Attachment F~~) the name of any person or persons involved in an accident or filing a claim who is alleged to have been operating a Delaware registered motor vehicle without the insurance required under Delaware law. The insurer shall provide the name, address, and description of the vehicle alleged to be uninsured.

10.0 Additional Required Proofs of Insurance

~~10.1~~ Each insurer licensed to write automobile liability insurance in this State shall furnish to their insureds verification of the insurance in force at the request of the Division of Motor Vehicles by use of a form approved by the Division of Motor Vehicles. The forms provided by the insurers to their agents or directly shall conform with the format of Form FR-19 (Attachment G). Forms shall be controlled, and numbered sequentially, by the insurer or its agents. To prevent copying, the sequential numbers must be in red ink and a minimum of seven digits. The words "Delaware Insurance Certificate" must be in dark blue ink. Each insurer is to utilize such measures as may be necessary to assure delivery of these forms to qualified insured drivers only.

11.0 Enforcement

~~11.1~~ Failure of an insurer to provide an Insurance Identification Card, or to provide notice of cancellation or termination as provided in section 5.0, shall be deemed a violation of the Commissioner's lawful order and may be found in violation of The Motor Vehicle Code, Title 21. In such instances the insurer shall, after hearing, be subjected to the penalties as prescribed in ~~18 Del.C. §334~~.

11.0 Severability

~~11.1~~ If any provision of this regulation or the application thereof to any person or situation is held invalid, such invalidity shall not affect any other provision or application of the regulation which can be given effect without the invalid provision or application and to this end the provisions of this regulation are declared to be severable.

12.0 Effective Date

~~13.1~~ Except for the conditions specified under section 6.0 this regulation* shall become effective January 1, 1991.

~~13.2~~ Delaware Insurance Department Bulletins 71-21, 71-22 and 74-8 are superseded and are rescinded effective January 1, 1991.

PROPOSED REGULATIONS

12.1 This Regulation shall become effective January 1, 2008.

*Regulation No. 31 was entitled "Insurance Identification Card" under an effective date of July 1, 1979; amended July 1, 1982; amended effective January 1, 1991 and again on May 12, 1993 under present title except for the conditions specified under § 6 and § 4 of the regulation and April 12, 1993.

Attachments A to G accompanying Regulation No. 31 follow:

ASSIGNED RISK
INSURANCE CERTIFICATION REQUEST
INITIAL TAP PROCESSING
LETTER OF TRANSMITTAL
RANDOM SELECTION TAPE PROCESSING
RANDOM SELECTION MANUAL PROCESSING
DELAWARE UNINSURED VEHICLE REPORT
DELAWARE INSURANCE CERTIFICATION

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314 and 3403 (18 **Del.C.** §§314 & 3403)
18 **DE Admin. Code** 702

PUBLIC NOTICE

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of a proposed change to Department of Insurance Regulation 702 relating to required disclosures for residential homeowners policies. The Commissioner proposes to amend Regulation 702. The docket number for this proposed amendment is 527.

The proposed changes to the regulation appear in section 2 relating to the purpose by requiring notice of deductibles required by the coverage, and by the addition of a section 5.1.5, describing the required disclosures of information relative to deductibles. The text of the proposed amendment is reproduced in the October 2007 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:30 p.m., Monday, November 5, 2007, and should be addressed to Mitch Crane, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or email to mitch.crane@state.de.us.

702 Required Disclosures For Residential Homeowners Polices

1.0 Authority

This regulation is adopted by the Commissioner pursuant to 18 **Del.C.** §§311(a) and 2304(1). It is promulgated in accordance with 29 **Del.C. Chapter** 101.

2.0 Purpose

The purpose of this regulation is to ensure that homeowners insurance policyholders are aware that they are not insured for certain types of risks or claims, to the extent that they do not have such coverage, and that they are aware of any deductibles required by their coverage. This regulation does not mandate any coverage by any carrier issuing homeowners insurance in the State of Delaware.

3.0 Applicability

This regulation shall apply to homeowners insurance policies. A homeowners insurance policy for purposes of this regulation means a property or casualty contract of insurance covering residential properties as defined by 18 Del.C. §4120.

4.0 Requirement of Disclosure

Insurers, upon initial delivery of a homeowners policy terms and declaration page, and not less than once annually after delivery, shall provide a form to the policyholder entitled "Important Information About Your Homeowners Insurance." The title of the document shall be in at least 30 point type.

5.0 Content of Disclosure

5.1 Each form presented pursuant to Section 4.0 of this Regulation shall make the following disclosures:

5.1.1 Disclosure that the policy does not cover damage caused by flooding, and sufficient information to allow the policyholder to contact the National Flood Insurance Program in order to purchase flood insurance if so desired. The following language shall be sufficient to ensure compliance with this subsection 5.1: "This policy does not cover damage to your property caused by flooding. Flood insurance is available for communities and property that participate in the National Flood Insurance Program ("NFIP"). Not all communities participate in the NFIP. Flood insurance may be available even if you do not live in a flood hazard area as defined by the NFIP. Please call the NFIP at 1-800-427-4661 to see if your community and property are eligible for coverage. If your community does not participate in the NFIP, you may contact your insurance agent or broker to see if there is other flood insurance coverage available to you." The disclosure may also inform the policyholder that the insurer offers flood insurance as a participant in the NFIP's "Write Your Own" program. The disclosure required by this subsection shall be entitled "Flood Insurance," and the subsection title shall be in at least 18 point type.

5.1.2 Disclosure that the policy may not cover the full cost of replacement without depreciation of the property, and sufficient information to allow the policyholder to purchase such coverage from the carrier if it is offered by the carrier. The following language shall be sufficient to ensure compliance with this subsection 5.2: "This policy may not cover the full cost of replacing your home if your home should be destroyed in an event otherwise covered by this policy. You may purchase additional coverage from us sufficient to cover the full cost of replacing your home, at an additional cost." The disclosure required by this subsection shall be entitled "Replacing Your Home," and the subsection title shall be in at least 18 point type.

5.1.3 Disclosure of any limitations in the policy regarding reimbursement for items stolen from the property, including but not limited to jewelry, furs, fine art, etc. and sufficient information to allow the policyholder to purchase insurance which would not contain such limitation if such coverage is offered by the insurer. The following language shall be sufficient to ensure compliance with this subsection 5.3: "This policy may not cover the value of all items stolen from your home. Please carefully review your policy to determine which items stolen from your home are not covered by this policy." The disclosure required by this subsection shall be entitled "Reimbursement for Stolen Items," and the subsection title shall be in at least 18 point type.

5.1.4 Disclosure of any formal practice followed by the insurer regarding non-renewal of the policy on the occurrence of certain factors or on the basis of claims asserted by the policyholder. The following language shall be sufficient to ensure compliance with this subsection 5.4: "We have a policy of declining to renew homeowners insurance policies under the following circumstances: (list the claim activities or occurrences that are likely to cause non-renewal of a policyholder's policy)." The disclosure required by this subsection shall be entitled "Non-Renewal of Your Policy," and the subsection title shall be in at least 18 point type.

5.1.5 Disclosure of information regarding any required deductibles, which disclosure shall include the following information:

5.1.5.1 A description of what a deductible is, including a statement that the policyholder is responsible for payment of the entire amount of the deductible:

5.1.5.2 A full description of the circumstances that will trigger applicability of each deductible:

5.1.5.3 A description and example(s) of how each deductible will be calculated:

5.1.5.4 The following statement: "Deductibles are not required by state law and are not uniform across insurance companies, and therefore the charge for each deductible may vary between insurers."

The disclosure required by this subsection shall be entitled "Policyholder Payment of Deductibles: and the title shall be in at least 18 point type.

5.2 Where a policy provides full coverage for any of the items required by sections 5.1.1 through 5.1.3, or where the policy does not require payment of a deductible, the insurer may indicate that the disclosure, as to each such item, is not applicable or "N/A."

6.0 Time for Compliance

Insurers required by Section 5.1.5 to provide disclosures regarding payment of insurance deductibles must submit the forms containing the language they propose for compliance with Section 5.1.5 to the Insurance Commissioner for approval by December 15, 2007.

67.0 Review and Approval of Forms

All forms required by this regulation shall be submitted to and approved by the Commissioner, or his representative, pursuant to 18 **Del.C.** §2712 *et seq.*

78.0 Severability

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

89.0 Causes of Action

This regulation shall not create, nor form the basis for, a cause of action for any person or entity, other than the Delaware Department of Insurance, against any insurer for violation of the provisions hereof.

910.0 Effective Date

The effective date of this regulation shall be January 1, 2006.

9 DE Reg. 438 (09/01/05)

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314 and 3403 (18 **Del.C.** §§314 & 3403)
18 **DE Admin. Code** 2201

PUBLIC NOTICE

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of proposed Department of Insurance Regulation 2201 relating to medical malpractice relief. The docket number for this proposed regulation is 528.

The purpose of this regulation is to provide procedures governing the Medical Malpractice Relief Initiative Pilot Program established by the Fiscal Year 2007 Appropriations Act. The text of the proposed regulation is reproduced in the October 2007 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:30 p.m., Monday, November 5, 2007, and should be addressed to Regulatory Specialist Mitch Crane, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or email to mitch.crane@state.de.us.

2201 Implementation of Medical Malpractice Relief Initiative Pilot Program

1.0 Purpose

The purpose of this section is to provide regulations governing the Medical Malpractice Relief Initiative Pilot Program established by the Fiscal Year 2007 Appropriations Act.

2.0 Authorization

These regulations are adopted in accordance with 18 **Del.C.** §311 and the Fiscal Year 2007 Appropriations Act.

3.0 Scope

These regulations shall govern the application of entities seeking state funding pursuant to the Medical Malpractice Relief Initiative Pilot Program for the purpose of establishing a Delaware-domiciled risk retention and/or captive entity.

4.0 Approval

4.1 No entity shall receive funding pursuant to the Medical Malpractice Relief Initiative Pilot Program unless such entity receives the recommendation of the Delaware Insurance Commissioner and the approval of the Controller General, the Co-Chairs of the Joint Finance Committee, and Director of the Office of Management and Budget.

4.2 An entity seeking low or no interest loans pursuant to the Medical Malpractice Relief Initiative Pilot Program for the purpose of fostering the establishment of risk reduction group(s) and/or captive insurance entities shall make application to the Delaware Department of Insurance on forms provided by the Department.

4.3 The Delaware Insurance Commissioner shall review any applications submitted pursuant to these provisions and shall determine whether to recommend such applicant for receipt of Medical Malpractice Relief Initiative Pilot Program funding. The Insurance Commissioner may require any documents reasonably necessary to verify the information contained in an application.

4.4 If the Insurance Commissioner decides to recommend an applicant for funding, the Commissioner shall make a funding recommendation for such applicant to the Controller General, the Co-Chairs of the Joint Finance Committee, and the Director of the Office of Management and Budget for their final review and approval.

4.5 If the Commissioner recommends funding for the application, the Commissioner's recommendation shall include the amount and type of funding, when said funds must be repaid to the State, and any conditions to be placed on the funding award.

5.0 Requirements and Considerations for Funding Awards

5.1 No applicant for funding under the Medical Malpractice Relief Initiative Pilot Program shall be recommended for funding unless the Insurance Commissioner finds that the applicant:

5.1.1 Is organized for the purpose of increasing the availability of medical malpractice insurance and reducing the costs of medical malpractice insurance through enhanced risk management and lower administrative costs; and

5.1.2 Is a Delaware-domiciled captive insurance company licensed pursuant to 18 **Del.C.** §6903 or a Delaware-domiciled risk retention group chartered pursuant to 18 **Del.C.** §8003.

5.2 In reviewing such applications and determining whether to recommend an applicant for funding, the Insurance Commissioner shall consider all factors the Commissioner considers relevant to the success of the applicant and the protection of Delaware consumers, including but not limited to the following criteria:

5.2.1 The likelihood that receiving the funding will assist the applicant in increasing the availability of and reducing the cost of medical malpractice insurance and of increasing the predictability of such costs;

5.2.2 The need of the medical professionals who are members of the applicant for an alternative to the traditional medical malpractice insurance market;

5.2.3 The applicant's structure and business plan;

5.2.4 The number of medical professionals who are members of the applicant; and

5.2.5 The applicant's provisions for and emphasis on risk management.

PROPOSED REGULATIONS

6.0 **Funding**

Funding pursuant to this program shall be limited to low or non-interest loans, via a surplus note, letter of credit, or otherwise. Funding awards must be conditioned upon binding agreements requiring that such funds be repaid to the State.

7.0 **Length of Pilot Program**

The pilot portion of any program funded under this provision must be completed within 12 months of approval of these regulations.

DEPARTMENT OF LABOR

DIVISION OF INDUSTRIAL AFFAIRS

Health Care Advisory Panel

Statutory Authority: 19 Delaware Code, Section 202(a) (19 Del.C. §202(a))

PUBLIC NOTICE

The Secretary of Labor in accordance with 19 Del.C. §§2322B and E has proposed rules and regulations relating to workers' compensation. These proposals set forth the Fee Schedule Amounts for professional services and hospital fees, and the use of consistent forms for the health care providers.

A public hearing will be held before the Health Care Advisory Panel ("Panel") at 4:00 p.m. on November 5, 2007, in the Department of Labor Fox Valley Annex, 4425 N. Market Street, Wilmington, Delaware 19802 where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules may obtain a copy from John Kirk, Administrator, Workers' Compensation, Division of Industrial Affairs, Department of Labor, P.O. Box 9828, 4425 N. Market Street, Wilmington, Delaware 19809-0828. Persons wishing to submit written comments may forward these to the Panel at the above address. The final date to receive written comments will be at the public hearing.

The Panel will consider making a recommendation to the Secretary at the regularly scheduled meeting following the public hearing.

Workers Compensation Regulations

1.0 **Definitions**

As used in this regulation:

"Department" means the Department of Labor.

"Fee Schedule Amounts" mean the fees as set forth by the Health Care Payment System.

"Health Care Advisory Panel" or "HCAP" means the seventeen (17) members appointed by the Governor by and with the consent of the Senate to carry out the provisions of Chapter 23, Title 19, Delaware Code.

"Health Care Payment System" means the comprehensive fee schedule promulgated by the Health Care Advisory Panel to establish medical payments for both professional and facility fees generated on workers' compensation claims.

"HCAP Forms" means the standard forms for the provision of health care services set forth in Section 2322E, Chapter 23, Title 19, Delaware Code.

2.0 **Purpose and Scope**

2.1 Section 2322B, Chapter 23, Title 19, Delaware Code authorizes and directs the Department within 180 days from the first meeting of the Health Care Advisory Panel to adopt a Health Care Payment System by regulation after promulgation by the Health Care Advisory Panel.

2.2 Section 2322B(c), Chapter 23, Title 19, Delaware Code establishes the formula based upon historical data required to determine the Fee Schedule Amounts for professional services.

2.3 Section 2322B(e), Chapter 23, Title 19, Delaware Code establishes the amount of reimbursement for

a procedure, treatment or service to be eighty-five (85%) of the actual charge as of November 1, 2008, if a specific fee is not set forth in the Fee Schedule Amounts.

2.4 Section 2322B (g), Chapter 23, Title 19, Delaware Code establishes separate service categories.

2.5 Section 2322B (h), Chapter 23, Title 19, Delaware Code establishes the Hospital fees developed for the Health Care Payment System.

2.6 Section 2322B (i), Chapter 23, Title 19, Delaware Code establishes the Ambulatory Surgical Treatment Center fees developed for the Health Care Payment System.

2.7 The fees to be established in Sections 2322B (k)(l) and (m) shall be promulgated and recommended by the Health Care Advisory Panel to the Department before the effective date of the regulation.

2.8 Section 2322E, Chapter 23, Section 19, Delaware Code, authorizes and directs the Health Care Advisory Panel to approve, propose and recommend to the Department the adoption by regulation of consistent forms for the health care providers ("HCAP Forms").

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Chapters 60 and 63 (7 Del.C. Chs. 60 and 63)
7 DE Admin. Code 1301

REGISTER NOTICE

SAN # 2004-05

1301 Regulations Governing Solid Waste

1. TITLE OF THE REGULATIONS:

Delaware Regulations Governing Solid Waste (DRGSW)

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

There are five amendments to update and enhance various sections of the solid waste regulations. The first amendment regarding Permits has three changes to clarify language, define requirements for permit transfers, and to make environmental assessment application requirements consistent. The second and third amendments regarding Sanitary and Industrial Landfills clarifies a reference to an Engineering Report. The fourth amendment regarding to Environmental Covenants updates language to comply with changes to the Delaware Code. The fifth amendment regarding Infectious Waste has eighteen changes that clarify and reorganize the entire Section. These five amendments will help improve understanding and implementation of the solid waste requirements.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

NONE

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

Amendments to DRGSW are proposed and amended in accordance with the provisions found at 7 Delaware Code, Chapter 60.

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

NONE

6. NOTICE OF PUBLIC COMMENT:

The public hearing on the proposed amendments to DRGSW will be held on Monday October 22, 2007 starting at 6:30 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

PROPOSED REGULATIONS

7. PREPARED BY:

Bill Davis, Environmental Scientist, Solid and Hazardous Waste Management - (302) 739-9403

***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/october2007/proposed/11 DE Reg 459 10-01-07.htm](http://regulations.delaware.gov/register/october2007/proposed/11_DE_Reg_459_10-01-07.htm) 1301
[Regulations Governing Solid Waste](#)

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Chapters 60 and 63 (7 **Del.C.** Chs. 60 and 63)
7 **DE Admin. Code** 1302

REGISTER NOTICE

SAN # 2007-14

1302 Regulations Governing Hazardous Waste

1. TITLE OF THE REGULATIONS:

Delaware Regulations Governing Hazardous Waste (DRGHW)

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

In order for the State of Delaware to maintain authorization from the U. S. Environmental Protection Agency (EPA) to administer its own hazardous waste management program, the State must maintain a program that is equivalent to and no less stringent than the Federal program. To accomplish this, the State regularly amends the DRGHW by adopting amendments previously promulgated by EPA. In addition, the State is proposing to make miscellaneous changes to the DRGHW that correct existing errors in the hazardous waste regulations, add clarification or enhance the current hazardous waste regulations.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

NONE

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

Amendments to DRGHW are proposed and amended in accordance with the provisions found at 7 Delaware Code, Chapters 60 and 63.

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

NONE

6. NOTICE OF PUBLIC COMMENT:

The public hearing on the proposed amendments to DRGHW will be held on Monday October 22, 2007 starting at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

7. PREPARED BY:

Bill Davis, Environmental Scientist, Solid and Hazardous Waste Management - (302) 739-9403

***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/october2007/proposed/11 DE Reg 460 10-01-07.htm](http://regulations.delaware.gov/register/october2007/proposed/11_DE_Reg_460_10-01-07.htm) 1302
[Regulations Governing Hazardous Waste](#)

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C., Ch. 60)
7 DE Admin. Code 1351

REGISTER NOTICE SAN #2005-06

1351 Underground Storage Tank Systems

1. Title of the Regulations:

Delaware Regulations Governing Underground Storage Tank Systems

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

The Delaware Regulations Governing Underground Storage Tank Systems were first effective July 11, 1986. The most recent revision date was November 23, 1994. The DNREC is proposing changes to the UST Regulations to incorporate new technological advances in UST system designs and operation to ensure the greatest protection of human health, safety and the environment in Delaware.

The changes to the Delaware UST Regulations are proposed for the following reasons:

- Outdated technology is being phased out of the Regulations to provide better protection of human health, safety and the environment.
- The federal Energy Policy Act (EPACT) of 2005 placed several requirements on state UST programs that had to be incorporated into the UST Regulations.
- New fuels, such as E10 and E85, made new requirements necessary.

3. Possible Terms of the Agency Action:

None

4. Statutory Basis or Legal Authority to Act:

7 Del.C., Chapter 74

5. Other Regulations That May Be Affected by the Proposal:

N/A

6. Notice of Public Comment:

The DNREC will conduct a Public Hearing on Tuesday, October 30, 2007. The hearing is scheduled to begin at 6:00pm in the conference room at the DNREC office located at 391 Lukens Drive, New Castle, DE. The public and interested parties are invited to attend the hearing and to make comments orally or in writing at the hearing. Written comments not presented at the hearing should be addressed to Ms. Jill Williams Hall, DNREC/TMB, 391 Lukens Drive, New Castle, DE 19720 and must be received by the Department not later than 4:00pm on October 30, 2007 unless a longer time is specified at the hearing.

Copies of the proposed regulations are available online at <http://www.dnrec.delaware.gov/info/Rules.htm>

Copies may be viewed during regular business hours at the following DNREC offices:

DNREC, 391 Lukens Drive, New Castle, DE

DNREC, R&R Building, 89 Kings Highway, Dover, DE

DNREC, Route 113, Sussex Suites, Unit # 6, Georgetown, DE

7. Prepared By:

Jill Williams Hall, Planner IV

395-2500

9/4/07

Jill.Hall@state.de.us

Summary of the Most Significant Changes to the UST Regulations

PART A: General Requirements for Underground Storage Tank Systems

- Definitions: Obsolete terms deleted; some new terms added

PROPOSED REGULATIONS

- All Referenced Standards updated to the most recent edition.
- After a transfer of ownership of an UST system the UST cannot be operated for more than 72 hours without the Department having received required notification documents.
- The Department created a delivery prohibition program as required by EPACT. EPACT mandates that the Department affix a tag prohibiting delivery to any UST System that does not have certain required equipment.

PART B: Requirements for Installation, Operation and Maintenance of UST Systems Storing Regulated Substance excluding Heating Fuel or Hazardous Substance

- Secondary containment of the entire UST System, including double wall tanks and piping, containment sumps at tank tops, and dispenser containment are required at all new installations. Tanks and Piping must have interstitial monitoring equipment that must be checked for evidence of a release every 30 days.
- All components of new UST System must be UL or equivalent third party certified and must be maintained such that manufacturer's warranties are not voided.
- Outdated release detection methods such as observation tubes, monitor wells and vapor detection tubes will be terminated within five years after the regulations are promulgated.
- Impressed current cathodic protection systems are not allowed on new installations. Repair of existing impressed current systems must be approved by the Department.
- Equipment utilized for release detection must pass annual testing and inspection requirements. Previously there was no such maintenance requirement.
- USTs containing ethanol blends must check for water in the tank everyday. Previously there was no requirement for ethanol blends.
- The Department can require a tank tightness test if inventory and release detection records are not maintained.
- Spill containment devices on new installations must have a 15 gallon capacity.
- Spill containment devices must be tightness tested annually.
- Sump and interstitial sensors on new installations must be tested annually; sensors on existing systems that are utilized for release detection must be tested annually.
- Containment sumps on new installations must be tightness tested every 3 years; containment sumps on existing systems that are utilized as part of the release detection system must be tested every 3 years.
- Operators must conduct a visual inspection of the entire facility at least once every 30 days including lifting all sump covers, removing dispenser covers and lifting all manhole covers to check for evidence of equipment deterioration, malfunction or a release. Records must be kept of inspections and repairs.
- Specific requirements for used oil and emergency generator tanks have been added.
 - Emergency generator tanks must implement a method of release detection by January 1, 2009. These tanks formerly had no requirement for any release detection.
 - Used oil USTs must utilize release detection but are allowed to implement manual tank gauging as a method of release detection.
- Double elbow swing joints must be replaced with flexible connectors by January 1, 2011.

PART C: Requirements for Installation, Operation and Maintenance of UST Systems Storing Heating Fuel

- Secondary containment of the entire UST System, including double wall tanks and piping, containment sumps at tank tops, and dispenser containment are required at all new installations. Tanks and Piping must have interstitial monitoring equipment that must be checked for evidence of a release every 30 days.
- All components of new UST System must be UL or equivalent third party certified and must be maintained such that manufacturer's warranties are not voided.
- Outdated release detection methods such as observation tubes, monitor wells and vapor detection tubes will be terminated within five years after the regulations are promulgated. Tank tightness testing can be utilized for the life of the system as a release detection method.

- Impressed current cathodic protection systems are not allowed on new installations. Repair of existing impressed current systems must be approved by the Department.
- Equipment utilized for release detection must pass annual testing and inspection requirements. Previously there was no such maintenance requirement.
- The Department can require a tank tightness test if inventory and release detection records are not maintained.
- Spill containment devices on new installations must have a 15 gallon capacity.
- Spill containment devices must be tightness tested annually.
- Sump and interstitial sensors on new installations must be tested annually; sensors on existing systems that are utilized for release detection must be tested annually.
- Containment sumps on new installations must be tightness tested every 3 years; containment sumps on existing systems that are utilized as part of the release detection system must be tested every 3 years.
- Operators must conduct a visual inspection of the entire facility at least once every 30 days including lifting all sump covers, removing dispenser covers and lifting all manhole covers to check for evidence of equipment deterioration, malfunction or a release. Records must be kept of inspections and repairs.

PART D: Requirements for Installation, Operation and Maintenance of UST Systems Storing Hazardous Substance

- Secondary containment of the entire UST System, including double wall tanks and piping, containment sumps at tank tops, and dispenser containment are required at all new installations. Tanks and Piping must have interstitial monitoring equipment that must be checked for evidence of a release every 30 days.
- All components of new UST System must be UL or equivalent third party certified and must be maintained such that manufacturer's warranties are not voided.
- Impressed current cathodic protection systems are not allowed on new installations. Repair of existing impressed current systems must be approved by the Department.
- Equipment utilized for release detection must pass annual testing and inspection requirements. Previously there was no such maintenance requirement.
- The Department can require a tank tightness test if inventory and release detection records are not maintained.
- Spill containment devices on new installations must have a 15 gallon capacity.
- Spill containment devices must be tightness tested annually.
- Sump and interstitial sensors on new installations must be tested annually; sensors on existing systems that are utilized for release detection must be tested annually.
- Containment sumps on new installations must be tightness tested every 3 years; containment sumps on existing systems that are utilized as part of the release detection system must be tested every 3 years.
- Operators must conduct a visual inspection of the entire facility at least once every 30 days including lifting all sump covers, removing dispenser covers and lifting all manhole covers to check for evidence of equipment deterioration, malfunction or a release. Records must be kept of inspections and repairs.
- Hazardous Substance USTs must show proof of financial responsibility by December 31, 2008.

PART E: Requirements for Reporting, Release Investigation, Remedial Action and Site Closure for UST Systems

- Light Non-Aqueous Phase Liquid (LNAPL) is now defined in Part A - distinguishes between Mobile LNAPL, "Free LNAPL" and "Residual LNAPL".
- Requires development of LNAPL Conceptual Site Model (LCSM) when LNAPL exists.
- Requirement limiting passive remedial action (RA) to 2 years removed and replaced with the requirement for an annual RA progress review and report to evaluate RA effectiveness (whether passive or active RA is implemented).
- Signature of DE PG or DE PE is required on hydrogeologic investigation reports and remedial

PROPOSED REGULATIONS

action workplans.on site closure report.

- Closure approval applies to site and surrounding conditions at the time the closure request was made. If risks posed by the site change in the future additional RA may be necessary.
- An approved contaminated material management plan is necessary prior to disturbance of residually contaminated soils or groundwater after a site has been closed.

PART F: Financial Responsibility Requirements for UST Systems

- Hazardous Substance UST Systems must show proof of FR by Dec. 31, 2008

PART G: Requirements for Contractor Certification

- Delete Interior Lining certification category
- Certified contractors must show provide proof of Contractor's Pollution Liability Insurance in the amount of \$250,000
- Adds standards of performance for Companies and Supervisors
- Certified contractor must report contamination encountered while performing UST activities

PART H: Regulations Governing Reimbursement for Petroleum Containment Cleanup

No changes

***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/october2007/proposed/11_DE_Reg_461_10-01-07.htm 1351
Underground Storage Tank Systems

DEPARTMENT OF SAFETY AND HOMELAND SECURITY

BOARD OF EXAMINERS OF PRIVATE INVESTIGATORS AND PRIVATE SECURITY AGENCIES

Statutory Authority: 24 Delaware Code, Section 1304(b)(3) (24 **Del.C.** §1304(b)(3))
24 **DE Admin. Code** 1300

PUBLIC NOTICE

Notice is hereby given that the Board of Examiners of Private Investigators and Private Security Agencies, in accordance with Del. Code Title 24 Chapter 13 proposes to adopt Rule 13.0 – Training Requirements. This adoption will require mandatory training and re-training of all security guards. If you wish to view the complete Rule, contact Ms. Peggy Anderson at (302) 739-5991. Any persons wishing to present views may submit them in writing, by October 31, 2007, to Delaware State Police, Detective Licensing, P.O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Thursday, October 25, 2007, 10:00 am, at the Delaware State Police Headquarters Conference Room, 1441 North DuPont Highway in Dover, Delaware.

1300 Board of Examiners of Private Investigators and Private Security Agencies

(Break in Continuity of Sections)

13.0 Training Requirements

13.1 Each person licensed as a security guard under Title 24 Chapter 13 shall undertake a total of sixteen (16) hours of training through a program approved by the Board, and any such additional training as the Board deems appropriate.

13.2 The required training shall include instruction in legal requirements and limitations, use of force, ethics, emergency services, diversity, communication, asset protection, and terrorism. The Board, in its discretion, may require such additional topics as it finds necessary.

13.3 The Detective Licensing Section shall have the authority to require regular reports on training from

licensees and employers, and shall report to the Board on compliance with this regulation.

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

<http://regulations.delaware.gov/register/october2007/proposed/11 DE Reg 464 10-01-07.htm>

DEPARTMENT OF STATE PUBLIC SERVICE COMMISSION

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

PUBLIC NOTICE

IN THE MATTER OF THE ADOPTION OF RULES
CONCERNING THE IMPLEMENTATION OF
72 DEL. LAWS CH. 402 (2000) GRANTING
THE COMMISSION THE JURISDICTION TO
GRANT AND REVOKE THE CERTIFICATES OF PUBLIC
CONVENIENCE AND NECESSITY FOR PUBLIC
UTILITY WATER UTILITIES (OPENED NOVEMBER 21,
2000; REOPENED MARCH 20, 2007)

PSC REGULATION DOCKET NO. 51

ORDER NO. 7254

This 4th day of September, 2007, the Commission determines and Orders the following:

1. In 2000, this Commission regained the authority to issue Certificates of Public Convenience and Necessity ("CPCN") to authorize entities to enter the water utility business or to allow existing water utilities to expand their operations and facilities into new service territories. See 26 Del. C. § 203C (2006 Supp.) ("§ 203C"). The Commission thereafter promulgated rules to chart how the Commission would navigate this water utility CPCN regime. See "Regulations Governing Water Utilities Including the Public Service Commission's Jurisdiction to Grant and Revoke Certificates of Public Convenience and Necessity" (adopted by PSC Order No. 5730 (June 5, 2001) ("2001 Rules")).¹

2. Earlier this year, the Commission published notice that it proposed to repeal the 2001 rules in favor of a new set of rules mapping the regime surrounding CPCNs for water utilities. See PSC Order No. 7142 (Mar. 20, 2007) (proposing new rules to supercede 2001 Rules); 10 DE Reg. 1563-1580 (April 1, 2007) (formally noticing repeal and proposed new CPCN rules). However, during the course of the proceedings before the Hearing Examiner reviewing these new rules, the Governor and General Assembly amended the provisions of § 203C. See 76 Del. Laws ch. 55 (June 28, 2007) ("chap. 55"). In the main, the amendments reworked the listed criteria for awarding a CPCN under § 203C. In particular, the amendment now obligates a utility to obtain petitions asking for water services executed by all of the landowners of each parcel to be included in a new service territory.² An

1. Published in 5 DE Reg. 212 (July 1, 2001).

2. See 26 Del. C. § 203C(e)(1)b., as amended by chap. 55 § 1. Previously, a water utility could obtain a CPCN by presenting petitions signed by a majority of all of the landowners in the proposed service area. The amendment requires petitions for each parcel, executed by all the owners of record of the parcel. At the same time, the amendments did not disturb a utility's ability to receive a CPCN by proffering its agreement with the developer of a new development. The subdivision must have been previously approved by the relevant governmental authority. See 26 Del. C. § 203C(e)(1)a., as carried forward by chap. 55 § 1.

exception exists for “existing” subdivisions or developments, and “unincorporated communities.” In such situations, the 2007 amendments permit a CPCN to be granted based on petitions for service signed by the landowners of a majority of the parcels within the development or community.³ In addition, the amendments also direct that, in the case of a CPCN premised on a resolution or ordinance enacted by a county or municipality, the service territory so authorized cannot extend beyond the political boundaries of the county or municipality entering the ordinance.⁴ Finally, in addition to making some other “technical” changes, the amendments require a municipal water authority to obtain the endorsement of the municipalities that formed it prior to seeking a CPCN to provide its water services beyond those municipalities’ borders.⁵

3. In light of the statutory amendments, the Hearing Examiner - at Staff’s suggestion – suspended further proceedings on the previously proposed new rules. The Commission now withdraws the proposed rule changes proposed by Order No. 7142. The recent legislative changes render some of those earlier provisions in need of further changes.

4. Instead, the Commission here proposes to adopt another set of new regulations related to CPCNs for water utilities. See Exhibit B. These new rules not only incorporate the statutory changes made in June, 2007, but also carry forward some of the same provisions, related to the administration of CPCNs, that were included in the earlier March, 2007 proposed rules.

5. The Commission proposes to repeal the 2001 Rules and adopt the revised set of rules pursuant to the authority granted by 26 Del.C. §203C(c) and 209(a). The revised rules entitled “Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities,” will supercede (and hence repeal) the 2001 Rules. They will, as did the 2001 Rules, apply to Commission-jurisdictional water utilities. Moreover, they will also govern in those instances when a governmental, municipal, or municipal authority water utility must also seek a CPCN from the Commission in order to expand its operations and facilities.⁶

6. In many aspects, the new rules track the form and content of the 2001 Rules. However, terms and provisions have now been added to conform to the new statutory criteria, and limitations, enacted in the 2007 amendments to § 203C. See proposed rules §§ 2.1 (definitions of “existing development,” “existing subdivision,” and “unincorporated community);” 3.9-3.11 (new criteria for CPCN); 3.12 (criteria for CPCN to municipal authority for extra-municipal service area). In addition, this new set of proposed rules includes provisions that respond to various administrative and practical issues that Staff has identified as surfacing since the adoption of the 2001 rules. For example, the new rules provide forms of notice to be sent to landowners to explain the application and the landowners’ statutory right to “opt-out.” See proposed rules §§ 10.2, 10.3.⁷ In a similar vein, the new rules impose particular mailing requirements related to the delivery of notices to landowners. Proposed rules §§ 9.2-9.6. These mailing directives seek to ensure that the owners have actual notice that their property will be affected by the CPCN application.⁸ The new rules also impose an obligation on water utilities to retain, for five years, materials related to each application for a Certificate. This retention obligation will help to make sure that the appropriate documents are available if later disputes might arise about a particular Certificate. Proposed rules § 11.6.

3. See 26 Del. C. § 203C(e)(1)c., as amended by chap. 55 § 1.

4. See 26 Del. C. § 203C(e)(1)d., as amended by chap. 55 § 1.

5. See 26 Del. C. § 203C(n), as added by chap. 55 § 6. See 16 Del. C. ch. 14 (describing formation and powers of municipal water and sewer authorities).

6. See 26 Del. C. § 203C(a) (2006 Supp.) (municipalities, governmental agencies, water authorities, and water districts are within the scope of water utilities required to obtain Certificates except the CPCN regime is not applicable where the municipal utility expands to serve within an area recently annexed by a municipality).

7. The 2007 statutory amendments limit the opt-out option to CPCN applications premised on landowner petitions under § 203C(e)(1)(b). & § 203C(e)(1)c. Thus, in the case of a CPCN premised on an agreement with a developer or an ordinance enacted by a county or municipality, the affected landowner is entitled to notice of the CPCN application but cannot exercise any opt-out option. See 26 Del. C. § 203C(j), as amended by chap. 55 § 2.

7. In several instances, the proposed new rules go beyond administrative detail. First, the proposed new rules require the applying non-governmental water utility to certify that it will actually provide water services to, or have water system facilities available, the proposed service area within three years. Proposed rules § 3.13. And if such certification fails to come true, the new rules then provide a mechanism for the Commission to determine whether the utility should be able to retain the CPCN in order to provide water services to the area. Proposed rules §§ 12.1-12.6. Staff has proposed these provisions. According to Staff, this process for certifying to actual service dovetails with the heart of the CPCN process: to authorize a water utility to “extend[] or expand[] . . . its business or operations.” See 26 Del. C. § 203C(a) (2006 Supp.) (emphasis added). In addition, as Staff sees it, the goal of the certification - to ensure that services follow the CPCN - is consistent with the text of § 203C, which conditions the grant of a CPCN for an area on either the developer signing a “service agreement,” the landowners “requesting water service,” or a governmental body “request[ing], direct[ing], or authoriz[ing] the applicant to provide water utility services.” (all emphasis added.) In each of the instances, the statutory text speaks of the Certificate being a vehicle for meeting an articulated desire to have water “service” in the service area, not a device for the utility to accumulate parcels in order to form a large, exclusive “franchise” area.⁹

8. Second, and also reflective of the statutory focus on “service” territory, the proposed new rules require that a service territory sought on the basis of 26 Del. C. § 203C(e)(1)b. be comprised of either a single parcel or multiple contiguous parcels to be served by a common system or main extension. Proposed rules § 7.4. The Commission believes that this linkage of parcels within a service territory will foster efficient service territories.

9. The Commission now proposes to adopt the new water utility CPCN Rules attached as Exhibit “B.” It solicits comments on any of the proposed provisions, including those adding bureaucratic details or the new regulatory section related to the certification of “actual service” to the service territory. While not limiting the scope of any comments, the Commission also seeks input from water utilities and others on the following issues:

(a) Is the three-year period for providing service in a new service area reasonable in light of water utilities’ actual historical experiences?;

(b) Should the new rules more explicitly define “existing development”, “existing subdivision,” and “unincorporated community;” and

(c) Do the provisions of 26 Del. C. § 203C(e)(1)c. preclude a water utility from utilizing the provisions of 26 Del. C. § 203C(e)(1)b. to obtain a CPCN to serve one or more parcels in an existing development, existing subdivision, or an unincorporated community?

If a water utility believes the three-year period proposed for in the actual service certification provision (proposed rules §§ 3.13 & 12.0) is unreasonable, the utility should provide an appropriate time frame to be utilized in that process. It should provide supporting data from its own experience to support its proffered time frame.

Now, therefore, **IT IS ORDERED:**

1. That, for the reasons set forth in the body of this Order, and pursuant to 29 Del. C. § 10118(a), the Commission hereby withdraws the notice of repeal and rule revisions proposed by PSC Order No. 7142 (Mar. 20, 2007), and published as proposed regulations at 10 Delaware Register of Regulations 1563-1580 (April 1, 2007). The Commission requests that the Registrar of Regulations publish notice of such withdrawal in the Delaware Register of Regulations.

2. That for the reasons set forth in the body of this Order, and pursuant to 26 Del. C. §§ 209(a)(1) & 203C(c) and 29 Del. C. § 10113(a), the Commission now again proposes to repeal its “Regulations Governing Water Utilities Including the Public Service Commission’s Jurisdiction to Grant and Revoke Certificates of Public Convenience and Necessity (adopted by PSC Order No. 5730 (June 5, 2001)), and to adopt as a replacement for

8. The statutory provisions of 26 Del. C. § 203C(d)(1) & (e)(1) (2006 Supp.) call for delivery of notices to landowners by certified mail (or its equivalent). However, consistent with the “due process” principles articulated in Jones vs. Flowers, 547 U.S. 220 (2006), the new rules call for a follow-up mailing of notices by simple first-class mail to the landowner’s best known address in instances where the earlier certified mail attempt has been returned as unsuccessful.

9. The Commission received adverse comment about these provisions in response to similar provisions in the rules proposed by Order No. 7142. The Commission will incorporate the written comments received in response to the earlier proposed rule revisions into “the record” for this new set of proposed rules.

PROPOSED REGULATIONS

such earlier rules the "Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities," attached to this Order as Exhibit "B."

3. That, pursuant to 29 Del. C. §§ 1133 and 10115(a), the Secretary shall transmit to the Registrar of Regulations for publication in the Delaware Register of Regulations a copy of this Order; a copy of the current "Regulations Governing Water Utilities Including the Public Service Commission's Jurisdiction to Grant and Revoke Certificates of Public Convenience and Necessity" (Exhibit "A") (now proposed to be repealed); and a copy of the now proposed "Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities" (Exhibit "B").

4. That, in addition, the Secretary shall transmit the Notice of Proposed Rule-Making, attached as Exhibit "C," to the Registrar of Regulations for publication in the Delaware Register of Regulations. In addition, the Secretary shall cause such Notice of Proposed Rule-Making to be published in The News Journal and the Delaware State News newspapers on October 1, 2007. The Secretary shall include proof of such publication in the docket file before the public hearing in this matter. Further, the Secretary shall serve (by regular mail or electronic e-mail) a copy of such Notice on: (a) the Division of the Public Advocate; (b) the Department of Natural Resources and Environmental Control; (c) the State Fire Marshal; (d) the Division of Public Health; (e) the State Planning Office; and (f) each person or entity who has made a timely request for advance notice of regulation-making proceedings; (g) each water utility currently subject to the regulatory jurisdiction of the Commission; and (h) each municipal water utility, governmental water district, or municipal water and sewer authority that has previously applied for a Certificate of Public Convenience and Necessity from this Commission.

5. That, pursuant to 29 Del. C. §§ 10115(a) and 10116, persons or entities may file written comments, suggestions, compilations of data, briefs, or other written materials, on or before November 1, 2007. The Commission will conduct a public hearing on the proposed new regulations on November 19, 2007 beginning at 10:00 AM. The comments, documents, briefs, and data received in response to the revised rules proposed by PSC Order No. 7142 (Mar. 20, 2007) (and now withdrawn) shall be incorporated into the record in this proceeding and shall be considered by the Hearing Examiner and Commission.

6. That, pursuant to 26 Del. C. § 502 and 29 Del. C. § 10116, Hearing Examiner Ruth Ann Price is designated to supervise the comment period and to conduct the public hearing. Thereafter, Hearing Examiner Price shall organize, classify, and summarize the materials and comments and file a Report with her recommendations concerning the adoption of the new regulations. Hearing Examiner Price is specifically designated, under 26 Del. C. § 102A, the power to determine the content and manner of any further public notice that might be necessary or appropriate. Hearing Examiner Price may also conduct further proceedings, including additional hearings, as may be necessary or appropriate.

7. That Francis J. Murphy, Esquire, is designated Staff Counsel for this matter.

8. That, pursuant to 26 Del. C. § 114, all jurisdictional water utilities are notified that they may be charged the costs of this proceeding.

9. 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, Chairman
 Joann T. Conaway, Commissioner
 Jaymes B. Lester, Commissioner
 Dallas Winslow, Commissioner
 Jeffrey J. Clark, Commissioner

ATTEST:

Karen J. Nickerson, Secretary

NOTICE OF PROPOSED RULE-MAKING: AMENDMENT OF RULES FOR GRANTING AND SUPERVISING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR WATER UTILITIES

TO: ALL WATER UTILITIES, CONSUMERS, AND OTHER INTERESTED PERSONS

Under 26 Del.C. §203C, the Public Service Commission ("PSC") holds the authority to grant a Certificate

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

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

Pursuant to 26 **Del.C.** §§203C(c) and 209(a), the PSC now proposes to repeal those 2001 rules and replace them with new "Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities." As outlined in PSC Order No. 7254 (Sept. 4, 2007), the PSC believes the new rules will make improvements in the administration of the CPCN process. Initially, the proposed new rules implement the statutory changes made to the criteria for obtaining a CPCN (and the provisions of 26 **Del.C.** §203C) by 76 **Del. Laws** ch. 55 (June 28, 2007). Second, the new rules provide for more detailed requirements for notice to affected landowners of the CPCN application and provide specific requirements on the form of notice to be sent to affected landowners to inform them of their options. In addition, the new regulations add new provisions that require a water utility to certify that it will serve, or have facilities within, the new Proposed Service Area within three years and provide a procedure for the PSC to explore whether a CPCN should continue if service or facilities are not made available within such period.

You can review PSC Order No. 7254 (Sept. 4, 2007) and the proposed new rules in the October 1, 2007 issue of the *Delaware Register of Regulations*. You can also review the Order and the new regulations at the PSC's Internet website located at <http://depdc.delaware.gov>. Written copies of the Order and proposed regulations can be obtained at the PSC's office at the address located below, for \$0.25 per page.

The PSC now solicits comments, suggestions, compilations of data, briefs, or other written materials about the proposed repeal of the 2001 Water Utility CPCN rules and the adoption of the proposed new Water Utility CPCN rules. If you want to file any such materials, you should submit an original and ten copies of such written documents on or before November 1, 2007. You should file such materials with the PSC at the following address:

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

If possible, you should accompany such written comments with an electronic version of the submission. Such electronic copy may be filed on a copy-capable CD-Rom disk or send as an attachment to an Internet e-mail addressed to karen.nickerson@state.de.us.

The PSC will also conduct a public hearing on the new proposed regulations on Monday, November 19, 2007. That hearing will begin at 10:00 A.M. and will be held at the PSC's office at the address set forth above. You may also submit comments and materials at such public hearing.

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

~~REGULATIONS CONCERNING WATER UTILITIES INCLUDING THE PUBLIC SERVICE COMMISSION'S JURISDICTION TO GRANT AND REVOKE CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY~~

~~10.101 Scope of Regulations.~~

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

10.102 Definitions.

As used in these regulations:

"Commission" means the Delaware Public Service Commission.

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

"DPH" means the Delaware Division of Public Health.

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

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

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

10.103 Application for Certificate of Public Convenience and Necessity.

(a) An application for a Certificate of Public Convenience and Necessity to begin the business of a water utility or to extend or expand the business or operations of any existing water utility shall be made in writing and filed with the Commission. The application shall include all information and supporting documentation required by statute, the Rules of Practice and Procedure of the Commission, these regulations, and shall not be considered complete until all such information and supporting documentation has been filed with the Commission. At the time of filing, the application shall:

(1) Contain a statement explaining the reason(s) why the Commission should grant the CPCN, and citations to all statutory and regulatory authority upon which the application is based, or upon which the applicant relies to support the application;

(2) Clearly state the relief sought by the application;

(3) State the name, address, telephone number, and e-mail address (if any) of the person to be notified in the event the Staff determines there are deficiencies in the application;

(4) Contain the supporting documentation required by 26 Del.C. § 203C, including evidence that all the landowners of the proposed territory have been notified of the application;

(5) Include a complete list of county tax map parcel number(s) for the area covered by the application;

(6) Include (along with a complete list of tax map number(s)) corresponding names and addresses of property owners and a copy of all tax map(s) for the area;

(7) For any proposed extension of service, contain a certification by the applicant that the extension will satisfy the provisions of 26 Del.C. § 403C, including the following:

(i) The applicant is furnishing water to its present customers or subscribers in this State in such fashion that water pressure at every house supplied is at least 25 pounds at all times at the service connection;

(ii) The applicant shall furnish water to the house or separate location of each new customer or subscriber in this State at the pressure of at least 25 pounds at each such location or house at all times at the service connection while continuing also to supply each old customer or subscriber at the pressure of at least 25 pounds at each house at all times at the service connection;

(iii) The applicant is not subject to a finding by the appropriate federal or state regulatory authority that it has materially failed to comply with applicable safe drinking water or water quality standards; and

(iv) The applicant is not subject to any Order issued by the Commission finding that the company has materially failed to provide adequate or proper safe water services to existing customers; and

(8) For applications submitted under 26 Del.C. § 203C(e), include a statement indicating whether the applicant has determined if a majority of the landowners of the proposed territory to be served object to the issuance of a CPCN to the applicant, and the documentation relied upon to support the applicant's determination.

(b) If an application for a CPCN involves a water utility project or service that requires the review, approval or authorization of any other state or federal regulatory body, including DNREC, the State Fire Marshal or DPH, the application to the Commission shall so state and shall include the following:

(1) A statement of the current status of such application;

(2) If the application to the other regulatory body or bodies has already been filed, a copy of any permit, order, certificate, or other document issued by the regulatory body relating thereto; and

(3) If such an application or amendment thereof is filed with another state or federal regulatory body or a determination is made by any such regulatory body subsequent to the date of filing the CPCN application with the Commission, but prior to its determination, a copy of any permit, order, certificate or other document that has been issued relating thereto shall be filed with the Commission.

~~(c) An applicant for a CPCN—other than a municipality or other governmental subdivision—shall provide with the application (if not presently on file with the Commission) the following:~~

- ~~(1) A corporate history including dates of incorporation, subsequent acquisitions and/or mergers;~~
- ~~(2) A complete description of all relationships between the applicant and its parent, subsidiaries, and affiliates. Furnish a chart or charts which depict(s) the inter-company relationships;~~
- ~~(3) A map identifying all areas, including all towns, cities, counties, and other government subdivisions to which service is already provided;~~
- ~~(4) A statement identifying any significant element of the application which, to the applicant's knowledge, represents a departure from prior decisions of the Commission;~~
- ~~(5) Annual reports to stockholders for applicant, its subsidiaries, and its parent for the last two years;~~
- ~~(6) The applicant's audited financial statements, 10K's, and all proxy material for the last two years; and~~
- ~~(7) Any reports submitted by the applicant within the preceding twelve months to any state or federal authorities in any proceedings wherein an issue has been raised about the applicant's failure to comply with any statute, regulation, rule, or order related to the provision of safe, adequate and reliable water service, including the water quality of water provided to existing customers.~~

~~(d) A municipality or other governmental subdivision applying for a CPCN shall provide with the application (if not presently on file with the Commission) the statement and documents identified in subsections (c)(3), (4) and (7) hereof.~~

~~(e) After a completed application has been filed and during the course of the Staff investigation of an application, the Commission may require an applicant to furnish additional information specifically related to the statutory standards for Commission review and consideration of an application, including the provision of safe, adequate, and reliable water service.~~

~~(f) Supporting documentation not filed with the application must be made available for Staff inspection upon request.~~

10.104 Additional requirements for an application filed by a new water utility.

~~(a) If the applicant for a CPCN is a new water utility that has not previously been awarded a CPCN in Delaware, the application, in addition to meeting the requirements of section 10.103, shall include the following:~~

- ~~(1) Evidence that it possesses the financial, operational, and managerial capacity to comply with all state and federal safe drinking requirements and that it has, or will procure, adequate supplies of water to meet demand, even in drought conditions, by maintaining supply sufficient to meet existing and reasonably anticipated future peak daily and monthly demands;~~
- ~~(2) A certified copy of the applicant's certificate of incorporation;~~
- ~~(3) Details of plant as to type, capacity, cost, status of plant construction, construction schedule, and estimated number of customers to be served; and~~
- ~~(4) A map showing the location and size, in acres or square feet, of the proposed territory, and the composition, diameter, length, and location of pipes to be initially installed.~~

~~(b) If the applicant for a CPCN is a new water utility that is an unincorporated proprietorship, the applicant shall be subject to a rebuttal presumption that the applicant lacks the financial, operational, and managerial capacity to comply with the requirements for a CPCN.~~

10.105 Review of application; deficiencies in the application.

~~(a) The Staff shall review all CPCN applications for compliance with applicable statutes and these regulations. The Staff will, within twenty one days after the date of filing, specifically identify any deficiencies in the application, and immediately request the Secretary to promptly notify the applicant of the alleged deficiencies. The applicant shall have thirty days from the date of the receipt of the notice from the Secretary of the deficiencies in the application to file a corrected or supplemental application. The Commission may, in its discretion, extend the period to cure deficiencies in the application for an additional thirty days.~~

~~(b) Only upon the applicant's filing of a corrected or supplemental application correcting the deficiencies shall such application be deemed completed and filed with the Commission for purposes of the time limits for action by the Commission under 26 Del. C. §203C(h). In the event the alleged deficiencies are not cured within the time provided hereunder, Staff may move the Commission to reject the utility's application for non-compliance with~~

these regulations.

~~(c) Nothing in this regulation shall prevent an applicant from filing an application in draft form for Staff's informal review and comment without prejudice, such informal review and comment not to be unreasonably withheld by Staff; nor shall this regulation affect or delay the filing date of applications that comply with applicable statutes and these regulations, or whose non-compliance is deemed minor or immaterial by the Commission or its Staff.~~

~~**10.106 Filing of application with DNREC, the State Fire Marshal, and DPH; coordination and cooperation.**~~

~~An applicant for a CPCN shall file a copy of the application and the supporting documentation required by section 10.103(a)(5) and (6) with DNREC, the State Fire Marshal, and DPH within three days of filing the same with the Commission. The Staff shall send written requests to DNREC, the State Fire Marshal, and DPH soliciting immediate written comment as to whether they are aware of any matters indicating that the applicant has been unwilling or unable to provide safe, adequate and reliable drinking water service to existing customers. The Staff shall coordinate and cooperate with DNREC, the State Fire Marshal, and DPH during the process of reviewing an application for a CPCN. The Staff shall also coordinate and cooperate with other interested state, local, and federal authorities.~~

~~**10.107 Provision of notice to all landowners of the proposed territory.**~~

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

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

~~**10.108 Landowners who object, opt out, and/or request a public hearing; time limits; extension of time.**~~

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

~~(b) A landowner shall notify the Commission, in writing, if the landowner (i) objects to the issuance of the CPCN; (ii) intends to opt out of inclusion in the territory; and/or (iii) requests a public hearing. The notice to the Commission from the landowner must be filed with the Commission within (i) sixty days from the date of the landowner's receipt of a written notice from the water utility that complies with applicable statutes and these regulations, of the landowner's inclusion in the service territory; or (ii) thirty days of the filing of the completed application, whichever period is greater. The Commission may, in the exercise of its discretion, extend the time to object, opt out, and/or request a public hearing even though the period in which to do so has expired. The Commission shall accept for filing written notices from landowners that were sent to the applicant and transmitted by the applicant to the Commission.~~

~~**10.109 Notification to all landowners of the proposed territory of their rights to object, opt out, and/or request a public hearing.**~~

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

~~“(1) Pursuant to Title 26, §203C(e) of the Delaware Code, an application for a Certificate of Public Convenience and Necessity (CPCN) will be submitted to the Delaware Public Service Commission on or about {enter date of intended submission}. Your property has been included within an area {enter name of your organization} intends to serve with public water and we are~~

required to inform you of certain information. The area to be served is {provide a shorthand description of the service area}. If you agree to the inclusion of your property in the proposed service area, no action on your part is required.

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

(3) Pursuant to current law, you may also elect to opt out of inclusion in the proposed service area. The term "opt out" means that you decide that you do not want to receive water service from {enter name of your organization}, even if a majority of the landowners in the proposed service area do elect to receive water service from {enter name of your organization}. If you decide that you do not want to receive water service from {enter name of your organization} and instead wish to opt out, you must notify the Commission, in writing, within sixty days of your receipt of this notice or within thirty days of the filing of the completed application for a CPCN, whichever is greater.

(4) You may also request a public hearing on this matter. A request for a public hearing must be made in writing to the Commission within sixty days of your receipt of this notice or within thirty days of the filing of the completed application for a CPCN, whichever is greater.

(5) The written notice of your decision to object to the issuance of the CPCN, to opt out of receiving water service from {enter name of your organization}, and/or your written request for a public hearing, shall be sent to the Secretary of the Delaware Public Service Commission at the following address:

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

(6) Any written notice you send to the Commission must include the description of the service area referred to in paragraph (1) above and the name of the applicant so the Commission will be able to identify the CPCN application to which your notice is related.

(7) Questions regarding objections, opt outs, and hearings may be directed to: {enter the name or title, and the address and telephone number of the Commission's contact person(s)}."

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

~~10.110 Suspension or revocation of CPCN for good cause.~~

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

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

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

(3) Either (i) a finding by the Commission that there are certain methods to mitigate any financial consequences to customers served by the utility subject to suspension or revocation and the adoption of a plan to implement those methods; or (ii) a finding by the Commission that there are no practicable methods to mitigate the financial consequences to customers.

(b) In addition to the factors required by section 10.110(a)(1), (2) and (3), the Commission may consider one or more of the following factors in determining whether to suspend or revoke a CPCN:-

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(1) ~~Fraud, dishonesty, misrepresentation, self-dealing, managerial dereliction, or gross mismanagement on the part of the water utility; or~~
 (2) ~~Criminal conduct on the part of the water utility; or~~
 (3) ~~Actual, threatened or impending insolvency of the water utility; or~~
 (4) ~~Persistent, serious, substantial violations of statutes or regulations governing the water utility in addition to any finding of non-compliance required by paragraph (a)(1) above; or~~
 (5) ~~Failure or inability on the part of the water utility to comply with an order of any other state or federal regulatory body after the water utility has been notified of its non-compliance and given an opportunity to achieve compliance; or~~
 (6) ~~Such other factors as the Commission deems relevant to the determination to suspend or revoke a CPCN.~~

~~10.111 Proceedings to suspend or revoke a CPCN for good cause.~~

(a) ~~Proceedings before the Commission to suspend or revoke a CPCN for good cause shall be conducted in accordance with the procedures set forth in 29 Del.C. Ch. 101, Subchapter III.~~

(b) ~~Unless the Commission finds, pursuant to proceedings conducted in accordance with subsection (a) above, that (i) the conduct of a water utility poses an imminent threat to the health and safety of its customers; or (ii) a water utility is unable to provide safe, adequate, and reliable water service, the Commission will not suspend or revoke a CPCN for good cause without first affording the water utility a reasonable opportunity to correct the conditions that are alleged to constitute the grounds for the suspension or revocation of the CPCN.~~

~~10.112 Compliance with 29 Del. C. Ch. 101, Subchapter III.~~

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

~~10.113 Waiver of requirements of sections 10.103 and 10.104.~~

~~The Commission may, in the exercise of its discretion, waive any of the requirements of sections 10.103 and 10.104 above.~~

Regulations Concerning Certificates Of Public Convenience And Necessity For Water Utilities

1.0 Authority and Scope of Regulations

1.1 These regulations shall govern the process: (a) for a person or entity (as described in 26 Del.C. §203C(a)) to obtain a Certificate of Public Convenience and Necessity to begin operation as a water utility; and (b) for a water utility to obtain a Certificate of Public Convenience and Necessity to extend, expand, or enlarge its operations, business, or facilities beyond its then certificated service territory. These regulations also govern, in conjunction with the provisions of 26 Del.C. §203C, how the Commission administers, supervises, and revokes any such Certificate of Public Convenience and Necessity previously granted to a water utility.

1.2 These regulations are enacted pursuant to 26 Del.C. §§203C and 209(a).

1.3 In granting, denying, or revoking a Certificate of Public Convenience and Necessity under 26 Del.C. §203C and these regulations, the Commission shall act consistently with the procedures required by 29 Del.C. ch. 101, Subchapters III and IV.

1.4 The Commission may modify or extend any of the timing requirements set forth in these regulations so long as such timing requirement is not required by statutory provision.

1.5 The Commission may by Order, and for good cause, waive any obligation under these regulations that is not required by statute and may, in an individual application, excuse any failure to comply with these regulations that is not material to the Commission's decision.

2.0 Definitions

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

"Commission" refers to the Public Service Commission.

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

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

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

"Existing development" or "existing subdivision" means an aggregate of already-occupied homes or buildings within a particular geographic area:

(a) that were constructed as part of a single-named development or subdivision;

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

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

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

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

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

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

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

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

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

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

"Staff" refers to the Staff of the Commission.

"Secretary" refers to the Secretary of the Commission.

"Unincorporated community" means an aggregate of already-occupied homes or buildings lying within a particular compact unincorporated geographic area that share common community interests; and

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

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

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

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

3.0 Application for Certificate of Public Convenience and Necessity

In General

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

3.2 An applicant may request, by a single application Certificates for one to five Proposed Service Areas. In the case of an application joining multiple Proposed Service Areas, the application shall contain sufficient information and documentation to establish the applicant's entitlement to a Certificate for each separate Proposed Service Area. The Commission shall separately determine for each Proposed Service Area whether to grant a Certificate for that area. However, the Commission, by a single Order, may grant a CPCN for one or more of the Proposed Service Areas that have been joined in a single application.

3.3 The CPCN application shall include all information and supporting documentation required by 26 Del.C. §203C, the Commission's Rules of Practice and Procedure, and these regulations. An application shall not

applicant.

Evidence of Landowner Notification

3.5 The application shall contain for each Proposed Service Area the documentation reflecting landowner notification as required by 26 Del.C. §203C(d)(1) or (e)(1), including:

3.5.1 copies of relevant Postal Service forms demonstrating that the applicant sent by certified mail the appropriate form of notice as required by these regulations to each landowner of record of each parcel encompassed within the Proposed Service Area;

3.5.2 copies of all materials or messages provided to the applicant by the Postal Service reflecting either delivery of the certified mail or failure of certified mail delivery because the delivery was "refused," "unclaimed," "undeliverable," "unknown," or otherwise not completed; and

3.5.3 a certification (or other evidence) that, for each earlier notice that was returned by the Postal Service due to a failure of certified mail delivery, the applicant then sent another copy of the required notice by first class United States mail to the best available address of the applicable landowner of record.

Criteria for a CPCN Request

3.6 For a request for a Proposed Service Area premised on 26 Del.C. §203C(d)(2)a., the application shall include all evidence (including reports or studies) that establish that the water sources and supplies then available in the Proposed Service Area do not meet the relevant standards governing drinking water for human consumption promulgated and enforced by the Department of Health and Social Services.

3.7 For a request for a Proposed Service Area premised on 26 Del.C. §203C(d)(2)b., the application shall include all evidence (including reports or studies) demonstrating that the supply of water available to the Proposed Service Area is insufficient to meet the projected demand.

3.8 For a request for a Proposed Service Area premised on 26 Del.C. §203C(e)(1)a., the application shall include a copy of a signed service agreement between the applicant and the developer of the proposed development or subdivision, and appropriate documentation reflecting that the development or subdivision has finally been approved by the relevant county or municipal government

3.9 For a request for a Proposed Service Area premised on 26 Del.C. §203C(e)(1)b., the application shall include copies of each petition requesting that the applicant provide water services which has been signed by all of the landowners of record of each parcel in the Proposed Service Area. Each such petition must meet the criteria set forth in section 8.1

3.10 For a request for a Proposed Service Area premised on 26 Del.C. §203C(e)(1)c., the application shall include copies of each petition requesting that the applicant provide water services which has been signed by all of the landowners of record of a parcel to be encompassed by the Proposed Service Area. Each such petition must meet the criteria set forth in section 8.1. The application shall include such petitions for a majority of the parcels within the existing development, existing subdivision, or unincorporated community that constitutes the Proposed Service Area.¹

3.11 For a request for a Proposed Service Area premised on 26 Del.C. §203C(e)(1)d., the application shall include a certified copy of the resolution or ordinance from the governing body of the relevant county or municipality that requests, directs, or authorizes the applicant to provide water utility services to the Proposed Service Area. If requested, the applicant must also provide additional references to demonstrate that the county or municipality enacting the ordinance or resolution has the appropriate legal authority to authorize the provision of water utility services to the Proposed Service Area.

Additional Criteria for a CPCN Request by a Municipal Water Authority

3.12 If the applicant is a municipal water authority created under the provisions of Chapter 14 of title 16 of the Delaware Code, and it seeks a Proposed Service Area that lies, wholly in part, outside of the political

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

boundaries of the municipality or municipalities that originally created such municipal authority, the application shall also include, as required by 26 Del.C. §203C(n), a certified copy of a resolution of the governing body of each such municipality requesting that the Certificate for the extra-territorial portion of the Proposed Service Area be granted.²

Plan of Service

3.13 An application shall include, for each Proposed Service Area, a description of how the applicant will provide water utility services to the area. In addition, the application shall include a separate certification that the applicant plans to provide its water utility services to consumers within the Proposed Service Area beginning no later than three years following the grant of a CPCN for the Area.³

Additional Quality of Service Certifications and Information

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

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

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

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

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

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

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

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

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

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

Additional Materials to be Supplied with the Application

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

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

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

3.18.3 a map identifying all areas where the applicant then provides water utility services;

3.18.4 the Annual Reports provided to owners of the applicant, or to the owners of its parent or subsidiaries, over the two-year period prior to the filing of the application;

3.18.5 the audited financial statements, SEC 10K filings, and all proxy material related to the

2. This requirement for a resolution from each municipality requesting the grant of a Certificate does not excuse the municipal water authority from establishing its entitlement to a Certificate for the Proposed Service Area outside of the municipality's boundaries under the provisions of 26 Del.C. §203C(d) or (e).

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

applicant for the two years prior to the filing of the application; and

3.18.6 copies of all reports submitted by the applicant within the preceding twelve months to any State or federal authority related to whether the applicant has complied with any statute, regulation, rule, or order concerning the provision of safe, adequate, and reliable water services (including the quality of water provided to existing customers).

3.19 Unless the materials are already on file with the Commission or available to the Commission, a municipal or other governmental water utility shall provide with the application the statement and documents identified in sections 3.18.3 and 3.18.6.

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

4.1 If the applicant is a new water utility, the application, in addition to fulfilling the requirements of sections 3.0 through 3.19, shall also include the following:

4.1.1 a copy of the applicant's certificate of incorporation, partnership agreement, or other enabling document;⁴

4.1.2 materials that demonstrate that the applicant possesses the financial, operational, and managerial capacity to comply with all State and federal safe drinking requirements and that the applicant has available, or will be able to procure, an adequate supply of water (even during drought conditions) to meet reasonably anticipated peak daily and monthly demands for its water utility services;

4.1.3 a description of the plant to be utilized to provide its water utility services (including details as to the type and capacity of treatment facilities, cost of facilities, and the projected construction schedule);

4.1.4 a map detailing the composition, diameter, length, and location of mains and pipes to be initially installed; and

4.1.5 a projection of the number of customers to be served in the five-year period following the grant of the requested CPCN.

5.0 Review of the Application and Deficiencies in the Application

5.1 An applicant may ask the Staff to informally review a draft of an application prior to its formal filing. Such informal review shall not affect or delay the filing of an application that complies with applicable statutes and these regulations.

5.2 Upon filing, the Staff shall review an application for compliance with the applicable statutory provisions and these regulations. Within thirty days after the date of filing, Staff may notify the applicant of specific deficiencies in the application. The applicant shall have thirty days from the date of the receipt of such notice to file an amended or supplemental application. The Commission may, in its discretion, extend the period for curing deficiencies in the application for an additional period of time.

5.3 If the applicant submits an amended or supplemental application, the application shall then be deemed filed on the date of such submission for the purposes of the time limits set forth in 26 Del.C. §203C(h). In the event the deficiencies identified by Staff are not cured within the time period provided, Staff may request that the Commission to reject the application.

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

6.0 Coordination with Other State Agencies, Counties, and Municipalities

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

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

6.3 In addition, if any parcel of land in a Proposed Service Area is located within a "future annexation

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

area" or "future growth area" under a comprehensive plan (26 Del.C. §§101 and 702) adopted by a municipality that provides water utility services, then the applicant shall also serve a copy of the application on the municipality (or its municipal utility). The applicant shall serve such copy on the municipality (or its utility) at least thirty days prior to filing the application with the Commission. The application filed with the Commission shall include a certification of such service on the identified municipality.

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

7.0 Proposed Service Area

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

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

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

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

7.4.1 a single parcel; or

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

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

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

8.0 Requirements Related to 26 Del. C. § 203C(e)(1)b. and c.

8.1 For a request premised on either 26 Del.C. §203C(e)(1)b. or 26 Del.C. §203C(e)(1)c., each petition requesting water utility services from the applicant must:

8.1.1 bear the signature of each landowner of record (or a duly authorized agent) that is requesting water utility services from the applicant;

8.1.2 reflect the date for each signature by each landowner of record, which date shall not be any earlier than one year prior to the date of the filing of the application;

8.1.3 bear a printed recitation of the name of each landowner of record executing the petition;

8.1.4 describe the nature and office of the executing individual if the request is by an artificial entity;

8.1.5 identify the tax map parcel number associated with each landowner of record requesting water service; and

8.1.6 list the present mailing address and telephone number of each landowner of record that executes the request for water utility services.

8.2 If a petition under 26 Del.C. §203C(e)(1)b. or 26 Del.C. §203C(e)(1)c. involves a petition for water utility services on behalf of condominium units as defined by 26 Del.C. §203C(j), the applicant shall provide with such petition the materials required by 26 Del.C. §203C(g)(1).

8.3 If a petition for water utility services is executed by an agent of the landowner of record, the

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

applicant shall provide with the petition evidence to demonstrate the agent's authority to act for the landowner of record.

9.0 Notice to Landowners in the Proposed Service Area

9.1 Pursuant to the provisions of 26 **Del.C.** §203C(d)(1) and (e)(1), prior to filing the application, the applicant shall send the form of notice prescribed by these regulations to each landowner of record in the Proposed Service Area. The landowners of record shall be determined as of the record date.

9.2 The form of notice required by these regulations shall be sent to each landowner of record not more than sixty days and not less than thirty days prior to the filing of the application.

9.3 For requests premised on 26 **Del.C.** §203C(d)(2)a. or b., the notices shall be sent by United States certified mail, return receipt requested, with delivery restricted to the addressee.

9.4 For requests premised on 26 **Del.C.** §203C(e)(1)a. or d., the notices shall be sent by United States certified mail, return receipt requested, with delivery restricted to the addressee.

9.5 For requests premised on 26 **Del.C.** §203C(e)(1)b. or c., the notices shall be sent to those landowners of record who did not execute a petition for water services by United States certified mail, return receipt requested, and with delivery restricted to the addressee. In the case of landowners of record who did execute petitions for water service, the notices shall be sent by United States certified mail, return receipt requested.

9.6 If the Postal Service returns to the applicant any materials reflecting that, in the case of a particular landowner of record, the certified mail delivery required under sections 9.3 through 9.5 failed because the delivery was "refused," "unclaimed," "undeliverable," "unknown," or otherwise not completed, then the applicant shall promptly re-send the form of the required notice by first class United States mail to the best available address of that landowner of record.

9.7 The Commission, by Order, may authorize a method of providing notice to landowners of record that is equivalent to the methods set forth in sections 9.3 through 9.6.

10.0 Form of Notice to Landowners of Record

10.1 The notice to be sent to landowners of record in a request premised on either 26 **Del.C.** §203C(d)(2), 26 **Del.C.** §203C(e)(1)a., or 26 **Del.C.** §203C(e)(1)d. shall be in a form approved by Staff.

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

"Public records list you as a landowner of the property with the following tax map parcel identification number(s): [insert tax map parcel identification number(s)]. Within sixty (60) days, [insert water utility's name] plans to file an application with the Delaware Public Service Commission ("PSC") requesting a Certificate Of Public Convenience and Necessity ("CPCN") to provide water services to an area described as [insert description of proposed service area]. [INSERT WATER UTILITY'S NAME] HAS INCLUDED YOUR PROPERTY IN THE AREA IT INTENDS TO SERVE. IF YOU DO NOT TAKE ANY ACTION NOW, YOU MAY LOSE YOUR CHOICE OF WHO CAN PROVIDE WATER SERVICE TO YOUR PROPERTY AND WHETHER YOU CAN OBTAIN A WELL PERMIT. You should read this notice carefully to understand the options you have under the law in this situation.

a) You may choose to remain in the utility's proposed service territory. If you signed a petition for water services and wish to remain in the utility's proposed service territory, you may do nothing and disregard this letter.

b) You may choose to "opt-out" of the utility's proposed service territory. You have the right to "opt-out" and have your property removed from the utility's service area. You can do this even though others in your area might desire water service from the utility. You should understand that being included in a utility's service area does not mean that public water services will be immediately available to your property or that, when available, you will be required to hook-up

to the public water system. However, if your property is included in the utility's water service territory and the well serving your drinking water needs becomes unusable, the Department of Natural Resources and Environmental Control might deny you a permit for a new well if there is public water available to your property. On the other hand, if you elect to "opt-out" of the utility's service area, but later change your mind and decide to connect to the utility's public water system, you could be charged additional fees to be included in a new CPCN service area. Finally, you cannot "opt-out" after the Commission has granted the CPCN to the water utility.

(c) You may object to the CPCN application. If you file an objection, you need to tell the PSC why the utility has not met the law's requirements for a CPCN. You should review the law about what a utility must provide in order to obtain a CPCN (contact the PSC to obtain a copy of the law). If you file an objection, this will not also remove your property from a proposed service area. To remove your property from the service territory, you must request to "opt-out."

Under the law, the PSC is obligated to grant a CPCN to a utility to provide water services if the landowners of a parcel in the proposed service area have requested the utility's water services. Attached to this letter is a form which allows you (and other owners of the property) to exercise one or more of the options. If you wish to exercise any of the options, complete the form and return it to the PSC at the address listed below within 60 days from the date you receive this notice:

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

If you have any questions, comments or concerns, please contact the PSC at (302) 736-7500 (in Delaware, call 800-282-8574) or by Internet e-mail at <http://dep.sc.delaware.gov>.

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

Public records list you as a landowner of the property with the following tax map parcel identification number(s): [insert tax map parcel identification number(s)]. Within sixty (60) days, [insert water utility's name] plans to file an application with the Delaware Public Service Commission ("PSC") requesting a Certificate of Public Convenience and Necessity ("CPCN") to provide water services to an area described as [insert name and description of existing development, existing subdivision, or unincorporated community]. [INSERT WATER UTILITY'S NAME] HAS INCLUDED YOUR PROPERTY IN THE AREA IT INTENDS TO SERVE. IF YOU DO NOT TAKE ANY ACTION NOW, YOU MAY LOSE YOUR CHOICE OF WHO CAN PROVIDE WATER SERVICE TO YOUR PROPERTY AND WHETHER YOU CAN OBTAIN A WELL PERMIT. You should read this notice carefully to understand the options you have under the law in this situation.

a) You may choose to remain in the utility's proposed service territory. If you signed a petition for water services and wish to remain in the utility's proposed service territory, or, if you did not sign a petition for water services but do not object to being included, you may do nothing and disregard this letter.

PROPOSED REGULATIONS

b) You may choose to "opt-out" of the utility's proposed service territory. You have the right to "opt-out" and have your property removed from the utility's service area. You can do this even though others in [insert development or community name] might desire water service from the utility. You should understand that being included in a utility's service area does not mean that public water services will be immediately available to your property or that, when available, you will be required to hook-up to the public water system. However, if your property is included in the utility's water service territory and the well serving your drinking water needs becomes unusable, the Department of Natural Resources and Environmental Control might deny you a permit for a new well if there is public water available to your property. On the other hand, if you elect to "opt-out" of the utility's service area, but later change your mind and decide to connect to the utility's public water system, you could be charged additional fees to be included in a new CPCN service area. Finally, you cannot "opt-out" after the Commission has granted the CPCN to the utility.

c) You may object to the Commission granting a CPCN for [insert development or community name]. If the landowners of a majority of the parcels in [insert development or community name] have not asked for water services, the PSC might deny the utility the right to serve in such area. An objection does not remove your property from the service territory; it simply reflects that you do not want the utility to provide services in the area. If you want to make sure your property is not included in the utility's service area, you should file the "opt-out" request described above. In addition, you may object that the water utility does not have the legal right to serve the area. You should review the law about what a utility must provide in order to obtain a CPCN (contact the PSC to obtain a copy of the law). If you file such an objection, you will need to tell the PSC why the utility has not met the law's requirements for a CPCN. Again, an objection will not remove your property from a proposed service area. To remove your property from the service territory, you must request to "opt-out."

Under the law, the PSC is obligated to grant a CPCN to a utility to provide water services to an existing development, existing subdivision, or recognized community if the landowners of a majority of the parcels in such development or community have requested the utility's water services. This means that even if you have not signed a request for the utility's water services, your property may be included in the utility's service area if the landowners of more than half of the parcels have made such requests. However, if you do not want your property included in the utility's proposed service territory or if you oppose the utility providing services in the area, then you must do something under one or more of the above options within 60 days. Attached to this letter is a form which allows you (and other owners of the property) to exercise one or more of the options. If you wish to exercise any of the options, complete the form and return it to the PSC at the address listed below within 60 days from the date you receive this notice:

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

If you have any questions, comments or concerns, please contact the PSC at (302) 736-7500 (in Delaware, call 800-282-8574) or by Internet e-mail at <http://depssc.delaware.gov>.

10.4 In a request under 26 Del.C. §203C(e), the notice sent to each landowner shall also include a form of response (in a form approved by Staff) that allows the landowner to easily and plainly exercise the options available under the form of notice.

10.5 Except as the Commission might specifically approve, the applicant shall not include any other correspondence with the landowner notice required by these regulations. The exterior of the envelope for any notice shall carry language (approved by Staff) to alert the landowner of the importance of the notice.

10.6 Within twenty-one days of the filing of the application, the applicant shall also publish in two newspapers of general circulation a form of public notice of its application. The Staff shall approve a form of such public notice. The applicant shall promptly file proof of such publication with the Commission.

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

11.1 A landowner of record of a parcel that is, in whole or in part, within a Proposed Service Area may object to a CPCN being granted by filing with the Commission a signed written document reflecting such objection. The objection shall set forth the reasons why the applicant is not entitled to a Certificate. Except for good cause, the written objection shall be filed with the Commission no later than twenty days after publication of the notices required under §10.6

11.2 The Commission may allow persons or entities that are not landowners of record to file an objection to an application for a CPCN. The objection shall set forth the person's or entity's interest in the matter and the reasons why the applicant is not entitled to a Certificate. Except for good cause, the objection by a non-landowner shall be filed with the Commission no later than twenty days after publication of the notices required under §10.6.

11.3 In an application premised on 26 Del.C. §203C(e)(1)b. or c., a landowner of record of a parcel that is, in whole or in part, within a Proposed Service Area may: (a) object to the issuance of the CPCN or (b) "opt-out" and have the landowner's parcel excluded from the Proposed Service Area pursuant to 26 Del.C. §203C(i). A landowner of record may exercise one or more of the above options.

11.3.1 The applicant shall immediately inform the Commission of the name and address of each landowner of record that notifies the applicant, either verbally or in writing, that the landowner wishes to exercise any one of the options under section 11.3. The applicant shall immediately file with the Commission any written documents from a landowner that exercises any of the options in section 11.3.

11.4 At any time prior to the issuance of the CPCN premised on 26 Del.C. §203C(1)b. or c., a landowner of record of a parcel that is, in whole or in part, within a Proposed Service Area, may file with the Commission a signed written document requesting that the landowner's parcel be excluded from the Proposed Service Area pursuant to 26 Del.C. §203C(i). A parcel will be excluded from the Proposed Service Area if any landowner of record of such parcel submits a signed "opt-out" request for exclusion of the parcel. The Commission may deny an "opt-out" request submitted by a landowner of record if the landowners of record holding, or vested with, a controlling interest in the parcel rescind, or countermand, the request to "opt-out." The other owners shall demonstrate to the Commission that they hold the authority to bind the parcel.

11.5 The Commission shall maintain a record of all written documents received from landowners of record that exercise the options available under sections 11.1 through 11.4.

11.6 An applicant shall retain all record related to an application for a Certificate for a period of five years after the date of the filing of the application. The applicant shall make such records available to the Commission upon request.

12.0 Conditional Grant of a CPCN for a Proposed Service Area

12.1 A CPCN to provide water utility services to a Proposed Service Area shall be conditioned on the applicant subsequently actually providing water utility services to consumers within the Area within three years from the grant of the CPCN, consistent with the certification required to be made under section 3.13.

12.2 If at the end of three years after the grant of a CPCN the water utility is not actually providing water utility services to consumers within the Service Area granted by the CPCN, the Commission may institute a proceeding to determine whether the previously granted CPCN should lapse because of the water utility's failure to provide water utility services.

12.3 In determining whether the previously granted CPCN should lapse, the Commission may consider: (a) whether the landowners of record in the Service Area continue to endorse the water utility providing water utility

services to their properties; (b) whether the utility has a reasonable plan to begin to provide water utility services in the near future; and (c) whether the Service Area supports, or is essential to, the water utility providing water services to another Service Area.

12.4 If the Commission determines that the previously granted CPCN should lapse, any water utility may then file an application for a CPCN to provide water utility services to one or more parcels encompassed by the lapsed CPCN.

12.5 A water utility granted a CPCN shall, within three years of the date of the CPCN, file a notice with the Commission reporting the date that it actually began providing water utility services to consumers in each Service Area granted by the CPCN.

12.6 The provisions of sections 12.1 through 12.5 shall not apply to a CPCN granted to a municipal water utility or a government water utility to provide water utility services to a service area in its governmental capacity. In addition, those provisions shall not apply to any Service Area granted under 26 Del.C. §203C(e)(1)d. to a non-municipal or non-governmental water utility unless the relevant governing board of the municipality or county has withdrawn or revoked its earlier request for the water utility to provide its water utility services to the Service Area.

13.0 Suspension or Revocation of CPCN for Good Cause

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

13.1.1 a finding by the Commission that the holder of a CPCN has not materially complied with: (a) any provisions of Titles 7, 16, or 26 of the **Delaware Code** dealing with obtaining water or providing water and water services to customers; or (b) any order or rule of the Commission relating to the same;

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

13.1.3 either (a) a finding by the Commission that there are certain methods to mitigate any financial consequences to customers served by the utility subject to suspension or revocation and the adoption of a plan to implement those methods; or (b) a finding by the Commission that there are no practicable methods to mitigate the financial consequences to customers.

13.2 The Commission may also consider one or more of the following factors in determining whether to suspend or revoke a CPCN:

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

13.2.2 criminal conduct on the part of the water utility; or

13.2.3 actual, threatened or impending insolvency of the water utility; or

13.2.4 persistent, serious, substantial violations of statutes or regulations governing the water utility in addition to any finding of non-compliance required by section 13.1.1 above; or

13.2.5 failure or inability on the part of the water utility to comply with an Order of any other State or federal regulatory body after the water utility has been notified of its non-compliance and given an opportunity to achieve compliance; or

13.2.6 such other factors as the Commission deems relevant to the determination to suspend or revoke a CPCN.

14.0 Proceedings to Suspend or Revoke a CPCN for Good Cause

14.1 Proceedings before the Commission to suspend or revoke a CPCN for good cause shall be conducted in accordance with the procedures set forth in 29 Del. C. ch. 101, Subchapters III and IV.

14.2 Unless the Commission finds, pursuant to proceedings conducted in accordance with section 14.1 above, that (a) the conduct of the water utility poses an imminent threat to the health and safety of its customers; or (b) the water utility is incapable of providing safe, adequate, and reliable water service, the Commission will not suspend or revoke a CPCN for good cause without initially affording the water utility a reasonable opportunity to correct the conditions that are alleged to constitute the grounds for the suspension or revocation of the CPCN.

PUBLIC SERVICE COMMISSION

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

PUBLIC NOTICE

IN THE MATTER OF THE ADOPTION OF RULES		
TO IMPLEMENT THE RENEWABLE ENERGY		
PORTFOLIO STANDARDS ACT,		
26 DEL.C. §§ 351-363, AS APPLIED TO		PSC REGULATION DOCKET NO. 56
RETAIL ELECTRICITY SUPPLIERS		
(OPENED AUGUST 23, 2005;		
REOPENED SEPTEMBER 4, 2007)		

ORDER NO. 7276

This 4th day of September, 2007, the Commission determines and Orders the following:

1. In 2005 the General Assembly and the Governor enacted the "Renewable Energy Portfolio Standards Act," 26 **Del.C.** §§351-363 (2006 Supp.) ("the Act"). As its name suggests, the Act requires each electric supplier to annually accumulate a portfolio of "renewable energy credits" equivalent to a specified percentage of its retail electric supply sales within this State. The obligation begins in 2007 and the particular percentages increase each year. In 2006, exercising the authority granted under 26 **Del.C.** §362 (2006 Supp.), the Commission promulgated "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" ("RPS Rules"). See PSC Order No. 6931 (June 6, 2006).¹

2. In the recently-ended legislative session, the General Assembly and Governor enacted significant changes to various provisions in the Act. See 76 **Del. Laws** ch. 165 §§1-9 (July 24, 2007) ("chapter 165"). The Commission now proposes to adopt revisions and amendments to its RPS Rules to incorporate, and assure consistency with, the statutory changes made by chapter 165. The revised RPS Rules, prepared by Staff and now being proposed for adoption, are set forth as Exhibit "B" to this Order.

3. The Commission continues to hold the authority to issue rules to implement the Act. See 26 **Del.C.** §362 (2006 Supp.). As noted, the proposed revisions are intended to mirror the recent changes in the statutory requirements. For example, the revisions incorporate the new "Schedule I" that increases the percentages of retail sales that electric suppliers must meet with renewable energy credits. Section 3.2.1.² The proposed revisions also implement the new requirement that electric suppliers also concurrently acquire, as part of their yearly portfolio obligation, specified levels of "solar renewable energy credits." Section 3.2.1.³ In addition, the proposed revisions provide for the statutory increases to the dollar amounts of "alternative compliance payments" for renewable credits and institute a new solar alternative compliance payment regime to be available as an alternative to solar renewable energy credits. Section 3.3.4.⁴

1. The RPS Rules (attached as Exhibit "A") were formally published at 10 DE Reg. 151-157 (July 1, 2006). Municipal electric utilities and the now self-regulated Delaware Electric Cooperative, Inc., can choose to be exempt from the Act's requirements by pursuing an alternative regime for supporting "renewable energy" resources. See 26 **Del.C.** §§ 353(a), 363 (2006 Supp.).

2. See 26 **Del.C.** § 354(a), as amended by chapter 165 § 4(b).

3. See 26 **Del.C.** §§ 352(22)-(23), 354(a), 356(a), as amended by chapter 165 §§ 3, 4(a)-(b), & 6.

4. See 26 **Del.C.** §§ 352(22), 358(d), 358(e), as amended by chapter 165 §§ 3, 7, & 8.

PROPOSED REGULATIONS

Now, therefore, **IT IS ORDERED:**

1. That, for the reasons set forth in the body of this Order, and pursuant to 26 **Del.C.** §362 and 29 **Del.C.** §10115, the Commission proposes to revise its "Rules and Procedures to Implement the Renewable Energy Portfolio Standard," originally adopted by PSC Order No. 6931 (June 6, 2006) and published at 10 DE Reg. 151-57. A copy of those rules, in their current form, are appended as Exhibit "A" to this Order. The proposed revised Rules, which include the changes, amendments, and revisions now being proposed for adoption, are attached to this Order as Exhibit "B."

2. That, pursuant to 29 **Del.C.** §§1133 and 10115(a), the Secretary shall transmit to the Registrar of Regulations for publication in the *Delaware Register of Regulations* a copy of this Order; a copy of the current "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" (adopted in PSC Order No. 6931 (June 6, 2006)) (Exhibit "A"); and a copy of the revised "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" now being proposed for adoption (Exhibit "B").

3. That, in addition, the Secretary shall transmit the Notice of Proposed Rule-Making, attached as Exhibit "C," to the Registrar of Regulations for publication in the *Delaware Register of Regulations*. In addition, the Secretary shall cause such Notice of Proposed Rule-Making to be published in *The News Journal* and the *Delaware State News* newspapers on October 1, 2007. The Secretary shall include proof of such publication in the docket file before the public hearing in this matter. Further, the Secretary shall serve (by regular mail or by electronic e-mail) a copy of such Notice on: (a) the Division of the Public Advocate; (b) the State Energy Office; (c) Delmarva Power & Light Company; (d) all certificated electric suppliers; and (e) each person or entity who has made a timely request for advance notice of regulation-making proceedings.

4. That, pursuant to 29 **Del.C.** §§10115(a) and 10116, persons or entities may file written comments, suggestions, compilations of data, briefs, or other written materials, on or before October 31, 2007. Pursuant to 29 **Del.C.** §10117, the Commission will conduct a public hearing on the proposed revisions and resulting new "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" on December 12, 2007 beginning at 10:00 AM at the Commission's office at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware.

5. That, pursuant to 26 **Del.C.** §502 and 29 **Del.C.** §10116, Hearing Examiner Ruth Ann Price is designated to supervise the comment period and to conduct the public hearing. Thereafter, Hearing Examiner Price shall organize, classify, and summarize the materials and comments and file a Report with the Commission with her recommendations concerning the proposed revisions to the "Rules and Procedures to Implement the Renewable Energy Portfolio Standard." Hearing Examiner Price is specifically delegated the power, under 26 **Del.C.** §102A, to determine the content and manner of any further public notices that might be necessary or appropriate. Hearing Examiner Price may also conduct further proceedings, including additional hearings, as may be necessary or appropriate.

6. That James McC. Geddes, Esquire, is designated Staff Counsel for this matter.

7. That, pursuant to 26 **Del.C.** §§114 and 1012(c)(2), all electric suppliers and electric public utilities are hereby notified that they may be charged the costs of this proceeding.

8. 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

Jaymes B. Lester, Commissioner

Jeffrey J. Clark, Commissioner

Joann T. Conaway, Commissioner

Dallas Winslow, Commissioner

ATTEST:

Karen J. Nickerson, Secretary

NOTICE OF PROPOSED RULE-MAKING: AMENDING "RULES and PROCEDURES TO IMPLEMENT THE RENEWABLE ENERGY PORTFOLIO STANDARD"

TO: ALL ELECTRIC SUPPLIERS, ELECTRIC UTILITIES, ELECTRIC GENERATORS USING RENEWABLE RESOURCES, AND OTHER INTERESTED PERSONS

Under the "Renewable Energy Portfolio Standards Act," 26 **Del.C.** §§351-363 (2006 Supp.) ("the Act"),

each electric supplier making retail electric sales in Delaware must, beginning in 2007, accumulate a portfolio of "renewable energy credits" equivalent to a specified percentage of its overall retail electric supply sales. In 2006, the Public Service Commission ("PSC") adopted its "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" ("RPS Rules"). See 10 DE Reg. 151-157 (July 1, 2006).

On July 24, 2006, the General Assembly and Governor enacted significant changes to various provisions of the Act. See 76 **Del. Laws** ch. 164 (July 24, 2007). In light of those statutory amendments, the PSC now proposes revisions to its RPS Rules to have those rules reflect, and be consistent with, the recent statutory changes. See PSC Order No. 7276 (Sept. 4, 2007). For example, the proposed rule revisions incorporate the new statutory "Schedule I" that increases the percentages of retail sales that electric suppliers must meet with renewable energy credits. The proposed rule changes also implement the new requirement that electric suppliers also concurrently acquire, as part of their yearly renewable energy portfolio obligation, specified levels of "solar renewable energy credits." In addition, the proposed revisions reflect the increases in the dollar amounts of "alternative compliance payments" for renewable credits and institute a new solar alternative compliance payment regime to be available as a substitute for solar renewable energy credits. The PSC is authorized to make rules to implement the Act under 26 **Del.C.** §362.

You can review PSC Order No. 7276 (Sept. 4, 2007) and the proposed revised RPS Rules in the October 1, 2007 issue of the *Delaware Register of Regulations*. You can also review the Order and the proposed, revised RPS Rules at the PSC's Internet website located at <http://depssc.delaware.gov>. If you wish to have written copies of the Order and proposed revised Rules, you can obtain them at the PSC's office at the address located below for \$0.25 per page.

The PSC now solicits comments, suggestions, compilations of data, briefs, or other written materials about the proposed revisions to its RPS Rules. If you wish to file any such materials, you should submit an original and ten copies of such written documents on or before October 31, 2007. You should file such materials with the PSC at the following address:

Public Service Commission
861 Silver Lake Boulevard
Cannon Building
Suite 100
Dover, Delaware, 19904
Attn: Reg. Dckt. No. 56

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

The PSC will also conduct a public evidentiary hearing on the new proposed regulations on Wednesday, December 12, 2007 at 10:00 AM at the Commission's office at the address set forth above. You may also submit comments and materials at such public evidentiary hearing.

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

RULES AND PROCEDURES TO IMPLEMENT THE RENEWABLE ENERGY PORTFOLIO STANDARD

4.0 Definitions

4.1 The following words and terms, when used in this Regulation, should have the following meanings unless the context clearly indicates otherwise:

"Alternative Compliance Payment" ("ACP") means a payment of a certain dollar amount per megawatt hour, which a Retail Electricity Supplier may submit in lieu of supplying the minimum percentage of RECs required under Section 3.3.4 of this Regulation.

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

"Commission" means the Delaware Public Service Commission.

"Compliance Year" means the calendar year beginning with June 1 and ending with May 31 of the

following year, for which a Retail Electricity Supplier must demonstrate that it has met the requirements of this Regulation.

“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.

“Eligible Energy Resources” means the following energy sources located within the PJM region or imported into the PJM region and tracked through the PJM Market Settlement System:

Solar energy technologies that employ solar radiation to produce electricity;

Electricity derived from wind energy;

Electricity derived from ocean energy including wave or tidal action, currents, or thermal

differences;

Geothermal energy technologies that generate electricity with a steam turbine, driven by hot water or steam extracted from geothermal reservoirs in the earth’s crust;

Electricity generated by a fuel cell powered by Renewable Fuels;

Electricity generated by the combustion of gas from the anaerobic digestion of organic material;

Electricity generated by a hydroelectric facility that has a maximum design capacity of 30 megawatts or less from all generating units combined that meet appropriate environmental standards as determined by DNREC (see DNREC Regulation _____);

Electricity generated from the combustion of biomass that has been cultivated and harvested in a sustainable manner as determined by DNREC, and is not combusted to produce energy in a waste-to-energy facility or in an incinerator (see DNREC Regulation _____);

Electricity generated by the combustion of methane gas captured from a landfill gas recovery system; provided, however, that:

Increased production of landfill gas from production facilities in operation prior to January 1, 2004 demonstrates a net reduction in total air emissions compared to flaring and leakage;

Increased utilization of landfill gas at electric generating facilities in operation prior to January 1, 2004 (i) is used to offset the consumption of coal, oil, or natural gas at those facilities, (ii) does not result in a reduction in the percentage of landfill gas in the facility’s average annual fuel mix when calculated using fuel mix measurements for 12 out of any continuous 15 month period during which the electricity is generated, and (iii) causes no net increase in air emissions from the facility; and

Facilities installed on or after January 1, 2004 meet or exceed 2004 Federal and State air emission standards, or the Federal and State air emission standards in place on the day the facilities are first put into operation, whichever is higher.

“End-Use Customer” means a person or entity in Delaware that purchases electrical energy at retail prices from a Retail Electricity Supplier.

“Fund” means the Delaware Green Energy Fund.

“GATS” means the Generation Attribute Tracking System developed by PJM Environmental Information Services, Inc. (PJM EIS).

“Generation Attribute” means a non-price characteristic of the electrical energy output of a Generation Unit including, but not limited to, the Unit’s fuel type, geographic location, emissions, vintage, and RPS eligibility.

“Generation Unit” means a facility that converts a fuel or an energy resource into electrical energy.

“Industrial Customer” means an End-Use Customer with a North American Industry Classification System (NAICS) Manufacturing Sector Code.

“Municipal Electric Company” means a public corporation created by contract between 2 or more municipalities pursuant to provisions of Title 22, Chapter 13 of the **Delaware Code** and the electric utilities that are municipally owned within the State of Delaware.

“New Renewable Generation Resources” means Eligible Energy Resources first going into commercial operation after December 31, 1997.

“Peak Demand” shall have the same meaning as and be determined consistently with how such term or a similar term is defined and determined in the applicable utility’s tariff then in effect and approved by the Commission. For customers with more than one account, the peak demands shall be aggregated for all accounts. The calculation will be applied in the current year based on the Peak Demand, as defined above, in the prior year.

“PJM” or **“PJM Interconnection”** means the regional transmission organization (RTO) that coordinates the movement of wholesale electricity in the PJM region, or its successors at law.

~~“PJM region” means the area within which the movement of wholesale electricity is coordinated by PJM Interconnection. The PJM region is as described in the Amended and Restated Operating Agreement of PJM.~~

~~“Renewable Energy Credit” (“REC”) means a tradable instrument comprised of all the Generation Attributes equal to 1 megawatt hour of electricity derived from Eligible Energy Resources and that is used to track and verify compliance with the provisions of this Regulation. A REC does not include emission reduction credits and/or allowances encumbered or used by a Generation Unit for compliance with local, state, or federal operating and/or air quality permits associated with the 1 megawatt hour of electricity.~~

~~“Renewable fuel” means a fuel that is derived from Eligible Energy Resources. This term does not include a fossil fuel or a waste product from a fossil fuel source.~~

~~“RPS” and “Renewable Energy Portfolio Standard” means the percentage of electricity sales at retail in the State that is to be derived from Eligible Energy Resources.~~

~~“Retail Electricity Product” means an electrical energy offering that is distinguished by its Generation Attributes only and that is offered for sale by a Retail Electricity Supplier to End Use Customers. Multiple electrical energy offerings with the same Generation Attributes may be considered a single Retail Electricity Product.~~

~~“Retail Electricity Supplier” means a person or entity that sells electrical energy to End Use Customers in Delaware, including, but not limited to, non-regulated power producers, electric utility distribution companies supplying standard offer, default service, or any successor service to End Use Customers. A Retail Electricity Supplier does not include a Municipal Electric Company for the purposes of this Regulation.~~

~~“Rural Electric Cooperative” means a non stock, non profit, membership corporation organized pursuant to the Federal “Rural Electrification Act of 1936” and operated under the cooperative form of ownership.~~

~~“Total Retail Sales” means retail sales of electricity within the State of Delaware exclusive of sales to any Industrial Customer with a Peak Demand in excess of 1,500 kilowatts.~~

2.0 Purpose and Scope

~~2.1 The benefits of electricity from renewable energy resources accrue to the public at large, and electric suppliers and consumers share an obligation to develop a minimum level of these resources in the electric supply portfolio of the State. The purpose of this Regulation, in support of 26 ~~Del.C.~~, §351—363, is to set forth the rules for governing the RPS.~~

~~2.2 This regulation shall apply to all retail electricity sales in the State of Delaware except for retail electricity sales of Municipal Electric Companies and retail electricity sales to any Industrial Customer with a Peak Demand in excess of 1,500 kilowatts.~~

~~2.2.1 An Industrial Customer with Peak Demand in excess of 1,500 kilowatts may elect to have their load exempt from this Regulation provided that they meet the definitions found in Section 1.1 and:~~

~~2.2.1.1 submit a notice to the Commission’s Staff including, but not limited to, Name and Address of Industrial Customer, and NAICS Code and load for each account;~~

~~2.2.1.1.1 the Commission’s Staff shall, within thirty (30) days of receipt of the notice, provide to the Industrial Customer an acknowledgement of the status, exempt or non-exempt, of the Industrial Customer and;~~

~~2.2.1.2 submit the Commission’s Staff acknowledgement referenced in Section 2.2.1.1.1 of this Regulation to their Retail Electricity Supplier.~~

~~2.2.2 For an End Use Customer with multiple accounts totaling in excess of 1,500 kilowatts within an applicable utility’s service territory and served by a single Retail Electricity Supplier, to have their load exempt, the aggregate of their accounts with an NAICS Manufacturing Sector Code must have a Peak Demand of at least 751 kilowatts and they must follow the procedure found in Section 2.2.1.~~

~~2.3 Any Rural Electric Cooperative that is opted out of Commission regulation by its membership pursuant to 26 ~~Del.C.~~, §223 of the ~~Delaware Code~~ shall, for all purposes of administering and applying this Regulation, be treated as a Municipal Electric Company during any period of time the Rural Electric Cooperative is exempt from Commission regulation.~~

~~2.4 A Rural Electric Cooperative may elect to be exempt from the requirements of this Regulation provided that, on or before June 1, 2006, they:~~

~~2.4.1 submit a written notice to the Delaware General Assembly;~~

~~2.4.2 submit a written notice to the Commission;~~

~~2.4.3 alert their End Use Customers with notices inserted in two (2) consecutive electricity bills;~~

~~2.4.4 offer their End Use Customers a voluntary program for purchasing renewable energy~~

under competitive rates; and

~~2.4.5 either contribute to the Delaware Green Energy Fund at levels commensurate with other Retail Electricity Suppliers or create an independent fund separate from the Delaware Green Energy Fund to be used in support of energy efficiency technologies, renewable energy technologies, or demand side management programs, into which they make payments of \$0.178 for each megawatt-hour they sell, transmit, or distribute in the State.~~

3.0 Administration of RPS

3.1 Certifying Eligible Energy Resources:

~~3.1.1 The Commission through its Staff will certify Generation Units as Eligible Energy Resources based on the definition of Eligible Energy Resources found in Section 1.1 of this Regulation.~~

~~3.1.2 Any Generation Unit seeking certification as an Eligible Energy Resource must submit an Application for Certification as an Eligible Energy Resource Under the Delaware Renewable Energy Portfolio Standard (Application) to the Commission. This may include Customer Sited Generation or a Generation Unit owned or operated by a Municipal Electric Company.~~

~~3.1.3 Commission Staff will review the Application and will notify the applicant of its approval as an Eligible Energy Resource or of any deficiencies in their Application within 30 days of receipt. The applicant will have the opportunity to revise their submission, if appropriate.~~

~~3.1.4 If Commission Staff finds the Generation Unit to be in compliance with Sections 1.0 and 3.0 of this Regulation, as well as any other applicable Delaware statute, Commission Staff will issue a State of Delaware Certification Number.~~

~~3.1.5 Upon receipt of the State of Delaware Certification Number, a Generation Unit will be deemed an Eligible Energy Resource.~~

~~3.1.6 Upon designation as an Eligible Energy Resource, the Generation Unit's owner shall be entitled to one (1) Renewable Energy Credit (REC) for each mega-watt hour of energy derived from Eligible Energy Resources. RECs will be created and supplied by the PJM-EIS GATS, or its successor at law. Eligible Energy Resources are subject to applicable PJM-EIS GATS rules and shall pay applicable PJM-EIS GATS fees.~~

~~3.1.6.1 However, if in the future, the Commission finds that PJM-EIS's GATS is not applicable or not suited to meet the needs or requirements of the RPS, the Commission may establish or participate in another renewable energy tracking system.~~

~~3.1.7 RECs created by Eligible Energy Resources on or after June 1, 2006 shall be valid to meet retail electricity supplier requirements, subject to Section 3.2.3 of this Regulation.~~

~~3.1.7.1 If a Generation Unit is deemed an Eligible Energy Resource under Section 3.1 and the Eligible Energy Resource's GATS account continues to be maintained in good standing, the Eligible Energy Resource may achieve a Delaware designation for RECs recorded with PJM-EIS's GATS for the calendar year being traded in GATS at the time of the Commission Staff's approval of the Eligible Energy Resource, but no earlier than June 1, 2006.~~

~~3.1.8 An Eligible Energy Resource will remain certified unless substantive changes are made to its operational characteristics. Substantive changes include, but are not limited to changes in fuel type, fuel mix and generator type. An Eligible Energy Resource making substantive changes to its operational characteristics shall notify the Commission of such changes at least 30 days prior to the effective date of such changes. At such time the Generation Unit shall submit a revised Application, which shall be subject to the process laid out in Section 3.1 of this Regulation.~~

~~3.1.9 RECs created by an Eligible Energy Resource shall remain valid for compliance, subject to Section 3.2.3 and Section 3.3.3 of this Regulation, even if that Eligible Energy Resource is subsequently decertified for eligibility.~~

3.2 Compliance with RPS

~~3.2.1 The Total Retail Sales of each Retail Electricity Product sold to End-Use Customers by a Retail Electricity Supplier during any given Compliance Year shall include a minimum percentage of electrical energy sales from Eligible Energy Resources as shown in Schedule 1.~~

<u>SCHEDULE 1</u>	
<u>Compliance Year</u>	<u>Cumulative Minimum Percentage</u>
<u>2007</u>	<u>1%</u>
<u>2008</u>	<u>1.5%</u>
<u>2009</u>	<u>2%</u>
<u>2010</u>	<u>2.75%</u>
<u>2011</u>	<u>3.5%</u>
<u>2012</u>	<u>4.25%</u>
<u>2013</u>	<u>5%</u>
<u>2014</u>	<u>5.75%</u>
<u>2015</u>	<u>6.5%</u>
<u>2016</u>	<u>7.25%</u>
<u>2017</u>	<u>8%</u>
<u>2018</u>	<u>9%</u>
<u>2019</u>	<u>10%</u>

3.2.2 A Retail Electricity Supplier's compliance with Schedule 1 shall be based on accumulating RECs equivalent to the current Compliance Year's Cumulative Minimum Percentage of Total Retail Sales of each Retail Electricity Product sold to End Use Customers and subject to Section 3.2.3 and, where appropriate, Commission regulations⁴. Such RECs shall be filed annually with the Commission within 120 days following the completion of the Compliance Year.

3.2.3 Each Retail Electricity Supplier can provide no more than 1% of each Compliance Year's Total Retail Sales from Eligible Energy Resources operational before December 31, 1997. The remainder of each year's retail sales, up to the required amount as specified in Section 3.2.1 of this Regulation must come from New Renewable Generation resources. In Compliance Year 2020 and for each Compliance Year thereafter, all Eligible Energy Resources used to meet the cumulative minimum percentage requirements set by the Commission rules shall be New Renewable Generation Resources.

3.2.4 A Retail Electricity Supplier shall not use RECs used to satisfy another state's renewable energy portfolio requirements for compliance with Schedule 1. A Retail Electricity Supplier may sell or transfer any RECs not required to meet this regulation.

3.2.5 On or after June 1, 2006, Eligible Energy Resources may create and accumulate RECs for the purposes of calculating compliance with the RPS.

3.2.6 Aggregate generation from small Eligible Energy Resources, 100 kilowatts of capacity or less, may be used to meet the requirements of Schedule 1, provided that the generators or their agents, on an annual basis, document the level of generation, as recorded by appropriate metering.

3.2.7 A Retail Electricity Supplier shall receive 300% credit toward meeting the RPS for energy derived from the following sources installed on or before December 31, 2014:

3.2.7.1 Solar electric; or

3.2.7.2 Renewable fuel that is used in a fuel cell.

3.2.8 A Retail Electricity Supplier shall receive 150% credit toward meeting the RPS for wind energy installations sited in Delaware on or before December 31, 2012.

3.2.9 A Retail Electricity Supplier shall receive credit toward meeting the RPS for electricity derived from the fraction of eligible landfill gas, biomass or biogas combined with other fuels.

3.2.10 Cumulative minimum percentage requirements of Eligible Energy Resources shall be established by Commission rules for Compliance Year 2020 and each subsequent year. In no case shall the minimum percentages established by Commission rules be lower than those required for Compliance Year 2019 in

1. The Commission understands the legislation to mean that the Total Retail Sales of each Retail Electricity Product sold to End Use Customers during a given Compliance Year shall include a minimum percentage of RECs determined by the current Cumulative Minimum Percentage as defined in Schedule 1. The Commission shall, in another proceeding, further define how RECs from Green Power products, as that term is defined in Commission Docket Number 49, are to be tracked and utilized for compliance in the RPS.

Schedule 1. Each of the rules setting such minimum percentage shall be adopted at least two years prior to the minimum percentage being required.

~~3.2.11 Beginning in Compliance Year 2010, and in each Compliance Year thereafter, the Commission may review the status of Schedule 1 and report to the legislature on the status of the pace of the scheduled percentage increases toward the goal of 10%. If the Commission concludes at this time that the schedule either needs to be accelerated or decelerated, it may also make recommendations to the General Assembly for legislative changes to the RPS.~~

~~3.2.12 Beginning in Compliance Year 2014, and in each Compliance Year thereafter, the Commission may, in the event of circumstances specified in this subsection and after conducting hearings, accelerate or slow the scheduled percentage increases towards meeting the goal of 10%. The Commission may only slow the increases if the Commission finds that at least 30% of RPS compliance has been met through the ACP for three (3) consecutive years, despite adequate planning by the Retail Electricity Suppliers. The Commission may only accelerate the scheduled percentage increases after finding that the average price for RECs eligible for RPS compliance has, for two (2) consecutive years, been below a predetermined market-based price threshold to be established by the Commission. The Commission shall establish the predetermined market-based price threshold in consultation with the Delaware Energy Office. Rules that would alter the percentage targets shall be promulgated at least two years before the percentage change takes effect. In no event shall the Commission reduce the percentage target below any level reached to that point.~~

~~3.3 Verification of Compliance with the RPS~~

~~3.3.1 Within 120 days of the end of a compliance year, each Retail Electricity Supplier who has made sales to an End-use Customer in the State of Delaware must submit a completed Retail Electricity Supplier's Verification of Compliance with the Delaware Renewable Energy Portfolio Standard Report (Report) which includes, but is not limited to, evidence of the specified number of RECs required for that Compliance Year according to Schedule 1 and the Total Retail Sales of each Retail Electricity Product.~~

~~3.3.2 RECs must have been created by PJM EIS's GATS, or its successor at law or pursuant to Section 3.1.6.1 of this Regulation.~~

~~3.3.3 RECs, submitted for compliance with this Regulation, may be dated no earlier than three (3) years prior to the beginning of the current Compliance Year.~~

~~3.3.4 In lieu of standard means of compliance with the RPS, any Retail Electricity Supplier may pay into the Fund an ACP of \$25 for each megawatt-hour deficiency between the RECs used by a Retail Electricity Supplier in a given compliance year and the RECs necessary for such Retail Electricity Supplier to meet the year's Cumulative Minimum Percentage. In subsequent years, the ACP for any Retail Electricity Supplier shall increase as follows:~~

~~3.3.4.1 If a Retail Electricity Supplier has paid an ACP of \$25 for any megawatt-hour deficiency in any previous year, then the ACP shall be \$35 for each megawatt-hour.~~

~~3.3.4.2 If a Retail Electricity Supplier has paid an ACP of \$35 for any megawatt-hour deficiency in any previous year, then the ACP shall be \$45 for each megawatt-hour.~~

~~3.3.4.3 If a Retail Electricity Supplier has paid an ACP of \$45 for any megawatt-hour deficiency in any previous year, then the ACP shall be \$50 for each megawatt-hour.~~

~~3.3.4.4 If a Retail Electricity Supplier has paid an ACP of \$50 for any megawatt-hour deficiency in any previous year, then the ACP shall be \$50 for each megawatt-hour.~~

~~3.3.4.5 ACPs shall not be more than \$50 for each megawatt-hour.~~

~~3.3.5 The Commission Staff shall notify any Retail Electricity Supplier of any compliance deficiencies within 165 days of the close of the current Compliance Year. If the Retail Electricity Supplier is found to be deficient by the Commission Staff, the Retail Electricity Supplier shall be required to pay the appropriate ACP, according to Section 3.3.4 of this Regulation. All such payments shall be due within 30 days of notification by the Commission Staff. Upon receipt of payment, the Retail Electricity Supplier shall be found to be in compliance for that given year.~~

~~3.3.6. All compliance payments, made by the Retail Electricity Supplier, shall be payable to the Delaware Green Energy Fund and sent to the Commission.~~

~~4.0 Recovery of Costs~~

~~4.1 A Retail Electricity Supplier may recover, through a non-bypassable surcharge on its supply portion of the bill, actual dollar for dollar costs incurred in complying with the State of Delaware's RPS, except that~~

any compliance fee assessed pursuant to Section 3.3.4 and its subsections of these Rules and Regulation shall be recoverable only to the extent authorized by Section 4.2 of this Regulation.

4.2 A Retail Electricity Supplier may recover any ACP if the payment of an ACP is the least cost measure to ratepayers as compared to the purchase of Renewable Energy Credits to comply with the RPS; or if there are insufficient Renewable Energy Credits available for the Retail Electricity Supplier to comply with the RPS.

4.3 Any cost recovered under this section shall be disclosed to customers at least annually on inserts accompanying customer bills.

5.0 Other General Rules

5.1 Under Delaware's Freedom of Information Act, 29 ~~Del.C.~~ Ch. 100, all information filed with the Commission is considered of public record unless it contains "trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature." 29 ~~Del.C.~~ §10002(d)(2). To qualify as a non-public record under this exemption, materials received by the Commission must be clearly and conspicuously marked on the title page and on every page containing the sensitive information as "proprietary" or "confidential" or words of similar effect. The Commission shall presumptively deem all information so designated to be exempt from public record status. However, upon receipt of a request for access to information designated proprietary or confidential, the Commission may review the appropriateness of such designation and may determine to release the information requested. Prior to such release, the Commission shall provide the entity that submitted the information with reasonable notice and an opportunity to show why the information should not be released.

5.2 Any End-Use Customer, Retail Electricity Supplier, Eligible Energy Resource, potential Eligible Energy Resource or other interested party to which this Regulation may apply may file a complaint with the Commission pursuant to the Rules of Practice and Procedure of the Delaware Public Service Commission.

5.3 The failure to comply with this Regulation may result in penalties, including monetary assessments, suspension or revocation of eligibility as an Eligible Energy Resource, or other sanction as determined by the Commission consistent with 26 ~~Del.C.~~, §205(a), §217, and §1019.

1.0 Definitions

1.1 The following words and terms, when used in this Regulation, should have the following meanings unless the context clearly indicates otherwise:

"Alternative Compliance Payment" or "ACP" means a payment of a certain dollar amount per megawatt hour, which a Retail Electricity Supplier may submit in lieu of supplying the minimum percentage of RECs required under Section 3.3.4 of this Regulation.

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

"Commission" means the Delaware Public Service Commission.

"Compliance Year" means the calendar year beginning with June 1 and ending with May 31 of the following year, for which a Retail Electricity Supplier must demonstrate that it has met the requirements of this Regulation.

"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.

"Eligible Energy Resources" means the following energy sources located within the PJM region or imported into the PJM region and tracked through the PJM Market Settlement System:

Solar photovoltaic or solar thermal energy technologies that employ solar radiation to produce electricity or to displace electricity use;

Electricity derived from wind energy;

Electricity derived from ocean energy including wave or tidal action, currents, or thermal differences;

Geothermal energy technologies that generate electricity with a steam turbine, driven by hot water or steam extracted from geothermal reservoirs in the earth's crust;

Electricity generated by a fuel cell powered by Renewable Fuels;

Electricity generated by the combustion of gas from the anaerobic digestion of organic material;

Electricity generated by a hydroelectric facility that has a maximum design capacity of 30 megawatts or less from all generating units combined that meet appropriate environmental standards as determined by DNREC (see DNREC Regulation's Secretary's Order No. 2006-W-0027);

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Electricity generated from the combustion of biomass that has been cultivated and harvested in a sustainable manner as determined by DNREC, and is not combusted to produce energy in a waste to energy facility or in an incinerator (see DNREC Regulation's Secretary's Order No. 2006-W-0027):

Electricity generated by the combustion of methane gas captured from a landfill gas recovery system; provided, however, that:

Increased production of landfill gas from production facilities in operation prior to January 1, 2004 demonstrates a net reduction in total air emissions compared to flaring and leakage:

Increased utilization of landfill gas at electric generating facilities in operation prior to January 1, 2004 (i) is used to offset the consumption of coal, oil, or natural gas at those facilities, (ii) does not result in a reduction in the percentage of landfill gas in the facility's average annual fuel mix when calculated using fuel mix measurements for 12 out of any continuous 15 month period during which the electricity is generated, and (iii) causes no net increase in air emissions from the facility; and

Facilities installed on or after January 1, 2004 meet or exceed 2004 Federal and State air emission standards, or the Federal and State air emission standards in place on the day the facilities are first put into operation, whichever is higher.

"End-Use Customer" means a person or entity in Delaware that purchases electrical energy at retail prices from a Retail Electricity Supplier.

"Fund" means the Delaware Green Energy Fund.

"GATS" means the Generation Attribute Tracking System developed by PJM-Environmental Information Services, Inc. (PJM-EIS).

"Generation Attribute" means a non-price characteristic of the electrical energy output of a Generation Unit including, but not limited to, the Unit's fuel type, geographic location, emissions, vintage, and RPS eligibility.

"Generation Unit" means a facility that converts a fuel or an energy resource into electrical energy.

"Industrial Customer" means an End-Use Customer with a North American Industry Classification System (NAICS) Manufacturing Sector Code.

"Municipal Electric Company" means a public corporation created by contract between 2 or more municipalities pursuant to provisions of Title 22, Chapter 13 of the **Delaware Code** and the electric utilities that are municipally owned within the State of Delaware.

"New Renewable Generation Resources" means Eligible Energy Resources first going into commercial operation after December 31, 1997.

"Peak Demand" shall have the same meaning as and be determined consistently with how such term or a similar term is defined and determined in the applicable utility's tariff then in effect and approved by the Commission. For customers with more than one account, the peak demands shall be aggregated for all accounts. The calculation will be applied in the current year based on the Peak Demand, as defined above, in the prior year.

"PJM" or "PJM Interconnection" means the regional transmission organization (RTO) that coordinates the movement of wholesale electricity in the PJM region, or its successors at law.

"PJM region" means the area within which the movement of wholesale electricity is coordinated by PJM Interconnection. The PJM region is as described in the Amended and Restated Operating Agreement of PJM.

"Renewable Energy Credit" ("REC") means a tradable instrument comprised of all the Generation Attributes equal to 1 megawatt-hour of electricity derived from Eligible Energy Resources and that is used to track and verify compliance with the provisions of this Regulation. A REC does not include emission reduction credits and/or allowances encumbered or used by a Generation Unit for compliance with local, state, or federal operating and/or air quality permits associated with the 1 megawatt-hour of electricity.

"Renewable fuel" means a fuel that is derived from Eligible Energy Resources. This term does not include a fossil fuel or a waste product from a fossil fuel source.

"RPS" and "Renewable Energy Portfolio Standard" means the percentage of electricity sales at retail in the State that is to be derived from Eligible Energy Resources.

"Retail Electricity Product" means an electrical energy offering that is distinguished by its Generation Attributes only and that is offered for sale by a Retail Electricity Supplier to End-Use Customers. Multiple electrical energy offerings with the same Generation Attributes may be considered a single Retail Electricity Product.

"Retail Electricity Supplier" means a person or entity that sells electrical energy to End-Use Customers in Delaware, including, but not limited to, non-regulated power producers, electric utility distribution companies supplying standard offer, default service, or any successor service to End-Use Customers. A Retail Electricity Supplier does not include a Municipal Electric Company for the purposes of this Regulation.

"Rural Electric Cooperative" means a non-stock, non-profit, membership corporation organized pursuant to the Federal "Rural Electrification Act of 1936" and operated under the cooperative form of ownership.

"Solar Alternative Compliance Payment" or "SACP" means a payment of a certain dollar amount per megawatt-hour, which a Retail Electricity Supplier or Municipal Electric Supplier may submit in lieu of supplying the Minimum Percentage from Solar Photovoltaic required under Section 3.3.4 of this Regulation.

"Solar Renewable Energy Credit" or "SREC" means a tradable instrument that is equal to 1 megawatt-hour of retail electricity sales in the State that is derived from Solar Photovoltaic Energy Resources and that is used to track and verify compliance with the provisions of this Regulation.

"Total Retail Sales" means retail sales of electricity within the State of Delaware exclusive of sales to any Industrial Customer with a Peak Demand in excess of 1,500 kilowatts.

2.0 Purpose and Scope

2.1 The benefits of electricity from renewable energy resources accrue to the public at large, and electric suppliers and consumers share an obligation to develop a minimum level of these resources in the electric supply portfolio of the State. The purpose of this Regulation, in support of 26 Del.C., §351 - 363, is to set forth the rules for governing the RPS.

2.2 This Regulation shall apply to all retail electricity sales in the State of Delaware except for retail electricity sales of Municipal Electric Companies and retail electricity sales to any Industrial Customer with a Peak Demand in excess of 1,500 kilowatts.

2.2.1 An Industrial Customer with Peak Demand in excess of 1,500 kilowatts may elect to have their load exempt from this Regulation provided that they meet the definitions found in Section 1.1 and:

2.2.1.1 submit a notice to the Commission's Staff including, but not limited to, Name and Address of Industrial Customer, and NAICS Code and load for each account ;

2.2.1.1.1 the Commission's Staff shall, within thirty (30) days of receipt of the notice, provide to the Industrial Customer an acknowledgement of the status, exempt or non-exempt, of the Industrial Customer and;

2.2.1.2 submit the Commission's Staff acknowledgement referenced in Section 2.2.1.1.1 of this Regulation to their Retail Electricity Supplier.

2.2.2 For an End-Use Customer with multiple accounts totaling in excess of 1,500 kilowatts within an applicable utility's service territory and served by a single Retail Electricity Supplier, to have their load exempt, the aggregate of their accounts with an NAICS Manufacturing Sector Code must have a Peak Demand of at least 751 kilowatts and they must follow the procedure found in Section 2.2.1.

2.3 Any Rural Electric Cooperative that is opted-out of Commission regulation by its membership pursuant to 26 Del.C. §223 of the Delaware Code shall, for all purposes of administering and applying this Regulation, be treated as a Municipal Electric Company during any period of time the Rural Electric Cooperative is exempt from Commission regulation.

2.4 A Rural Electric Cooperative may elect to be exempt from the requirements of this Regulation provided that, on or before June 1, 2006, they:

2.4.1 submit a written notice to the Delaware General Assembly;

2.4.2 submit a written notice to the Commission;

2.4.3 alert their End-Use Customers with notices inserted in two (2) consecutive electricity bills;

2.4.4 offer their End-Use Customers a voluntary program for purchasing renewable energy under competitive rates; and

2.4.5 either contribute to the Delaware Green Energy Fund at levels commensurate with other Retail Electricity Suppliers or create an independent fund separate from the Delaware Green Energy Fund to be used in support of energy efficiency technologies, renewable energy technologies, or demand side management programs, into which they make payments of \$0.178 for each megawatt-hour they sell, transmit, or distribute in the State.

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3.1.1 The Commission through its Staff will certify Generation Units as Eligible Energy Resources based on the definition of Eligible Energy Resources found in Section 1.1 of this Regulation.

3.1.2 Any Generation Unit seeking certification as an Eligible Energy Resource must submit an

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Application for Certification as an Eligible Energy Resource Under the Delaware Renewable Energy Portfolio Standard (Application) to the Commission. This may include Customer-Sited Generation or a Generation Unit owned or operated by a Municipal Electric Company.

3.1.3 Commission Staff will review the Application and will notify the applicant of its approval as an Eligible Energy Resource or of any deficiencies in their Application within 30 days of receipt. The applicant will have the opportunity to revise their submission, if appropriate.

3.1.4 If Commission Staff finds the Generation Unit to be in compliance with Sections 1.0 and 3.0 of this Regulation, as well as any other applicable Delaware statute; Commission Staff will issue a State of Delaware Certification Number.

3.1.5 Upon receipt of the State of Delaware Certification Number, a Generation Unit will be deemed an Eligible Energy Resource.

3.1.6 Upon designation as an Eligible Energy Resource, the Generation Unit's owner shall be entitled to one (1) Renewable Energy Credit (REC) for each mega-watt hour of energy derived from Eligible Energy Resources other than Solar Photovoltaic Energy Resources. Upon designation as an Eligible Energy Resource, the owner of a Generation Unit employing Solar Photovoltaic Energy Resources shall be entitled to one (1) Solar Renewable Energy Credit (SREC) for each mega-watt hour of energy derived from Solar Photovoltaic Energy Resource. SRECs and RECs will be created and supplied by the PJM-EIS GATS, or its successor at law. Eligible Energy Resources are subject to applicable PJM-EIS GATS rules and shall pay applicable PJM-EIS GATS fees.

3.1.6.1 However, if in the future, the Commission finds that PJM-EIS's GATS is not applicable or not suited to meet the needs or requirements of the RPS, the Commission may establish or participate in another renewable energy tracking system.

3.1.7 RECs or SRECs created by Eligible Energy Resources on or after June 1, 2006 shall be valid to meet retail electricity supplier requirements, subject to Section 3.2.3 of this Regulation.

3.1.7.1 If a Generation Unit is deemed an Eligible Energy Resource under Section 3.1 and the Eligible Energy Resource's GATS account continues to be maintained in good standing, the Eligible Energy Resource may achieve a Delaware designation for RECs or SRECs recorded with PJM-EIS's GATS for the calendar year being traded in GATS at the time of the Commission Staff's approval of the Eligible Energy Resource, but no earlier than June 1, 2006.

3.1.8 An Eligible Energy Resource will remain certified unless substantive changes are made to its operational characteristics. Substantive changes include, but are not limited to changes in fuel type, fuel mix and generator type. An Eligible Energy Resource making substantive changes to its operational characteristics shall notify the Commission of such changes at least 30 days prior to the effective date of such changes. At such time, the Generation Unit shall submit a revised Application, which shall be subject to the process laid out in Section 3.1 of this Regulation.

3.1.9 RECs or SRECs created by an Eligible Energy Resource shall remain valid for compliance, subject to Section 3.2.3 and Section 3.3.3 of this Regulation, even if that Eligible Energy Resource is subsequently decertified for eligibility.

3.2 Compliance with RPS

3.2.1 The Total Retail Sales of each Retail Electricity Product sold to End-Use Customers by a Retail Electricity Supplier during any given Compliance Year shall include a minimum percentage of electrical energy sales from Eligible Energy Resources and Solar Photovoltaics as shown in Schedule 1. Any portion of a Retail Electric Supplier's renewable energy supply portfolio for 2007, 2008 and 2009 Compliance Years that is acquired under wholesale renewable energy supply entered into pursuant to the 2005 or 2006 Delaware Standard Offer Services ("SOS") auctions shall be subject to the provisions of this Regulation as shown in Schedule 2 below that were in effect on the date of the 2005 or 2006 SOS auction.

SCHEDULE 1

<u>Compliance Year (beginning June 1st)</u>	<u>Cumulative Minimum Percentage from Solar Photovoltaics</u>	<u>Minimum Cumulative Percentage from Eligible Energy Resources^a</u>
<u>2007</u>	<u>--</u>	<u>2.0%</u>
<u>2008</u>	<u>0.011%</u>	<u>3.0%</u>
<u>2009</u>	<u>0.014%</u>	<u>4.0%</u>
<u>2010</u>	<u>0.018%</u>	<u>5.5%</u>

SCHEDULE 2		
<u>Compliance Year (beginning June 1st)</u>	<u>Minimum Cumulative Percentage from Solar Photovoltaics</u>	<u>Minimum Cumulative Percentage from Eligible Energy Resources^a</u>
<u>2007</u>	--	<u>1.00%</u>
<u>2008</u>	<u>0.011%</u>	<u>1.50%</u>
<u>2009</u>	<u>0.014%</u>	<u>2.00%</u>
<u>2010</u>	<u>0.018%</u>	<u>5.00%</u>
<u>2011</u>	<u>0.048%</u>	<u>7.00%</u>
<u>2012</u>	<u>0.099%</u>	<u>8.50%</u>
<u>2013</u>	<u>0.201%</u>	<u>10.00%</u>
<u>2014</u>	<u>0.354%</u>	<u>11.50%</u>
<u>2015</u>	<u>0.559%</u>	<u>13.0%</u>
<u>2016</u>	<u>0.803%</u>	<u>14.5%</u>
<u>2017</u>	<u>1.112%</u>	<u>16.00%</u>
<u>2018</u>	<u>1.547%</u>	<u>18.00%</u>
<u>2019</u>	<u>2.005%</u>	<u>20.00%</u>

a. Minimum Cumulative Percentage from Eligible Energy Resources includes the Minimum Cumulative Percentage from Solar Photovoltaics

3.2.2 A Retail Electricity Supplier's compliance with Schedule 1 shall be based on accumulating RECs equivalent to the current Compliance Year's Cumulative Minimum Percentage of Total Retail Sales of each Retail Electricity Product sold to End-Use Customers and subject to Section 3.2.3 and, where appropriate, Commission regulations.¹ Such RECs shall be filed annually with the Commission within 120 days following the completion of the Compliance Year.

3.2.3 Each Retail Electricity Supplier can provide no more than 1% of each Compliance Year's Total Retail Sales from Eligible Energy Resources operational before December 31, 1997. The remainder of each year's retail sales, up to the required amount as specified in Section 3.2.1 of this Regulation must come from New Renewable Generation resources. In Compliance Year 2020 and for each Compliance Year thereafter, all Eligible Energy Resources used to meet the cumulative minimum percentage requirements set by the Commission rules shall be New Renewable Generation Resources.

3.2.4 A Retail Electricity Supplier shall not use RECs used to satisfy another state's renewable energy portfolio requirements for compliance with Schedule 1. A Retail Electricity Supplier may sell or transfer any RECs not required to meet this Regulation.

3.2.5 On or after June 1, 2006, Eligible Energy Resources may create and accumulate RECs for the purposes of calculating compliance with the RPS.

3.2.6 Aggregate generation from small Eligible Energy Resources, 100 kilowatts of capacity or less, may be used to meet the requirements of Schedule 1, provided that the generators or their agents, on an annual basis, document the level of generation, as recorded by appropriate metering.

3.2.7 A Retail Electricity Supplier shall receive 300% credit toward meeting the Minimum Cumulative Percentage from Eligible Energy Resources of Schedule 1 or Schedule 2 of the RPS for energy derived from the following sources installed on or before December 31, 2014:

3.2.7.1 Customer-Sited solar photovoltaic physically located in Delaware; or

1. The Commission understands the legislation to mean that the Total Retail Sales of each Retail Electricity Product sold to End-Use Customers during a given Compliance Year shall include a minimum percentage of RECs determined by the current Cumulative Minimum Percentage as defined in Schedule 1. The Commission shall, in another proceeding, further define how RECs from Green Power products, as that term is defined in Commission Docket Number 49, are to be tracked and utilized for compliance in the RPS.

PROPOSED REGULATIONS

3.2.7.2 A fuel cell powered by Renewable Fuels.

3.2.8 A Retail Electricity Supplier shall receive 150% credit toward meeting the RPS for wind energy installations sited in Delaware on or before December 31, 2012.

3.2.9 A Retail Electricity Supplier shall receive credit toward meeting the RPS for electricity derived from the fraction of eligible landfill gas, biomass or biogas combined with other fuels.

3.2.10 Cumulative minimum percentage requirements of Eligible Energy Resources shall be established by Commission rules for Compliance Year 2020 and each subsequent year. In no case shall the minimum percentages established by Commission rules be lower than those required for Compliance Year 2019 in Schedule 1. Each of the rules setting such minimum percentage shall be adopted at least two years prior to the minimum percentage being required.

3.2.11 Beginning in Compliance Year 2010, and in each Compliance Year thereafter, the Commission may review the status of Schedule 1 and report to the legislature on the status of the pace of the scheduled percentage increases toward the goal of 20%. If the Commission concludes at this time that the schedule either needs to be accelerated or decelerated, it may also make recommendations to the General Assembly for legislative changes to the RPS.

3.2.12 Beginning in Compliance Year 2014, and in each Compliance Year thereafter, the Commission may, in the event of circumstances specified in this subsection and after conducting hearings, accelerate or slow the scheduled percentage increases towards meeting the goal of 20%. The Commission may only slow the increases if the Commission finds that at least 30% of RPS compliance has been met through the ACP for three (3) consecutive years, despite adequate planning by the Retail Electricity Suppliers. The Commission may only accelerate the scheduled percentage increases after finding that the average price for RECs eligible for RPS compliance has, for two (2) consecutive years, been below a predetermined market-based price threshold to be established by the Commission. The Commission shall establish the predetermined market-based price threshold in consultation with the Delaware Energy Office. Rules that would alter the percentage targets shall be promulgated at least two years before the percentage change takes effect. In no event shall the Commission reduce the percentage target below any level reached to that point.

3.3 Verification of Compliance with the RPS

3.3.1 Within 120 days of the end of a compliance year, each Retail Electricity Supplier who has made sales to an End-use Customer in the State of Delaware must submit a completed Retail Electricity Supplier's Verification of Compliance with the Delaware Renewable Energy Portfolio Standard Report (Report) which includes, but is not limited to, evidence of the specified number of SRECs and RECs required for that Compliance Year according to Schedule 1 or Schedule 2 and the Total Retail Sales of each Retail Electricity Product.

3.3.2 SRECs or RECs must have been created by PJM-EIS's GATS, or its successor at law or pursuant to Section 3.1.6.1 of this Regulation.

3.3.3 SRECs or RECs, submitted for compliance with this Regulation, may be dated no earlier than three (3) years prior to the beginning of the current Compliance Year.

3.3.4 In lieu of standard means of compliance with the RPS, any Retail Electricity Supplier may pay into the Fund a SACP or ACP pursuant to the provisions of 26 Del.C. §358 or as determined by the State Energy Coordinator of the Delaware Energy Office consistent with 26 Del.C. §354 (a).

3.3.5 The Commission Staff shall notify any Retail Electricity Supplier of any compliance deficiencies within 165 days of the close of the current Compliance Year. If the Retail Electricity Supplier is found to be deficient by the Commission Staff, the Retail Electricity Supplier shall be required to pay the appropriate ACP, according to Section 3.3.4 of this Regulation. All such payments shall be due within 30 days of notification by the Commission Staff. Upon receipt of payment, the Retail Electricity Supplier shall be found to be in compliance for that given year.

3.3.6 All compliance payments, made by the Retail Electricity Supplier, shall be payable to the Delaware Green Energy Fund and sent to the Commission.

4.0 Recovery of Costs

4.1 A Retail Electricity Supplier may recover, through a non-bypassable surcharge on its supply portion of the bill, actual dollar for dollar costs incurred in complying with the State of Delaware's RPS, except that any compliance fee assessed pursuant to Section 3.3.4 and its subsections of these Rules and Regulation shall be recoverable only to the extent authorized by Section 4.2 of this Regulation.

4.2 A Retail Electricity Supplier may recover any ACP if the payment of an ACP is the least cost

measure to ratepayers as compared to the purchase of Renewable Energy Credits to comply with the RPS; or if there are insufficient Renewable Energy Credits available for the Retail Electricity Supplier to comply with the RPS.

4.3 Any cost recovered under this section shall be disclosed to customers at least annually on inserts accompanying customer bills.

5.0 Other General Rules

5.1 Under Delaware's Freedom of Information Act, 29 Del.C. ch. 100, all information filed with the Commission is considered of public record unless it contains "trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature." 29 Del.C. §10002(d)(2). To qualify as a non-public record under this exemption, materials received by the Commission must be clearly and conspicuously marked on the title page and on every page containing the sensitive information as "proprietary" or "confidential" or words of similar effect. The Commission shall presumptively deem all information so designated to be exempt from public record status. However, upon receipt of a request for access to information designated proprietary or confidential, the Commission may review the appropriateness of such designation and may determine to release the information requested. Prior to such release, the Commission shall provide the entity that submitted the information with reasonable notice and an opportunity to show why the information should not be released.

5.2 Any End-Use Customer, Retail Electricity Supplier, Eligible Energy Resource, potential Eligible Energy Resource or other interested party to which this Regulation may apply may file a complaint with the Commission pursuant to the Rules of Practice and Procedure of the Delaware Public Service Commission.

5.3 The failure to comply with this Regulation may result in penalties, including monetary assessments, suspension or revocation of eligibility as an Eligible Energy Resource, or other sanction as determined by the Commission consistent with 26 Del.C., §205(a), §217, and §1019.

EXECUTIVE DEPARTMENT DELAWARE ECONOMIC DEVELOPMENT OFFICE

The Delaware Economic Development Authority Council On Development Finance
Statutory Authority: 29 Delaware Code Sections 5005(11) and 5053(k)
(29 Del.C. §§5005(11) and 5053(k))

NOTICE OF PUBLIC HEARING

In accordance with procedures set forth in 29 Del.C. Ch. 11, Subch. III and 29 Del.C., Ch. 101, the Director of the Delaware Economic Development Office, as Chairperson of The Delaware Economic Development Authority, is proposing to adopt a regulation for the administration and operation of the Council on Development Finance as recommended by the Joint Sunset Committee in accordance with 29 Del.C. §10214. The proposed regulation sets forth certain procedures for the administration and operation of the Council on Development Finance.

The Director of the Delaware Economic Development Office, as the Chairperson of The Delaware Economic Development Authority, or an employee of the Delaware Economic Development Office designated by the Director, will hold a public hearing at which members of the public may present comments on the proposed regulation on November 26, 2007 at 9:00 A.M. at Buena Vista, 661 South DuPont Highway in New Castle, Delaware 19720. Additionally, members of the public may present written comments on the proposed regulation by submitting such written comments to Ms. Lee K. Porter, Delaware Economic Development Office, 99 Kings Highway, Dover, DE, 19901-7305. Written comments must be received on or before November 14, 2007. Members of the public may receive a copy of the proposed regulation at no charge by United States Mail by writing Ms. Lee K. Porter at the Dover, Delaware, address of the Delaware Economic Development Office set forth above, or by calling her at (302) 739-4271.

1104 Administration and Operation of Council on Development Finance**1.0 Definitions**

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

“Chairperson” means the Chairperson of the Council.

“Competitiveness Fund” shall have the meaning given pursuant to 75 *Del. Laws*, c. 308, §36(d) (July 1, 2004), 75 *Del. Laws*, c. 98, §39(d) (July 1, 2005), and 75 *Del. Laws*, c. 353, §40(d) (July 1, 2006).

“Council” means the Council on Development Finance.

“DEDA” means The Delaware Economic Development Authority.

“DEDO” means the Delaware Economic Development Office.

“Director” means the Director of DEDO in his or her capacity as Director, or as the Chairperson of DEDA.

“Member or Members” means the Members appointed to serve on the Council in accordance with 29 *Del.C.* §5007.

“Project or Projects” shall have the meaning given pursuant to 29 *Del.C.* §5052(12).

“Strategic Fund” shall have the meaning given pursuant to 29 *Del.C.* §§5021 – 5029.

“Substantive Changes” means i) a 10% or lower decrease in the interest rate for any fixed rate loan made by DEDO or DEDA; ii) any changes in the collateral of a loan which would cause a decrease in the security position of DEDO or DEDA; and iii) a 10% or greater increase in the amount of any loan or grant.

2.0 Enabling Legislation

2.1 Pursuant to 29 *Del.C.* §5003, DEDO was established. Pursuant to 29 *Del.C.* §5007 the Council was established. Pursuant to 29 *Del.C.* §5053 DEDA was established. DEDO and DEDA have authority to make regulations pursuant to 29 *Del.C.* §§5005(11) and 5053(k).

3.0 Purpose

3.1 The purpose of this Regulation is to enhance the coordination between the Council and DEDO and set forth certain procedures to be used in the administration and operation of the Council.

4.0 Procedures

4.1 In the event of any Council vacancy, Members will encourage the Governor to fill such a vacancy promptly.

4.2 The Council will request staff to develop an economic matrix that includes certain information on companies recommended for funding, including but not limited to, information on employee benefits such as health care and the potential for any unintended consequence stemming from the company's operations.

4.3 The Council will, consistent with the provisions of 29 *Del.C.* §§10001 - 10005, make certain information contained in a company's application available to the public upon written request.

4.4 The Council will, when practicable, schedule and locate meetings of the Council in a way that achieves geographic balance and centrality.

4.5 Any Substantive Changes made to any agreement or contract excluding any agreement contract or associated document related to any bond issued by DEDA, after initial review by the Council shall be resubmitted to the Council for additional review and recommendation.

4.6 DEDO will organize and provide orientation for all new Council Members and will organize and provide an annual retreat for all Council Members. The orientation will include: i) the responsibilities of Council Members and DEDO staff; ii) discussion of applicable state law/regulations; and iii) a briefing by the staff of the Delaware Public Integrity Commission on matters, including but not limited to, rules of conduct; conflict of interest, and public disclosure. The retreat will include reports on industry trends, emerging issues and emerging financing programs.

4.7 The Council requires staff to provide Members with periodic update reports on each recipient of all funding.

4.8 The Council will, consistent with 29 *Del.C.* §§5804, 5805 and 5806, encourage Members to identify prospective companies and to turn any information directly over to the Council staff for follow up.

4.9 The Council will, once a year, cooperate with the staff of DEDO in matters relating to DEDO's strategic marketing plan, including the annual review of the plan.

4.10 The Council will cooperate with the staff of DEDO in matters relating to the utilization of the DEDO website for news and information about Council meeting dates, times, locations, agendas, meeting minutes and Member contact information.

4.11 The Council requires that: i) DEDO make no announcement regarding the awarding of any funding prior to review by the Council and approval by the Director; or ii) that any announcement regarding the awarding of any funding, when the matter is under DEDO control, include that the funding is subject to review and recommendation of the Council.

4.12 Twice a year, DEDO staff will bring to the Council for review: employment levels, percents above sustainable wages, company investments and the repayment status for outstanding loans made by DEDO.

4.13 Projects with approvals that are more than two years old without an executed agreement will be brought to the Council's attention.

4.14 The Director will brief the Chairperson on Projects under consideration as soon as DEDO completes its internal review and before DEDO makes an offer.

4.15 DEDO staff will provide reports to the Council on return on investment, gross State product and personal income tax data related to each Project where such information is used to determine the value of the Project.

4.16 DEDO will continue to inform the Council biannually on the fiscal status of all Projects including the total funds available, amounts encumbered (and corresponding dates of encumbrances), funds committed to future Projects and available balances.

4.17 DEDO will make sure that original offer letters for each Project are presented to the Council when the original offer letter resulted in an application being submitted to the Council for review and recommendation.

4.18 DEDO will present the Council with recommendations regarding how the Strategic Fund and Competitiveness Fund balances should be used on an allocation basis to help various economic development sectors.

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.

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 106

REGULATORY IMPLEMENTING ORDER

106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II)

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) to reflect the status of DPAS II from a pilot to implementation and to reflect comments and suggestions from the evaluations conducted at the conclusion of the first (June 2006) and second year (June 2007) of the pilot. The evaluations were conducted by Progress Education Corporation. The rewritten regulation will reflect changes to the procedures, the forms and the student improvement section of the regulation.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Monday, July 23, 2007, in the form hereto attached as Exhibit "A". There were no formal written comments received. The changes reflect language clarification and the addition of an evaluation process that was omitted in the August 2007 *Delaware Register of Regulations*.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) in order to change the status of the teacher appraisal process from a pilot to implementation. In addition, changes are made that reflect comments and suggestions based on the evaluations of the DPAS II pilot.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II). Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II) in the Administrative Code of Regulations for the Department of Education.

V. Effective Date of Order

IT IS SO ORDERED the 20th day of September 2007.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 20th day of September 2007.

State Board of Education

Jean W. Allen, President

Mary B. Graham, Esquire

Barbara B. Rutt

Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President

Jorge L. Melendez

Dennis J. Savage

106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II)

1.0 The Teacher Appraisal Process, Delaware Performance Appraisal System (DPAS II), shall be effective for the following school districts and charter schools beginning with the 2007-08 school year:

Appoquinimink

Caesar Rodney

Colonial

Lake Forest

Laurel

[Smyrna]

Sussex Technical

MOT Charter

Providence Creek Academy Charter

Sussex Academy of the Arts and Sciences

The Teacher Appraisal Process, Delaware Performance Appraisal System (DPAS II), shall be effective for all public school districts and charter schools beginning with the 2008-2009 school year.

2.0 Definitions

"Announced Observation" shall consist of the Pre-observation Form and conference with the evaluator, an observation by the evaluator at an agreed upon date and time, using the associated formative conferences and reports. The observation shall be of sufficient length, at least thirty (30) minutes, to analyze the lesson and assess teacher performance.

"Board" shall mean a local board of education or charter school board of directors.

"Credentialed Evaluator" shall mean the individual, usually the supervisor of the teacher, who has successfully completed the evaluation training in accordance with 10.0. The Credentialed Evaluator may also be referred to as "Evaluator".

"DASA" shall mean the Delaware Association of School Administrators.

"DPAS II Guide for Teachers" shall mean the manual that contains the prescribed forms, detailed procedures, specific details about the five (5) components of evaluation and other relevant documents that are used to implement the appraisal process.

"DSEA" shall mean the Delaware State Education Association.

"Experienced Teacher" shall mean a teacher who holds a valid and current Continuing or Advanced License, or Standard or Professional Status Certificate issued prior to August 1, 2003.

"Improvement Plan" shall be the plan that a teacher and evaluator mutually develop in accordance with 8.0.

"Novice Teacher" shall mean a teacher who holds a valid and current Initial License.

"Satisfactory Component Rating" shall mean the teacher's performance ~~[reflects the ability to]~~ demonstrate[s] an understanding of the concepts of the component.

"Satisfactory Evaluation" shall be equivalent to the overall "Effective" or "Needs Improvement" rating on the Summative Evaluation and shall be used to qualify for a continuing license.

"State Assessment" shall mean the Delaware Student Testing Program (DSTP) or its successor.

"Summative Evaluation" shall be the ~~[rating process final evaluation]~~ at the conclusion of the appraisal cycle.

"Unannounced Observation" shall consist of an observation by the evaluator at a date and time that has not been previously arranged using the associated formative conferences and reports. The observation shall be of sufficient length, at least thirty (30) minutes, to analyze the lesson and assess teacher performance.

"Unsatisfactory Component Rating" shall mean the teacher's performance does not ~~[reflect the ability to]~~ demonstrate an understanding of the concepts of the component.

"Unsatisfactory Evaluation" shall be the equivalent to the overall "Ineffective" rating on the Summative Evaluation.

"Working Day" shall mean a day when the employee would normally be working in that district or charter school.

(Break in Continuity of Sections)

5.0 Appraisal Criteria

5.1 The following five (5) components, including the four (4) Appraisal Criteria specified for each, shall be the basis upon which the performance of a teacher shall be evaluated by a credentialed evaluator:

5.1.1 **Planning and Preparation**

5.1.1.1 **Selecting Instructional Goals:** Teacher selects instructional goals that are aligned with the DE content standards and the district or charter school's curricula. Goals are appropriate for the learners and reflect high expectations for all students, consistent with State Assessment levels of performance where applicable.

5.1.1.2 **Designing Coherent Instruction:** Teacher plans for learning activities that align with the instructional goals and support student learning. Instructional planning shows a structure and selection of materials and activities that support student learning relative to the district or charter school's curricula.

5.1.1.3 **Demonstrating Knowledge of Content and Pedagogy:** Teacher shows his or her knowledge of content and how to teach it to a variety of learners. The teacher's plans include natural connections among content areas that deepen student learning. The content that he or she teaches is aligned to the district or charter school's curricula.

5.1.1.4 **Demonstrating Knowledge of Students:** Teacher shows his or her knowledge of

student developmental characteristics; approaches to learning, knowledge, and skills; interests; cultural heritage; and, where applicable, State Assessment performance levels.

5.1.2 Classroom Environment

5.1.2.1 Managing Classroom Procedures: Teacher has clearly defined procedures for managing learning time, transitions between learning events, and routines that maximize learning time.

5.1.2.2 Managing Student Behavior: Teacher establishes behavioral expectations and consequences and monitors student conduct. Teacher responds to student behavior in appropriate and effective ways to minimize disruptions.

5.1.2.3 Creating an Environment to Support Learning: Teacher creates an atmosphere in which learning is valued. Teacher-to-student and student-to-student interactions show rapport that is grounded in mutual respect.

5.1.2.4 Organizing Physical Space: Teacher organizes, allocates, and manages physical space to create a safe learning environment. Teacher uses physical resources to contribute to effective instruction and makes resources accessible to all students.

5.1.3 Instruction

5.1.3.1 Engaging Students in Learning: Content is appropriate, clear, and linked to student knowledge and experience. Content is aligned with the district or charter school's curricula. Activities and assignments engage all students. Instructional materials are suitable to the instructional goals. The instruction is coherent and paced appropriately for all students.

5.1.3.2 Demonstrating Flexibility and Responsiveness: Teacher has a repertoire of instructional strategies and makes use of them to make modifications to lessons as needed. Teacher differentiates instruction based on learner characteristics and achievement data.

5.1.3.3 Communicating Clearly and Accurately: Verbal and written communication is clear and appropriate to students' ages, backgrounds, and levels of understanding.

5.1.3.4 Using Questioning and Discussion Techniques: Questions are appropriate to the content and level of students' understanding. Teacher encourages students to pose their own questions and is responsive to student questions. Teacher facilitates student led discussions.

5.1.4 Professional Responsibilities

5.1.4.1 Communicating with Families: Teacher shares information about the school's educational program and expectations for student performance. Teacher develops a mechanism for two way communication with families about student progress, behavior, and personal needs or concerns.

5.1.4.2 Developing a Student Record System: Teacher keeps records of attendance, disciplinary actions, emergency contact information, and personal information. Teacher shares relevant information with appropriate school personnel.

5.1.4.3 Growing and Developing Professionally: Teacher chooses and participates in professional development that is aligned with his or her professional needs **[or and]** aligned with the needs of the school, district or charter school, or students.

5.1.4.4 Reflecting on Professional Practice: Teacher engages in reflective thinking as an individual, as a team participant, or as a school community member with the goal of improving instruction and learning for all students.

5.1.5 Student Improvement

5.1.5.1 Showing Student Improvement: Teacher uses school goals from the school improvement process to set his or her annual data driven goal(s) for student improvement. Data **[used to establish goals]** shall include school accountability data, State Assessment data where available, **[or and]** classroom based assessment data **[where available]**.

5.1.5.2 Aligning Assessments to Teacher Data Driven Goal(s): Teacher uses assessments and scoring criteria that accurately measure progress towards the student improvement goal(s).

5.1.5.3 Measuring Student Improvement: Teacher has specific, measurable evidence to show progress towards or attainment of goal(s) for student improvement.

5.1.5.4 Reflecting on Student Improvement: Teacher reflects on goal setting process and outcomes for the purpose of continuous professional improvement and shares student improvement information **[with other staff]** as appropriate.

(Break in Continuity of Sections)

[11.0 Evaluation of Process

11.1 The Department of Education shall conduct an annual evaluation of the teacher appraisal process. The evaluation shall, at a minimum, include a survey of teachers and evaluators and interviews with a sampling of teachers and evaluators. Data from the evaluation and proposed changes to the *DPAS II Guide for Teachers* shall be presented to the State Board of Education for review on an annual basis.]

8 DE Reg. 431 (9/1/04)

9 DE Reg. 522 (10/1/05)

* Please note only those changes made to the regulation as originally proposed and published in the August 2007 issue of the *Register* at page 121 (11 DE Reg. 121) are being published here. Therefore, the entire final regulation is not being republished. A copy of the regulation is available at:

<http://regulations.delaware.gov/register/october2007/final/11 DE Reg 502 10-01-07.htm>

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 107

REGULATORY IMPLEMENTING ORDER**107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II)****I. Summary of the Evidence and Information Submitted**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) to reflect the status of DPAS II from a pilot to implementation and to reflect comments and suggestions from the evaluations conducted at the conclusion of the first (June 2006) and second year (June 2007) of the pilot. The evaluations were conducted by Progress Education Corporation. The rewritten regulation will reflect changes to the procedures, the forms and the student improvement section of the regulation.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Monday, July 23, 2007, in the form hereto attached as Exhibit "A". There were no formal written comments received. The changes reflect language clarification and the addition of an evaluation process that was omitted in the August 2007 *Delaware Register of Regulations*.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) in order to change the status of the specialist appraisal process from a pilot to implementation. In addition, changes are made that reflect comments and suggestions based on the evaluations of the DPAS II pilot.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II). Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) in the Administrative Code of Regulations for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on September 20, 2007. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 20th day of September 2007.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 20th day of September 2007.

State Board of Education

Jean W. Allen, President

Mary B. Graham, Esquire

Barbara B. Rutt

Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President

Jorge L. Melendez

Dennis J. Savage

107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II)

1.0 The Specialist Appraisal Process, Delaware Performance Appraisal System (DPAS II), shall be effective for the following school districts and charter schools beginning with the 2007-08 school year:

Appoquinimink

Caesar Rodney

Colonial

Lake Forest

Laurel

[Smyrna]

Sussex Technical

MOT Charter

Providence Creek Academy Charter

Sussex Academy of the Arts and Sciences

The Specialist Appraisal Process, Delaware Performance Appraisal System (DPAS II), shall be effective for all public school districts and charter schools beginning with the 2008-2009 school year.

1.1 Specialist shall mean a staff person who delivers professional services to students, teachers, staff or families, licensed or certified by the Department of Education or a professional board regulated by the Division of Professional Regulation. Specialists include, but are not limited to, guidance counselors, instructional support specialists, library media specialists, school psychologists, speech pathologists, school nurses, student support specialists, and therapeutic services specialists.

2.0 Definitions

“Announced Observation” shall consist of the Pre-observation Form and conference with the evaluator, an observation by the evaluator at an agreed upon date and time, using the associated formative conferences and reports. The observation for the specialist may be a collection of data over a specified period of time, up to four (4) weeks, or it may be an observation of sufficient length, at least thirty (30) minutes, to gather appropriate data and assess specialist performance.

“Board” shall mean a local board of education or a charter school board of directors.

“Credentialed Evaluator” shall mean the individual, usually the supervisor of the specialist, who has successfully completed the evaluation training in accordance with 10.0. The Credentialed Evaluator may also be referred to as “Evaluator”.

“DASA” shall mean the Delaware Association of School Administrators.

“DPAS II Guide for Specialists” shall mean the manual that contains the prescribed forms, detailed procedures, specific details about the five (5) components of evaluation and other relevant documents that are used to implement the appraisal system.

“DSEA” shall mean the Delaware State Education Association.

“Experienced Specialist” shall mean a specialist who holds a valid and current Continuing or Advanced License, or Standard or Professional Status Certificate issued prior to August 1, 2003 or holds a valid and current license from his or her respective licensure body.

“Improvement Plan” shall be the plan that a specialist and evaluator mutually develop in accordance with 8.0.

“Novice Specialist” shall mean a specialist who holds a valid and current Initial License or holds a valid and current license from his or her respective licensure body.

“Satisfactory Component Rating” shall mean the specialist’s performance ~~[reflects the ability to]~~ demonstrate[s] an understanding of the concepts of the component.

“Satisfactory Evaluation” shall be equivalent to the overall “Effective” or “Needs Improvement” rating on the Summative Evaluation and shall be used to qualify for a continuing license.

“State Assessment” shall mean the Delaware Student Testing Program (DSTP) or its successor.

“Summative Evaluation” shall be the ~~[rating process]~~ final evaluation] at the conclusion of the appraisal cycle.

“Unannounced Observation” shall consist of an observation by the evaluator at a date and time that has not been previously arranged using the associated formative conferences and reports. The observation shall be of sufficient length, at least thirty (30) minutes, to gather appropriate data and assess specialist performance.

“Unsatisfactory Component Rating” shall mean the specialist’s performance does not ~~[reflect the ability to]~~ demonstrate an understanding of the concepts of the component.

“Unsatisfactory Evaluation” shall be the equivalent to the overall “Ineffective” rating on the Summative Evaluation.

“Working Day” shall mean a day when the employee would normally be working in that district or charter school.

(Break in Continuity of Sections)

5.0 Appraisal Criteria

5.1 The following five (5) components, including the four (4) Appraisal Criteria specified for each, shall be the basis upon which the performance of a specialist shall be evaluated by a credentialed evaluator:

5.1.1 Planning and Preparation

5.1.1.1 Designing Coherent Programs or Services: Specialist designs activities and plans for services that support the needs of the students or clients served.

5.1.1.2 Demonstrating Knowledge of Best Practice and Models of Delivery: Specialist uses practices and models of delivery that are aligned with local and national standards.

5.1.1.3 Demonstrating Knowledge of Students or Clients: Specialist shows knowledge of the needs and characteristics of the students or clients, including their approaches to learning, knowledge, skills, and interests.

5.1.1.4 Demonstrating Knowledge of Resources: Specialist selects appropriate resources, either within or outside of the school, that support the needs of students or clients.

5.1.2 Professional Practice and Delivery of Services

5.1.2.1 Creating an Environment to Support Student or Client Needs: Specialist creates an environment in which student or client needs are identified and valued. Specialist and student or client interactions show rapport that is grounded in mutual respect.

5.1.2.2 Demonstrating Flexibility and Responsiveness: Specialist has a repertoire of instructional or professional strategies and makes modifications to services based on needs of the students or clients.

5.1.2.3 Communicating Clearly and Accurately: Verbal and written communication is clear and appropriate to students' or clients' ages, backgrounds, needs, or levels of understanding.

5.1.2.4 Delivering Services to Students or Clients: Specialist is responsive to the identified needs of the students or clients and meets standards of professional practice. The resources and materials are suitable and match the needs of the students or clients. The delivery of service is coherent.

5.1.3 Professional Collaboration and Consultation

5.1.3.1 Collaborating with Others: Specialist develops partnerships with school or district staff or external agencies to provide integrated services that meet student or client needs.

5.1.3.2 Serving as a Consultant to the School Community: Specialist shares expertise with school staff to assist them in their work or to respond to school wide issues, problems, or concerns.

5.1.3.3 Providing Resources and Access: Specialist provides school, district or external based resources to appropriate staff, students, or clients or gives information about the effective use of the resources.

5.1.3.4 Maintaining Standards of Professional Practice: Specialist adheres to his or her professional standards of practice, including issues surrounding confidentiality.

5.1.4 Professional Responsibilities

5.1.4.1 Communicating with Families: Specialist shares information about district or school educational programs and expectations for student or client performance. Specialist develops a mechanism for two way communication with families about student or client progress, behavior, personal needs, or concerns.

5.1.4.2 Developing a Record System: Specialist keeps student or client records relevant to their services and shares information with appropriate school personnel.

5.1.4.3 Growing and Developing Professionally: Specialist chooses and participates in professional development that is aligned with his or her professional needs **[or and]** aligned with the needs of the school, district or students.

5.1.4.4 Reflecting on Professional Practice: Specialist engages in reflective thinking as an individual, as a team participant, or as a school and community member with the goal of improving professional practice and delivery of service.

5.1.5 Student Improvement

5.1.5.1 Showing Student Improvement: Specialist uses school or district goals from the school or district improvement process to set his or her annual data driven goal(s) for student improvement. Data **[used to establish goals]** shall include school or district accountability data, State Assessment data where available, **[or and]** other assessment data **[where available]**.

5.1.5.2 Using Assessments to Promote Student or Client Improvement: Specialist uses assessments related to his or her field of expertise that accurately measure progress towards the student improvement goal(s).

5.1.5.3 Measuring Student Improvement: Specialist has specific, measurable evidence to show progress towards or attainment of goal(s) for student improvement.

5.1.5.4 Reflecting on Student Improvement: Specialist reflects on goal setting process and outcomes for the purpose of continuous professional improvement and shares student improvement information **[with other staff]** as appropriate.

(Break in Continuity of Sections)

[11.0 Evaluation of Process

11.1 The Department of Education shall conduct an annual evaluation of the teacher appraisal process. The evaluation shall, at a minimum, include a survey of teachers and evaluators and interviews with a sampling of teachers and evaluators. Data from the evaluation and proposed changes to the DPAS II Guide for Teachers shall be presented to the State Board of Education for review on an annual basis.]

8 DE Reg. 431 (9/1/04)

9 DE Reg. 528 (10/1/05)

* Please note only those changes made to the regulation as originally proposed and published in the August 2007 issue of the *Register* at page 132 (11 DE Reg. 132) are being published here. Therefore, the entire final regulation is not being republished. A copy of the regulation is available at:

[http://regulations.delaware.gov/register/october2007/final/11 DE Reg 506 10-01-07.htm](http://regulations.delaware.gov/register/october2007/final/11%20DE%20Reg%20506%2010-01-07.htm)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))

14 DE Admin. Code 108

REGULATORY IMPLEMENTING ORDER

108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II)

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) to reflect the status of DPAS II from a pilot to implementation and to reflect comments and suggestions from the evaluations conducted at the conclusion of the first (June 2006) and second year (June 2007) of the pilot. The evaluations were conducted by Progress Education Corporation. The rewritten regulation will reflect changes to the procedures, the forms and the student improvement section of the regulation.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Monday, July 23, 2007, in the form hereto attached as Exhibit "A". There were no formal written comments received. The changes reflect language clarification and the addition of an evaluation process that was omitted in the August 2007 *Delaware Register of Regulations*.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) in order to change the status of the administrator appraisal process from a pilot to implementation. In addition, changes are made that reflect comments and suggestions based on the evaluations of the DPAS II pilot.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II). Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 DE Admin. Code 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II) amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 DE Admin. Code 108 Administrator Appraisal Process Delaware Performance Appraisal System

(DPAS II) in the Administrative Code of Regulations for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del.C. §122 on September 20, 2007. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 20th day of September 2007.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

Approved this 20th day of September 2007.

State Board of Education

Jean W. Allen, President

Mary B. Graham, Esquire

Barbara B. Rutt

Dr. Terry M. Whittaker

Richard M. Farmer, Jr., Vice President

Jorge L. Melendez

Dennis J. Savage

108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II)

1.0 The Administrator Appraisal Process, Delaware Performance Appraisal System (DPAS II), shall be effective for the following school districts and charter schools beginning with the 2007-08 school year:

Appoquinimink

Caesar Rodney

Colonial

Lake Forest

Laurel

[Smyrna]

Sussex Technical

MOT Charter

Providence Creek Academy Charter

Sussex Academy of the Arts and Sciences

The Administrator Appraisal Process, Delaware Performance Appraisal System (DPAS II), shall be effective for all public school districts and charter schools beginning with the 2008-2009 school year.

1.1 For purposes of this regulation, an administrator shall be a professional employee authorized by a board to serve in a supervisory capacity involving the oversight of an instructional program(s).

2.0 Definitions

“Board” shall mean the local board of education or charter school board of directors.

“Credentialed Evaluator” shall mean the individual, usually the supervisor of the administrator, who has successfully completed the evaluation training in accordance with 10.0. A superintendent shall be evaluated by member(s) of the local school board of education who shall also have successfully completed the evaluation training in accordance with 10.0. The Credentialed Evaluator may also be referred to as “Evaluator”.

“DASA” shall mean the Delaware Association of School Administrators.

“DPAS II Guide for Administrators” shall mean the manual that contains the prescribed forms, detailed procedures, evaluation criteria and other relevant documents that are used to implement the appraisal process.

“DSEA” shall mean the Delaware State Education Association.

“Experienced Administrator” shall mean an administrator who has three (3) or more years of service as an administrator.

“Formative Process” shall consist of the Goal Setting Conference, self evaluation, a survey of staff that are supervised by the administrator, and formative conferences and reports as outlined in the DPAS II Guide for Administrators.

“Improvement Plan” shall be the plan that an administrator and evaluator mutually develop in accordance with 8.0.

“Inexperienced Administrator” shall mean an administrator who has less than three (3) years of service as an administrator.

“Satisfactory Component Rating” shall mean the administrator’s performance ~~[reflects the ability to]~~ demonstrate[s] an understanding of the concepts of the component.

“Satisfactory Evaluation” shall be equivalent to the overall “Effective” or “Needs Improvement” rating on the Summative Evaluation.

“State Assessment” shall mean the Delaware Student Testing Program (DSTP) or its successor.

“Summative Evaluation” shall be the ~~[rating process]~~ final evaluation] at the conclusion of the appraisal cycle.

“Unsatisfactory Component Rating” shall mean the administrator’s performance does not ~~[reflect the ability to]~~ demonstrate an understanding of the concepts of the component.

“Unsatisfactory Evaluation” shall be the equivalent to the overall “Ineffective” rating on the Summative Evaluation.

“Working Day” shall mean a day when the employee would normally be working in that district or charter school.

(Break in Continuity of Sections)

5.0 Appraisal Criteria

5.1 The following five (5) components, including the four (4) Appraisal Criteria specified for each, shall be the basis upon which the performance of an administrator shall be evaluated by a certified evaluator(s):

5.1.1 Vision and Goals

5.1.1.1 Using Data: Administrator, in collaboration with others such as the school or district improvement team or board, uses multiple sources of information and assists in analyzing data to establish rigorous and concrete school or district improvement goals in the context of student achievement and instructional programs.

5.1.1.2 Implementing Vision and Goals: Administrator provides leadership for major initiatives and change efforts relative to the school or district improvement goals. Administrator is committed to doing the work required for continuous school and district improvement.

5.1.1.3 Promoting Vision and Goals: Administrator promotes high expectations for teaching and learning. Administrator is committed to ensuring that all students have the knowledge and skills necessary to become successful in future educational activities.

5.1.1.4 Communicating the Vision and Goals: Administrator communicates effectively to appropriate stakeholders about progress towards meeting the school or district improvement plan goals. Administrator participates in a process to regularly monitor, evaluate and revise school or district improvement goals.

5.1.2 Culture of Learning

5.1.2.1 Advocating a Culture of Learning: Administrator provides leadership for assessing, developing and improving the school or district culture and instructional program that is conducive to student learning. Administrator can articulate the desired school or district instructional program and shows evidence about how he or she reinforces the instructional program and culture.

5.1.2.2 Monitoring the Culture of Learning: Administrator participates in monitoring and evaluating the effectiveness of the curriculum, instruction or assessment of students. Administrator evaluates staff and provides on-going coaching for improvement. Administrator uses a variety of sources of information to make decisions.

5.1.2.3 Sustaining the Culture of Learning: Administrator helps to ensure that staff have

professional development opportunities that enhance their performance and improve student learning. Administrator is accessible and approachable by staff, families, and community and is visible in the school or district community. Administrator supports the use of technology as appropriate in teaching and learning.

5.1.2.4 Maintaining the Culture of Learning: Administrator systematically and fairly recognizes accomplishments of staff and students towards a positive school or district culture. Administrator uses and analyzes data to instill the importance of continually developing programs and strategies to enhance opportunities for learning.

5.1.3 Management

5.1.3.1 Solving Problems or Concerns: Administrator addresses and resolves issues as they arise in a timely manner and works to prevent potential problems. Operational procedures are designed and managed to maximize opportunities for learning for all students.

5.1.3.2 Managing Resources: Administrator manages fiscal and physical resources responsibly, efficiently and effectively. Administrator protects instructional time by managing operational procedures in such a way as to maximize learning. Administrator efficiently manages his or her time so that teaching and learning are a high priority.

5.1.3.3 Complying with Policies: Administrator complies with federal, state, and board policies. School or district contractual agreements are effectively managed. Administrator maintains confidentiality and privacy of school or district records, including student or staff information.

5.1.3.4 Protecting the Welfare and Safety of Students and Staff: Administrator works to ensure a safe and secure school or district environment and a culture that is conducive to teaching and learning. Challenges that could potentially interrupt teaching and learning are addressed and resolved.

5.1.4 Professional Responsibilities

5.1.4.1 Maintaining Professional Relationships: Administrator fosters and maintains positive professional relationships with staff. Administrator is respectful of other's opinions and demonstrates an appreciation for and sensitivity to diversity in the school or district community.

5.1.4.2 Promoting Family and Community Involvement: Administrator collaboratively works to establish a culture that encourages and welcomes families and community members and seeks ways in which to engage them in student learning.

5.1.4.3 Demonstrating Fairness: Administrator is fair and consistent when dealing with students and staff. Administrator demonstrates values, beliefs and attitudes that inspire all students and staff to higher levels of performance.

5.1.4.4 Growing and Developing Professionally: Administrator chooses and participates in professional development that is aligned with his or her professional needs ~~or~~ and aligned with the needs of the school or district.

5.1.5 Student Improvement

5.1.5.1 Showing Student Improvement: Administrator uses school or district goals from the school or district improvement process to set his or her personal annual data driven goal(s) for student improvement. Data **[used to establish goals]** shall include school or district accountability data, State Assessment data, ~~or~~ and other assessment data **[where available]**.

5.1.5.2 Measuring Student Improvement: Administrator has specific, measurable evidence to show progress towards or attainment of goal(s) for student improvement.

5.1.5.3 Implementing Strategies for Student Improvement: Administrator designs and implements appropriate strategies to show progress towards or attainment of goal(s) for student improvement.

5.1.5.4 Reflecting on Student Improvement: Administrator reflects on goal setting process and outcomes for the purpose of continuous professional improvement and shares student improvement information **[with other staff]** as appropriate.

(Break in Continuity of Sections)

10.0 Evaluator(s) Credentials

10.1 Evaluators shall have completed the DPAS II training as developed by the Department of Education. Evaluators shall receive a certificate of completion which is valid for five (5) years and is renewable upon completion of professional development focused on DPAS II as specified by the Department of Education.

10.2 The training for the certificate of completion shall include techniques for observation and

conferencing, content and relationships of ISLLC standards, and a thorough review of the *DPAS II Guide for Administrators*. Activities in which participants practice implementation of DPAS II procedures shall be included in the training.

10.3 The credentialing process shall be conducted by the Department of Education.

[11.0 Evaluation of Process

11.1 The Department of Education shall conduct an annual evaluation of the teacher appraisal process. The evaluation shall, at a minimum, include a survey of teachers and evaluators and interviews with a sampling of teachers and evaluators. Data from the evaluation and proposed changes to the DPAS II Guide for Teachers shall be presented to the State Board of Education for review on an annual basis.]

8 DE Reg. 431 (9/1/04)

* Please note only those changes made to the regulation as originally proposed and published in the August 2007 issue of the *Register* at page 143 (11 DE Reg. 143) are being published here. Therefore, the entire final regulation is not being republished. A copy of the regulation is available at:

[http://regulations.delaware.gov/register/october2007/final/11 DE Reg 510 10-01-07.htm](http://regulations.delaware.gov/register/october2007/final/11%20DE%20Reg%20510%2010-01-07.htm)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 6010, (7 Del.C. §6010)

7 DE Admin. Code 3521

Secretary's Order No.: 2007-F-0041

**RE: Proposed Amendments to Delaware Tidal Finfish
Regulation 3521: Weakfish Size Limits, Possession Limits, and Seasons**

Date of Issuance: September 17, 2007

Effective Date of the Amendment: October 11, 2007

I. Background:

A public hearing was held on Wednesday, August 29, 2007, at 7:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Tidal Finfish Regulation 3521 concerning weakfish size limits, possession limits, and seasons. In accordance with Addendum II to Amendment 4 of the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Weakfish, Delaware is required to lower the recreational possession limit on weakfish from eight (8) per day to six (6) per day by October 29, 2007. Similarly, the commercial hook and line daily harvest limit shall be reduced as well, from eight (8) per day to six (6) per day, except on four specific days of the week as indicated by the Department for food fishing equipment permits for hook and line. During the four days of the week so specified, commercial hook and line fisherman are not constrained by daily harvest limits, although minimum size limits still apply. The Atlantic States Marine Fisheries Commission took this action in order to conserve weakfish as an aid to future stock recovery. All major weakfish harvesting states along the Atlantic seaboard are required to take this action.

If commercial fishing removals of weakfish should rise to a pre-determined level consistent with average removals over the last five years, the Commission will give consideration to further restraints on commercial fishing. Similarly, if Delaware (or any other state's commercial weakfish landings) exceeds its five-year mean by more than 25% in any single year, the Commission will review the findings and take action as it deems appropriate. If the commercial measures in the Weakfish Plan are modified, it would be incumbent upon Delaware to come into compliance with the applicable changes.

No members of the public attended this hearing on August 29, 2007, and no public comment or questions

were received by the Department regarding this proposed action. Proper notice of the hearing was provided as required by law.

II. Findings:

The Department has provided a reasoned analysis and a sound conclusion with regard to the response given to each such comment, as reflected in the Hearing Officer's Report of September 14, 2007, which is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. Proper notice of the hearing was provided as required by law.
2. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
3. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
4. The Department held a public hearing in a manner required by the law and regulations;
5. The Department considered all timely and relevant public comments in making its determination;
6. Promulgation of these proposed amendments would bring Delaware into compliance with Addendum II to Amendment 4 of the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Weakfish, by lowering the recreational possession limit on weakfish from eight (8) to six (6) per day by October 29, 2007;
7. Similarly, the commercial hook and line daily harvest limit shall be reduced as well, from eight (8) per day to six (6) per day. Commercial fisherman may declare four days of the week between the period May 1 through October 31, and during those four days of the week, they are not subject to the recreational creel limit. On all other days of the week, and during the rest of the year, commercial hook and line fisherman are subject to the recreational creel limit, and minimum size limits still apply;
8. The Atlantic States Marine Fisheries Commission has taken this action to conserve weakfish as an aid to future stock recovery, and all major weakfish harvesting states along the Atlantic seaboard are required to take this action;
9. If commercial fishing removals of weakfish should rise to a pre-determined level consistent with average removals over the last five years, the Commission will give consideration to further restraints on commercial fishing. Similarly, if Delaware exceeds its five-year mean by more than 25% in any single year, the Commission will review the findings and take action as it deems appropriate;
10. If the commercial measures in the Weakfish Plan are modified, it would be incumbent upon Delaware to come into compliance with the applicable changes;
11. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
12. The Department's proposed regulation, as published in the September 1, 2007 *Delaware Register of Regulations* and set forth in Attachment "A" hereto, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that
13. The Department's proposed amendments to Tidal Finfish Regulation 3521 are adequately supported, not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that
14. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Report dated September 14, 2007, and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Tidal Finfish Regulation No. 3521 – Weakfish Size Limits, Possession Limits, and Seasons - be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of State of Delaware Tidal Finfish Regulation No. 3521 will bring Delaware into compliance with Addendum II to Amendment 4 of the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Weakfish. This action is being taken by the Commission to conserve weakfish as an aid to future stock recovery. Thus, it is incumbent upon Delaware to be in compliance with the Commission's plan, not only to avoid federal sanctions against Delaware and its weakfish refinery, but to protect this species with these conservation measures to ensure that weakfish will continue to be found in Delaware waters in the future.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 **Del.C.**, Ch. 60.

John A. Hughes, Secretary

* Please note that no changes were made to the regulation as originally proposed and published in the August 2007 issue of the *Register* at page 153 (11 DE Reg. 153). Therefore, the regulation is not being republished. A copy of the final regulation is available at <http://regulations.delaware.gov/register/october2007/final/11 DE Reg 514 10-01-07.htm>

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
400 Delaware Gaming Control Board

Statutory Authority: 28 Delaware Code, Sections 1503 and 1504 (28 **Del.C.** §§1503 and 1504)
24 **DE Admin. Code** 401, 403 and 404

ORDER

401 Regulations Governing Bingo
403 Regulations Governing Charitable Gambling Other Than Raffles
404 Regulations Governing No Limit Texas Hold 'em Poker

The Delaware Gaming Control Board ("Board") was established to "protect the public through the regulation and policing of sports, amusements and other activities which involve gambling and other practices which are unlawful except as permitted by law." 28 **Del.C.** §1501(a). The Board is authorized by 28 **Del.C.** §§1503 and 1504 to make, adopt, amend, and repeal regulations as necessary to effectuate that mandate.

The Delaware Gaming Control Board, in accordance with 29 **Del.C.** Chapter 101 and 28 **Del.C.** §1503, proposed amendments to section **5.0 Reports After Games of Regulations Governing Bingo**. The proposed amendments clarify a licensee's post-event/post-function reporting requirements. The Board further proposed amendments to **Regulations Governing Charitable Gambling Other Than Raffles** in section **6.0 Operation of Games** and section **12.0 Reports After the Function**. The proposed amendments to section 12.0 clarify a licensee's post-event/post-function reporting requirements. The proposed amendments to section 6.0 alter the maximum allowable wagers for various charitable games.

In accordance with 29 **Del.C.** Chapter 101 and 28 **Del.C.** §1504, the Board proposed the establishment of **404 Regulations Governing No Limit Texas Hold'em Poker**. Section **1.0 Reports After the Function** establishes a licensee's post-event/post-function reporting requirements but allows 30 days for submission of reports. Section **2.0 Limitation of Texas Hold'em Tournaments** clarifies the allowable timeframe for holding tournaments. Section **3.0 Re-buys** seeks to reconcile two conflicting statutory provisions declaring re-buys optional.

Minor grammatical, typographic, or stylistic changes were also included.

The proposals appeared in *Delaware Register of Regulations*, Volume 11, Issue 2, page 155 on August 1, 2007.

Summary of the Evidence and Information Submitted

No written or verbal comments were received with the exception of a comment by Brandon Buglio of Ace's Full Entertainment supporting the proposed amendment to Regulation 403, Section 6.1.

Findings of Fact

The Board finds that adoption of the proposed amendments is appropriate and serves the Board's mandate to regulate gaming in the interest of public safety.

Decision and Effective Date

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

Text and Citation

The text of the final regulations is attached hereto as Exhibit A and is formatted to show the amendments. A non-marked up version of the regulations as amended is attached hereto as Exhibit B.

IT IS SO ORDERED this 6th day of September, 2007, by the **Delaware Gaming Control Board**.

John Mancus, Chairman
James Green, Vice Chairman
Deborah Messina
Brad Barrie

* Please note that no changes were made to the regulation as originally proposed and published in the August 2007 issue of the *Register* at page 155 (11 DE Reg. 155). Therefore, the regulation is not being republished. A copy of the final regulation is available at <http://regulations.delaware.gov/register/october2007/final/11 DE Reg 516 10-01-07.htm>

DEPARTMENT OF TRANSPORTATION OFFICE OF MOTOR FUEL TAX ADMINISTRATION

Statutory Authority: 6 Delaware Code, Section 2912 (6 **Del.C.** §2912 et seq.)

ORDER

2401 Regulations for the Office of Retail Gasoline Sales

BACKGROUND

Under 6 **Del.C.**, §2912, certain entities that distribute Motor Fuels through Delaware retail service stations are required to provide pump assistance to motorists who cannot pump their own fuel. Section 2912 (a) places this requirement on Retail Dealers that offer both Full-Service and Self-Service. Section 2912 (b) places this requirement on stations that provide self-service, unless the location is operating on a remote control basis with only one employee, or someone able to provide refueling assistance is in the vehicle. Regulation 2912.1 currently requires Full/Self Service Retail Stations to conspicuously post a sign describing the pump service requirements. There is not a similar sign requirement for affected Self-Service Retail Stations. The purpose of this proposed change is to place the sign-posting requirement on Self-Service retail stations as well. In addition, format, numbering and style changes were made consistent with Administrative Procedures Act and Administrative Code styling.

Proposed changes to the existing regulations were previously advertised in the September 2006 State Register of Regulations. Initial comments on the proposed changes were received between September 21, 2006 and July 31, 2007.

REGULATORY IMPLEMENTING ORDER

I. Summary of the Evidence and Information Submitted.

The Secretary of the Delaware Department of Transportation approves the proposed regulation as published in the *Delaware Register of Regulations* on September 1, 2006. Notices of the proposed regulation were published in the *Delaware State News* and the *News Journal* on December 26, 2006 and January 23, 2007. The notices invited written comments, and several comments were received. The notices also invited the public to attend a hearing on January 31, 2007 to comment on the proposed regulation. No members of the public attended the hearing. As a result of the comments received, two non-substantive changes were made:

1. The term "Handicapped" was replaced with the phrase "persons with disabilities".
2. References to refueling of gasoline were changed to refueling of motor fuels, to encompass other products besides gasoline being sold at retail service stations.

II. Findings of Fact.

The Secretary of Transportation finds that it is necessary to adopt the regulation to promote the provision of assistance to persons with disabilities, in accordance with the Americans with Disabilities Act and Delaware law.

III. Decision to Adopt the Regulation.

For the foregoing reasons, the Secretary of Transportation concludes that it is necessary to adopt the regulation. Therefore, pursuant to 6 Del.C. §2911, the regulation attached hereto is hereby adopted.

IV. Text and Citation.

The text of the regulation amended hereby shall be in the form attached hereto, and said regulation shall be cited in the Regulations of the Department of Transportation, Division of Motor Vehicles, Motor Fuel Tax Administration.

FINAL REGULATIONS

V. Effective Date of Order.

The action referred to above was taken on August 14, 2007. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED, this 14th day of August, 2007.

Carolann Wicks, P.E., Secretary
Delaware Department of Transportation

* Please note that no changes were made to the regulation as originally proposed and published in the September 2006 issue of the *Register* at page 542 (10 DE Reg. 542). Therefore, the regulation is not being republished. A copy of the final regulation is available at

<http://regulations.delaware.gov/register/october2007/final/11 DE Reg 517 10-01-07.htm>

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

EXECUTIVE ORDER
NUMBER ONE HUNDRED

RE: Creating A Task Force To Examine Opportunities For Continued Improvement At The Delaware Psychiatric Center

WHEREAS, the Delaware Psychiatric Center has shown continued improvement in health care quality over the past seven years through a series of systemic changes; and

WHEREAS, the Delaware Psychiatric Center provides essential services to some of the most vulnerable citizens of the State of Delaware; and

WHEREAS, it is essential that adequate policies, procedures, and safeguards are in place to help protect individuals at the Delaware Psychiatric Center; and

WHEREAS, there are always opportunities to improve patient care and staff development at any health care facility;

NOW, THEREFORE, I, RUTH ANN MINNER, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order as follows:

1. The Task Force to Examine Opportunities for Continued Improvement at the Delaware Psychiatric Center (the "Task Force") is hereby created. The Task Force will have nine (9) members appointed by the Governor who shall serve at the pleasure of the Governor. The members shall include patient/health care advocates, individuals with psychiatric health care experience, the chair of the Senate Health and Social Services Committee, the chair of the House Health and Human Development Committee, and members from the community-at-large. The Task Force shall be co-chaired by two members of the Task Force designated by the Governor.

2. The Task Force shall examine and make recommendations concerning:

a. Current hiring procedures for the Delaware Psychiatric Center staff, to include recommendations relating to criminal background checks, drug testing, and general interview and orientation processes;

b. Best medical practices for the Delaware Psychiatric Center, to include recommendations specifically relating to restructuring current units to meet the needs of the current patient population, matching staff with the appropriate patient groupings, and policies and protocols relating to care of psychiatric patients;

c. Professional development for direct care staff at the Delaware Psychiatric Center, to include recommendations relating to training practices, needed resources for professional development opportunities, and curricula for direct care staff;

d. Additional community placement options for patients of the Delaware Psychiatric Center, to include identification of such options and an examination of the existing patient population related to community placement opportunities;

e. Adequacy of the Delaware Psychiatric Center's buildings and grounds, to include proposed designs for a new facility; and

f. The Delaware Psychiatric Center's performance improvement unit, to include recommendations regarding changes in both staffing and scope of activities of that unit.

3. The Task Force shall convene no later than within 30 days of the date of this order and provide its recommendations to the Governor no later than December 15, 2007.

Approved: August 22, 2007

Ruth Ann Minner,
Governor

ATTEST:

Harriet Smith Windsor, Secretary of State

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER**

**EXECUTIVE ORDER
NUMBER ONE HUNDRED-ONE**

RE: Establishing The Child Poverty Task Force

WHEREAS, the United States of America has the highest child poverty rate of the seventeen wealthiest countries in the world; and

WHEREAS, although the State of Delaware made progress towards reducing child poverty in the 1990's, the poverty rate in Delaware has risen since 2002; and

WHEREAS, children who live in poverty are subjected to a number of harsh realities that include, but are not limited to, a substantially greater likelihood to die from infectious diseases and to drop out of school prior to obtaining a high school diploma; and

WHEREAS, the United Kingdom reduced the child poverty rate in Great Britain from 19% in 2000 to 11% in 2006 through its commitment to reduce child poverty by 50% within ten years; and

WHEREAS, the States of Connecticut, California, and Minnesota, as well as the cities of New York and Milwaukee, have made similar commitments to reduce the child poverty rate by 50% within ten years; and

WHEREAS, the State of Delaware recognizes the moral and economic interest in reducing child poverty, and appreciates the productivity that would result from a substantial decrease of child poverty in Delaware.

NOW, THEREFORE, I, RUTH ANN MINNER, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order as follows:

1. The Child Poverty Task Force (the "Task Force") is hereby established.
2. The Task Force shall consist of twenty-five (25) members as follows:
 - a. The Secretary of the Department of Education or his/her designee;
 - b. The Secretary of the Department of Health and Social Services or his/her designee;
 - c. The Secretary of Labor or his/her designee;
 - d. The Secretary of the Department of Services for Children, Youth and Their Families or his/her designee;
 - e. The Executive Director of the Delaware State Housing Authority or his/her designee;
 - f. The Chief Judge of the Delaware Family Court or his/her designee;
 - g. The four Co-Chairs of the "Kid's Caucus" in the State Legislature;
 - h. The Child Advocate or his/her designee;
 - i. The Governor's Policy Advisor for Health;
 - j. The Governor's Policy Advisor for Education;
 - k. Three members of the Delaware non-profit community whose organizations serve children and families, to be appointed by the Governor;
 - l. A representative of the University of Delaware's Center for Community Research and Service;
 - m. A KIDS COUNT Delaware Board member or Data Committee Member or his/her

designee;

- n. A member of the business community appointed by the State Chamber of Commerce;
- o. The President of the Metropolitan Wilmington Urban League or his/her designee;
- p. A representative from the City of Wilmington, designated by the Mayor of the City of

Wilmington;

- q. One at-large member appointed by the President *Pro Tempore* of the Delaware Senate;

and

- r. One at-large member appointed by the Speaker of the Delaware House of

Representatives.

3. The Task Force shall develop a ten-year plan to reduce the number of Delaware children living in poverty by 50% and to establish recommendations for prevention and intervention services in order to promote the health, safety and well-being of Delaware's children and their families. The plan shall include:

- a. Identifying and analyzing the occurrence of child poverty in Delaware; and
- b. Identifying the risk factors for and underlying etiologies of child poverty; and
- c. Reviewing scholarly research that identifies the best practices for prevention and intervention of child poverty; and
- d. Analyzing the long-term effects of child poverty on children, their families and their communities; and
- e. Assessing the costs of child poverty to municipalities and to the State; and
- f. Creating an inventory of existing state-wide public and private programs that address child poverty; and
- g. Calculating the percentage of the target population served by such programs and the current funding levels, if any, for such programs; and
- h. Identifying and analyzing any deficiencies or inefficiencies of such programs; and
- i. Establishing the procedures and priorities for implementing strategies to achieve a 50% reduction in child poverty in the State of Delaware by June 30, 2017.

4. The chairperson of the Task Force, who shall be appointed by the Governor from among its members, shall lead the administration of the Task Force by:

- a. setting a time, date and place for the initial organizational meeting;
- b. ensuring the proper preparation and distribution of meeting notices, agendas, minutes, correspondence, and reports of the Task Force;
- c. ensuring the Task Force identify any staffing requirements necessary to properly execute the functions of this order, and allow the representatives from among the various state agencies to distribute those responsibilities within those agencies; and
- d. ensuring the final report of the Task Force is submitted to the Governor with copies submitted to the Speaker of the House of Representatives, the President *Pro Tempore* of the Senate, the Director of the Division of Research of Legislative Council and the Delaware Public Archives;

5. The Task Force shall submit its report on "Recommendations to Reduce Child Poverty" to the Governor, Speaker of the House and President *Pro Tempore* within one year of the effective date of this order.

Approved: August 29, 2007

Ruth Ann Minner,
Governor

ATTEST:
Harriet Smith Windsor, Secretary of State

DELAWARE RIVER BASIN COMMISSION**NOTICE OF PUBLIC HEARING****Water Quality Regulations, Water Code and Comprehensive Plan to Classify the Lower Delaware River as Special Protection Waters**

Summary: The Commission will hold a public hearing to receive comments on proposed amendments to the Commission's Water Quality Regulations, Water Code and Comprehensive Plan to establish numeric values for existing water quality for the reach of the main stem Delaware River known as the "Lower Delaware" and to assign this reach the SPW classification "Significant Resource Waters" (SRW). The Lower Delaware extends from the southern boundary of the Delaware Water Gap National Recreation Area at River Mile ("RM") 209.4 to the head of tide at Trenton, New Jersey, RM 144.4. Although no area of the State of Delaware falls within the portion of the Basin subject to the proposed regulations, as a member of the Delaware River Basin Commission, Delaware participates in cooperative management of the Basin's water resources and has a role in deciding whether the proposed rules are adopted.

The Lower Delaware River has carried the SPW-SRW classification on a temporary basis since January of 2005, making this reach and its drainage area subject for the past three years to those provisions of the Commission's SPW regulations that do not depend for implementation upon the use of numeric values for existing water quality. The amendments that currently are proposed would make projects within the Lower Delaware drainage subject to all applicable SPW requirements, including those for "no measurable change" to existing water quality as defined by the rule. The amendments also would incorporate language intended to clarify aspects of the SPW regulations that have been a source of confusion for some DRBC docket holders and applicants since the program was originally adopted in 1992 for point sources and in 1994 for non-point sources. Notably, a new term - "substantial alterations or additions" - is proposed to be added to the Definitions section of the regulations and to be inserted in other sections of the rule to clarify which types of additions or alterations to existing wastewater treatment facilities will trigger certain SPW requirements that are deemed appropriate in connection with capital investment projects. A new paragraph also is proposed to expressly authorize effluent trading between point sources to satisfy the requirement for no measurable change to existing water quality under certain circumstances.

Dates: The public hearing will be held on December 4, 2007, at the Commission's office building, located at 25 State Police Drive, West Trenton, New Jersey. Driving directions are available on the Commission's website, www.drbc.net. Please do not rely on Internet mapping services as they may not provide accurate directions to the DRBC. The hearing will begin at 2:30 P.M. and will continue until all those who wish to testify are afforded an opportunity to do so. Persons wishing to testify at the hearing are asked to register in advance by phoning Ms. Paula Schmitt at 609-883-9500, ext. 224. Written comments will be accepted through the close of business on December 6, 2007. Written comments may be submitted by email to paula.schmitt@drbc.state.nj.us; by fax to Commission Secretary at 609-883-9522; by U.S. Mail to Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628-0360; or by overnight mail to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628-0360. In all cases, please include the commenter's name, address and affiliation if any in the comment document and include "SPW" in the subject line.

Further Information: The current rule and the full text of the proposed amendments are posted on the Commission's website, www.drbc.net, along with supporting data, reports, maps and related documents. Hard copies may be obtained by contacting Ms. Paula Schmitt at 609-883-9500, ext. 224. The Commission will hold two informational meetings on the proposed rulemaking. The first will take place on Thursday, October 25, 2007 from 7:00 P.M. to 9:00 P.M. at the office of the Delaware and Raritan Canal Commission at the Prallsville Mills Complex, 33 Risler Street (Route 29) in Stockton, New Jersey. The second will be held on Thursday, November 1, 2007 from 7:00 P.M. to 9:00 P.M. in Room 315 of the Acopian Engineering Building at Lafayette College, located at High Street, Easton, Pennsylvania. Please contact Commission Secretary Pamela Bush, 609-883-9500 ext. 203 with questions about the proposed rule or the rulemaking process.

Pamela M. Bush, Esquire, Commission Secretary
September 14, 2007

DELAWARE STATE FIRE PREVENTION COMMISSION NOTICE OF PUBLIC HEARING

Delaware State Fire Prevention Regulations Part X, Ambulance Service Regulations

The Delaware State Fire Prevention Commission will hold a hearing pursuant to 16 **Del.C.** §6603 and 29 **Del.C.** §101 on Tuesday, November 20, 2007, at 1:00 P.M. in the Commission Chamber, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware. The Commission is proposing changes to the following Regulations.

Persons may view the proposed changes to the Regulations between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, at the Delaware State Fire Prevention Commission, Delaware State Fire School, Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware, 19904, or Office of the State Fire Marshal located at the Delaware Fire Service Center, 1537 Chestnut Grove Road, Dover, Delaware, 19904, or the Regional State Fire Marshal's Offices located 2307 MacArthur Road, New Castle, Delaware and 22705 Park Avenue, Georgetown, Delaware, 19947. You can find the meeting announcement and proposed changes on the Delaware Website <http://www.delaware.gov/egov/calendar.nsf> or on the Delaware State Fire Marshal's Office webpage at www.statefiremarshal.delaware.gov under the tabs "Services" and "Proposed Changes".

Persons may present their views in writing by mailing their views to the Commission at the above addresses prior to the hearing, and the Commission will consider those responses received before 9:00 a.m. on November 20, 2007, or by offering testimony at the Public Hearing. If the number of persons desiring to testify at the Public Hearing is large, the amount of time allotted to each speaker will be limited. There will be a reasonable fee charge for copies of the proposed changes or retrieve from the webpage for free.

DEPARTMENT OF AGRICULTURE THOROUGHBRED RACING COMMISSION NOTICE OF PUBLIC HEARING

The Delaware Thoroughbred Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to add rules 13.8.2, 13.13.2, 13.13.3, and 13.13.4 to reflect current policies, practices, and procedures. The Commission will hold a public hearing on the proposed rule change on October 23, 2007. Written comments should be sent to John F. Wayne, Executive Director, Delaware Thoroughbred Racing Commission, 777 Delaware Park Boulevard, Wilmington, DE 19804.

DEPARTMENT OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, October 18, 2007 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF DEVELOPMENTAL DISABILITIES NOTICE OF PUBLIC COMMENT PERIOD

Disabilities Services Eligibility Criteria 2100 Eligibility Criteria

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 Developmental Disabilities Services (DDDS) is proposing to amend the

eligibility criteria related to DDDS services.

Any person who wishes to make written suggestions, compilations of data, written testimony, written briefs or other written materials concerning the proposed new regulations must submit same to Joseph B. Keyes, Ph.D., Applicant Services Unit; Division of Developmental Disabilities Services, 1052 S. Governor's Avenue, Suite 101, Dover, Delaware 19904 or by fax to (302) 744-9711 by November 2, 2007.

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 at the Public Hearing and written materials filed by other interested persons.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
NOTICE OF PUBLIC COMMENT PERIOD

Pharmaceutical Services Program – Tamper-Resistant Prescription Pads

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 amending the Delaware Medical Assistance Program (DMAP) Provider Manuals to bring the Medicaid regulations into compliance with new Federal law.

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 October 31, 2007.

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.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
NOTICE OF PUBLIC COMMENT PERIOD

Title XIX Medicaid State Plan Attachment 4.19-D Reimbursement Methodology for Nursing Facilities

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**), and 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 proposing to amend the Title XIX Medicaid State Plan regarding the reimbursement methodology for nursing facilities.

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 October 31, 2007.

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.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
NOTICE OF PUBLIC COMMENT PERIOD

Acquired Brain Injury (ABI) §1915(c) Home and Community-Based Services Waiver Application

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, and, in compliance with State Notice procedures as set forth in the Federal Register, September 27, 1994, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is submitting an Acquired Brain Injury (ABI) §1915(c) Home and Community-Based Services Waiver application to the Centers for Medicare and Medicaid Services (CMS).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning this waiver must submit same to Sharon L. Summers, Planning and 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 October 31, 2007. A copy of the waiver application is available upon request by contacting Lisa Bond, Division of Services for Aging and Adults with Physical Disabilities at (302) 255-9358.

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.

DIVISION OF SOCIAL SERVICES **NOTICE OF PUBLIC COMMENT PERIOD**

Food Stamp Program 9006.3 Exceptions From Notice

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 Food Stamp Program policies in the Division of Social Services Manual (DSSM) regarding exemptions from adverse action notices.

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 (new fax number) by October 31, 2007.

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.

DIVISION OF SOCIAL SERVICES **NOTICE OF PUBLIC COMMENT PERIOD**

Food Stamp Program 9032.2 Alien Eligibility

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 Food Stamp Program policies in the Division of Social Services Manual (DSSM) regarding alien eligibility.

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 (new fax number) by October 31, 2007.

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.

DIVISION OF SUBSTANCE ABUSE AND MENTAL HEALTH
NOTICE OF PUBLIC COMMENT PERIOD

6100 Substance Abuse Facility Licensing Standards

In compliance with the State's Administrative Procedures Act (APA – Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 16 of the **Delaware Code**, Chapter 22, Sections 2207 and 2208, Delaware Health and Social Services (DHSS)/Division of Substance Abuse and Mental Health (DSAMH) is proposing to establish updated licensure standards for Substance Abuse Treatment facilities to replace existing standards promulgated in 1979.

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 Mr. Harris Taylor, Dir. of Program Accountability, Division of Substance Abuse and Mental Health, 1901 North DuPont Highway, Main Administration Building, New Castle, Delaware 19720 by October 31, 2007.

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

DEPARTMENT OF INSURANCE
NOTICE OF PUBLIC COMMENT PERIOD

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of intent to adopt proposed Department of Insurance Regulation 606 relating to the standardization of insurance identification cards and notification to the Division of Motor Vehicles of the termination of automobile insurance. The docket number for this proposed amendment is 526.

The purpose of the proposed regulation is to require standardized motor vehicle insurance identification cards, require notification to the Division of Motor Vehicles of the termination of motor vehicle insurance coverage and related changes in the existing Regulation. The text of the proposed amendment is reproduced in the October 2007 edition of the Delaware Register of Regulations. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:30 p.m., Monday November 5, 2007, and should be addressed to Mitchell G. Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or email to mitch.crane@state.de.us.

DEPARTMENT OF INSURANCE
NOTICE OF PUBLIC COMMENT PERIOD

702 Required Disclosures For Residential Homeowners Policies

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of a proposed change to Department of Insurance Regulation 702 relating to required disclosures for residential homeowners policies. The Commissioner proposes to amend Regulation 702. The docket number for this proposed amendment is 527.

The proposed changes to the regulation appear in section 2 relating to the purpose by requiring notice of deductibles required by the coverage, and by the addition of a section 5.1.5, describing the required disclosures of information relative to deductibles. The text of the proposed amendment is reproduced in the October 2007 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:30 p.m., Monday, November 5, 2007, and should be addressed to Mitch Crane, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or email to mitch.crane@state.de.us.

DEPARTMENT OF INSURANCE
NOTICE OF PUBLIC COMMENT PERIOD**2201 Implementation of Medical Malpractice Relief Initiative Pilot Program**

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of proposed Department of Insurance Regulation 2201 relating to medical malpractice relief. The docket number for this proposed regulation is 528.

The purpose of this regulation is to provide procedures governing the Medical Malpractice Relief Initiative Pilot Program established by the Fiscal Year 2007 Appropriations Act. The text of the proposed regulation is reproduced in the October 2007 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.delawareinsurance.gov/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:30 p.m., Monday, November 5, 2007, and should be addressed to Regulatory Specialist Mitch Crane, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or email to mitch.crane@state.de.us.

DEPARTMENT OF LABOR
DIVISION OF INDUSTRIAL AFFAIRS
Health Care Advisory Panel**NOTICE OF PUBLIC HEARING**

The Secretary of Labor in accordance with 19 **Del.C.** §§ 2322B and E has proposed rules and regulations relating to workers' compensation. These proposals set forth the Fee Schedule Amounts for professional services and hospital fees, and the use of consistent forms for the health care providers.

A public hearing will be held before the Health Care Advisory Panel ("Panel") at 4:00 p.m. on November 5, 2007, in the Department of Labor Fox Valley Annex, 4425 N. Market Street, Wilmington, Delaware 19802 where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules may obtain a copy from John Kirk, Administrator, Workers' Compensation, Division of Industrial Affairs, Department of Labor, P.O. Box 9828, 4425 N. Market Street, Wilmington, Delaware 19809-0828. Persons wishing to submit written

comments may forward these to the Panel at the above address. The final date to receive written comments will be at the public hearing.

The Panel will consider making a recommendation to the Secretary at the regularly scheduled meeting following the public hearing.

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

SAN #2005-06

Title of the Regulations:

Delaware Regulations Governing Underground Storage Tank Systems

Brief Synopsis of the Subject, Substance and Issues:

The Delaware Regulations Governing Underground Storage Tank Systems were first effective July 11, 1986. The most recent revision date was November 23, 1994. The DNREC is proposing changes to the UST Regulations to incorporate new technological advances in UST system designs and operation to ensure the greatest protection of human health, safety and the environment in Delaware.

The changes to the Delaware UST Regulations are proposed for the following reasons:

- Outdated technology is being phased out of the Regulations to provide better protection of human health, safety and the environment.
- The federal Energy Policy Act (EPACT) of 2005 placed several requirements on state UST programs that had to be incorporated into the UST Regulations.
- New fuels, such as E10 and E85, made new requirements necessary.

Notice of Public Comment:

The DNREC will conduct a Public Hearing on Tuesday, October 30, 2007. The hearing is scheduled to begin at 6:00pm in the conference room at the DNREC office located at 391 Lukens Drive, New Castle, DE. The public and interested parties are invited to attend the hearing and to make comments orally or in writing at the hearing. Written comments not presented at the hearing should be addressed to Ms. Jill Williams Hall, DNREC/TMB, 391 Lukens Drive, New Castle, DE 19720 and must be received by the Department not later than 4:00 pm on October 30, 2007 unless a longer time is specified at the hearing.

Copies of the proposed regulations are available online at <http://www.dnrec.delaware.gov/info/Rules.htm>

Copies may be viewed during regular business hours at the following DNREC offices:

DNREC, 391 Lukens Drive, New Castle, DE

DNREC, R&R Building, 89 Kings Highway, Dover, DE

DNREC, Route 113, Sussex Suites, Unit # 6, Georgetown, DE

Prepared By:

Jill Williams Hall, Planner IV

395-2500

9/4/07

Jill.Hall@state.de.us

DIVISION OF AIR AND WASTE MANAGEMENT
NOTICE OF PUBLIC HEARING

1. TITLE OF THE REGULATIONS:

Delaware Regulations Governing Solid Waste (DRGSW)

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

There are five amendments to update and enhance various sections of the solid waste regulations. The first amendment regarding Permits has three changes to clarify language, define requirements for permit transfers, and to make environmental assessment application requirements consistent. The second and third amendments regarding Sanitary and Industrial Landfills clarifies a reference to an Engineering Report. The fourth amendment regarding to Environmental Covenants updates language to comply with changes to the **Delaware Code**. The fifth amendment regarding Infectious Waste has eighteen changes that clarify and reorganize the entire Section. These five amendments will help improve understanding and implementation of the solid waste requirements.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

NONE

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

Amendments to DRGSW are proposed and amended in accordance with the provisions found at 7 Delaware Code, Chapter 60.

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

NONE

6. NOTICE OF PUBLIC COMMENT:

The public hearing on the proposed amendments to DRGSW will be held on Monday October 22, 2007 starting at 6:30 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

7. PREPARED BY:

Bill Davis, Environmental Scientist, Solid and Hazardous Waste Management - (302) 739-9403

DIVISION OF AIR AND WASTE MANAGEMENT
NOTICE OF PUBLIC HEARING
SAN # 2007-14

1. TITLE OF THE REGULATIONS:

Delaware Regulations Governing Hazardous Waste (DRGHW)

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

In order for the State of Delaware to maintain authorization from the U. S. Environmental Protection Agency (EPA) to administer its own hazardous waste management program, the State must maintain a program that is equivalent to and no less stringent than the Federal program. To accomplish this, the State regularly amends the DRGHW by adopting amendments previously promulgated by EPA. In addition, the State is proposing to make miscellaneous changes to the DRGHW that correct existing errors in the hazardous waste regulations, add clarification or enhance the current hazardous waste regulations.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

NONE

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

Amendments to DRGHW are proposed and amended in accordance with the provisions found at 7 Delaware Code, Chapters 60 and 63.

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

NONE

6. NOTICE OF PUBLIC COMMENT:

The public hearing on the proposed amendments to DRGHW will be held on Monday October 22, 2007 starting at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

7. **PREPARED BY:**

Bill Davis, Environmental Scientist, Solid and Hazardous Waste Management - (302) 739-9403

DEPARTMENT OF SAFETY AND HOMELAND SECURITY
BOARD OF EXAMINERS OF PRIVATE INVESTIGATORS AND PRIVATE SECURITY AGENCIES
NOTICE OF PUBLIC COMMENT PERIOD

1300 Board of Examiners of Private Investigators & Private Security Agencies

Notice is hereby given that the Board of Examiners of Private Investigators and Private Security Agencies, in accordance with **Del. Code** Title 24 Chapter 13 proposes to adopt Rule 13.0 – Training Requirements. This adoption will require mandatory training and re-training of all security guards. If you wish to view the complete Rule, contact Ms. Peggy Anderson at (302) 739-5991. Any persons wishing to present views may submit them in writing, by October 31, 2007, to Delaware State Police, Detective Licensing, P.O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Thursday, October 25, 2007, 10:00 am, at the Delaware State Police Headquarters Conference Room, 1441 North DuPont Highway in Dover, Delaware.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
NOTICE OF RESCHEDULED PUBLIC HEARING

1400 Board of Electrical Examiners

The Delaware Board of Electrical Examiners, in accordance with 29 **Del.C.** Chapter 101 and 24 **Del.C.** §1406(a)(1), has proposed amendments to its Regulation 7.0 **Expiration and Renewal**. Specifically, the amendments to Regulation 7.0 would require licensees to provide the name of their insurer and their policy number when they attest to maintenance of their required liability insurance during the renewal process. The amendments would also require licensees to provide course names and approval numbers when they attest to completion of their required continuing education during the renewal process. Minor grammatical, typographic, or stylistic changes may also be included.

The public hearing for the proposed regulatory changes was originally scheduled for September 5, 2007 at 8:30 a.m. but has been rescheduled and will be held on November 7, 2007 at 8:30 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, DE 19904. Members of the public may offer verbal comments on the proposal at the hearing. Written comments should be submitted to the Board care of Dianna Meade at the above address. Written comments may be submitted until the public hearing begins. Anyone wishing to obtain a copy of the proposed changes or to make comments at the public hearing should contact Dianna Meade at (302) 744-4526.

The Board will consider promulgating the proposed regulations immediately following the public hearing.

DIVISION OF PROFESSIONAL REGULATION
4400 Delaware Manufactured Home Installation Board
NOTICE OF PUBLIC HEARING

The Delaware Manufactured Home Installation Board, in accordance with 24 **Del.C.** §4416(b)(1) has

proposed revisions to Regulation 5.0 of its rules and regulations. The proposed revisions address the requirements for re-taking the examination once an applicant for licensure as a manufactured home installer has failed the examination at least twice.

A public hearing on the proposed revisions to the rules and regulations, originally scheduled for Monday, September 10, 2007, will be held on Monday, October 22, 2007, at 9:15 a.m. in Conference Room B, on the second floor 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 Manufactured Home Installation Board, 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.

PUBLIC SERVICE COMMISSION PUBLIC NOTICE

Regulations Concerning Certificates Of Public Convenience And Necessity For Water Utilities

ORDER NO. 7254

This 4th day of September, 2007, the Commission determines and Orders the following:

1. In 2000, this Commission regained the authority to issue Certificates of Public Convenience and Necessity ("CPCN") to authorize entities to enter the water utility business or to allow existing water utilities to expand their operations and facilities into new service territories. See 26 **Del.C.** §203C (2006 Supp.) ("§ 203C"). The Commission thereafter promulgated rules to chart how the Commission would navigate this water utility CPCN regime. See "Regulations Governing Water Utilities Including the Public Service Commission's Jurisdiction to Grant and Revoke Certificates of Public Convenience and Necessity" (adopted by PSC Order No. 5730 (June 5, 2001) ("2001 Rules")).

2. Earlier this year, the Commission published notice that it proposed to repeal the 2001 rules in favor of a new set of rules mapping the regime surrounding CPCNs for water utilities. See PSC Order No. 7142 (Mar. 20, 2007) (proposing new rules to supercede 2001 Rules); 10 DE Reg. 1563-1580 (April 1, 2007) (formally noticing repeal and proposed new CPCN rules). However, during the course of the proceedings before the Hearing Examiner reviewing these new rules, the Governor and General Assembly amended the provisions of § 203C. See 76 **Del. Laws** ch. 55 (June 28, 2007) ("chap. 55"). In the main, the amendments reworked the listed criteria for awarding a CPCN under §203C. In particular, the amendment now obligates a utility to obtain petitions asking for water services executed by all of the landowners of each parcel to be included in a new service territory. An exception exists for "existing" subdivisions or developments, and "unincorporated communities." In such situations, the 2007 amendments permit a CPCN to be granted based on petitions for service signed by the landowners of a majority of the parcels within the development or community. In addition, the amendments also direct that, in the case of a CPCN premised on a resolution or ordinance enacted by a county or municipality, the service territory so authorized cannot extend beyond the political boundaries of the county or municipality entering the ordinance. Finally, in addition to making some other "technical" changes, the amendments require a municipal water authority to obtain the endorsement of the municipalities that formed it prior to seeking a CPCN to provide its water services beyond those municipalities' borders.

3. In light of the statutory amendments, the Hearing Examiner - at Staff's suggestion - suspended further proceedings on the previously proposed new rules. The Commission now withdraws the proposed rule changes proposed by Order No. 7142. The recent legislative changes render some of those earlier provisions in need of further changes.

4. Instead, the Commission here proposes to adopt another set of new regulations related to CPCNs for water utilities. See Exhibit B. These new rules not only incorporate the statutory changes made in June, 2007, but also carry forward some of the same provisions, related to the administration of CPCNs, that were included in the earlier March, 2007 proposed rules.

5. The Commission proposes to repeal the 2001 Rules and adopt the revised set of rules pursuant to the authority granted by 26 **Del.C.** §203C(c) and 209(a). The revised rules entitled "Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities," will supercede (and hence repeal) the 2001 Rules. They will, as did the 2001 Rules, apply to Commission-jurisdictional water utilities. Moreover, they will also govern in those instances when a governmental, municipal, or municipal authority water utility must also seek a CPCN from the Commission in order to expand its operations and facilities.

6. In many aspects, the new rules track the form and content of the 2001 Rules. However, terms and provisions have now been added to conform to the new statutory criteria, and limitations, enacted in the 2007 amendments to §203C. See proposed rules §§2.1 (definitions of "existing development," "existing subdivision," and "unincorporated community"); 3.9-3.11 (new criteria for CPCN); 3.12 (criteria for CPCN to municipal authority for extra-municipal service area). In addition, this new set of proposed rules includes provisions that respond to various administrative and practical issues that Staff has identified as surfacing since the adoption of the 2001 rules. For example, the new rules provide forms of notice to be sent to landowners to explain the application and the landowners' statutory right to "opt-out." See proposed rules §§ 10.2, 10.3. In a similar vein, the new rules impose particular mailing requirements related to the delivery of notices to landowners. Proposed rules §§9.2-9.6. These mailing directives seek to ensure that the owners have actual notice that their property will be affected by the CPCN application. The new rules also impose an obligation on water utilities to retain, for five years, materials related to each application for a Certificate. This retention obligation will help to make sure that the appropriate documents are available if later disputes might arise about a particular Certificate. Proposed rules §11.6.

7. In several instances, the proposed new rules go beyond administrative detail. First, the proposed new rules require the applying non-governmental water utility to certify that it will actually provide water services to, or have water system facilities available, the proposed service area within three years. Proposed rules § 3.13. And if such certification fails to come true, the new rules then provide a mechanism for the Commission to determine whether the utility should be able to retain the CPCN in order to provide water services to the area. Proposed rules §§ 12.1-12.6. Staff has proposed these provisions. According to Staff, this process for certifying to actual service dovetails with the heart of the CPCN process: to authorize a water utility to "extend[] or expand[] . . . its business or operations." See 26 **Del.C.** §203C(a) (2006 Supp.) (emphasis added). In addition, as Staff sees it, the goal of the certification - to ensure that services follow the CPCN - is consistent with the text of § 203C, which conditions the grant of a CPCN for an area on either the developer signing a "service agreement," the landowners "requesting water service," or a governmental body "request[ing], direct[ing], or authoriz[ing] the applicant to provide water utility services." (all emphasis added.) In each of the instances, the statutory text speaks of the Certificate being a vehicle for meeting an articulated desire to have water "service" in the service area, not a device for the utility to accumulate parcels in order to form a large, exclusive "franchise" area.

8. Second, and also reflective of the statutory focus on "service" territory, the proposed new rules require that a service territory sought on the basis of 26 **Del.C.** §203C(e)(1)b. be comprised of either a single parcel or multiple contiguous parcels to be served by a common system or main extension. Proposed rules §7.4. The Commission believes that this linkage of parcels within a service territory will foster efficient service territories.

9. The Commission now proposes to adopt the new water utility CPCN Rules attached as Exhibit "B." It solicits comments on any of the proposed provisions, including those adding bureaucratic details or the new regulatory section related to the certification of "actual service" to the service territory. While not limiting the scope of any comments, the Commission also seeks input from water utilities and others on the following issues:

(a) Is the three-year period for providing service in a new service area reasonable in light of water utilities' actual historical experiences?;

(b) Should the new rules more explicitly define "existing development", "existing subdivision," and "unincorporated community;"? and

(c) Do the provisions of 26 **Del.C.** §203C(e)(1)c. preclude a water utility from utilizing the provisions of 26 **Del.C.** §203C(e)(1)b. to obtain a CPCN to serve one or more parcels in an existing development, existing subdivision, or an unincorporated community?

If a water utility believes the three-year period proposed for in the actual service certification provision (proposed rules §§3.13 & 12.0) is unreasonable, the utility should provide an appropriate time frame to be utilized in that process. It should provide supporting data from its own experience to support its proffered time frame.

Now, therefore, **IT IS ORDERED:**

1. That, for the reasons set forth in the body of this Order, and pursuant to 29 **Del.C.** §10118(a), the Commission hereby withdraws the notice of repeal and rule revisions proposed by PSC Order No. 7142 (Mar. 20, 2007), and published as proposed regulations at 10 *Delaware Register of Regulations* 1563-1580 (April 1, 2007). The Commission requests that the Registrar of Regulations publish notice of such withdrawal in the *Delaware Register of Regulations*.

2. That for the reasons set forth in the body of this Order, and pursuant to 26 **Del.C.** §§209(a)(1) & 203C(c) and 29 **Del.C.** §10113(a), the Commission now again proposes to repeal its "Regulations Governing Water Utilities Including the Public Service Commission's Jurisdiction to Grant and Revoke Certificates of Public Convenience and Necessity (adopted by PSC Order No. 5730 (June 5, 2001)), and to adopt as a replacement for such earlier rules the "Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities," attached to this Order as Exhibit "B."

3. That, pursuant to 29 **Del.C.** §§1133 and 10115(a), the Secretary shall transmit to the Registrar of Regulations for publication in the *Delaware Register of Regulations* a copy of this Order; a copy of the current "Regulations Governing Water Utilities Including the Public Service Commission's Jurisdiction to Grant and Revoke Certificates of Public Convenience and Necessity" (Exhibit "A") (now proposed to be repealed); and a copy of the now proposed "Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities" (Exhibit "B").

4. That, in addition, the Secretary shall transmit the Notice of Proposed Rule-Making, attached as Exhibit "C," to the Registrar of Regulations for publication in the *Delaware Register of Regulations*. In addition, the Secretary shall cause such Notice of Proposed Rule-Making to be published in *The News Journal* and the *Delaware State News* newspapers on October 1, 2007. The Secretary shall include proof of such publication in the docket file before the public hearing in this matter. Further, the Secretary shall serve (by regular mail or electronic e-mail) a copy of such Notice on: (a) the Division of the Public Advocate; (b) the Department of Natural Resources and Environmental Control; (c) the State Fire Marshal; (d) the Division of Public Health; (e) the State Planning Office; and (f) each person or entity who has made a timely request for advance notice of regulation-making proceedings; (g) each water utility currently subject to the regulatory jurisdiction of the Commission; and (h) each municipal water utility, governmental water district, or municipal water and sewer authority that has previously applied for a Certificate of Public Convenience and Necessity from this Commission.

5. That, pursuant to 29 **Del.C.** §§10115(a) and 10116, persons or entities may file written comments, suggestions, compilations of data, briefs, or other written materials, on or before November 1, 2007. The Commission will conduct a public hearing on the proposed new regulations on November 19, 2007 beginning at 10:00 AM. The comments, documents, briefs, and data received in response to the revised rules proposed by PSC Order No. 7142 (Mar. 20, 2007) (and now withdrawn) shall be incorporated into the record in this proceeding and shall be considered by the Hearing Examiner and Commission.

6. That, pursuant to 26 **Del.C.** §502 and 29 **Del.C.** §10116, Hearing Examiner Ruth Ann Price is designated to supervise the comment period and to conduct the public hearing. Thereafter, Hearing Examiner Price shall organize, classify, and summarize the materials and comments and file a Report with her recommendations concerning the adoption of the new regulations. Hearing Examiner Price is specifically designated, under 26 **Del.C.** §102A, the power to determine the content and manner of any further public notice that might be necessary or appropriate. Hearing Examiner Price may also conduct further proceedings, including additional hearings, as may be necessary or appropriate.

7. That Francis J. Murphy, Esquire, is designated Staff Counsel for this matter.

8. That, pursuant to 26 **Del.C.** §114, all jurisdictional water utilities are notified that they may be charged the costs of this proceeding.

9. 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, Chairman
Joann T. Conaway, Commissioner
Jaymes B. Lester, Commissioner
Dallas Winslow, Commissioner
Jeffrey J. Clark, Commissioner

ATTEST:

Karen J. Nickerson, Secretary

NOTICE OF PROPOSED RULE-MAKING: AMENDMENT OF RULES FOR GRANTING and SUPERVISING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR WATER UTILITIES**TO: ALL WATER UTILITIES, CONSUMERS, AND OTHER INTERESTED PERSONS**

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

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

Pursuant to 26 **Del.C.** §§203C(c) and 209(a), the PSC now proposes to repeal those 2001 rules and replace them with new "Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities." As outlined in PSC Order No. 7254 (Sept. 4, 2007), the PSC believes the new rules will make improvements in the administration of the CPCN process. Initially, the proposed new rules implement the statutory changes made to the criteria for obtaining a CPCN (and the provisions of 26 **Del.C.** §203C) by 76 **Del. Laws** ch. 55 (June 28, 2007). Second, the new rules provide for more detailed requirements for notice to affected landowners of the CPCN application and provide specific requirements on the form of notice to be sent to affected landowners to inform them of their options. In addition, the new regulations add new provisions that require a water utility to certify that it will serve, or have facilities within, the new Proposed Service Area within three years and provide a procedure for the PSC to explore whether a CPCN should continue if service or facilities are not made available within such period.

You can review PSC Order No. 7254 (Sept. 4, 2007) and the proposed new rules in the October 1, 2007 issue of the *Delaware Register of Regulations*. You can also review the Order and the new regulations at the PSC's Internet website located at <http://dep.sc.delaware.gov>. Written copies of the Order and proposed regulations can be obtained at the PSC's office at the address located below, for \$0.25 per page.

The PSC now solicits comments, suggestions, compilations of data, briefs, or other written materials about the proposed repeal of the 2001 Water Utility CPCN rules and the adoption of the proposed new Water Utility CPCN rules. If you want to file any such materials, you should submit an original and ten copies of such written documents on or before November 1, 2007. You should file such materials with the PSC at the following address:

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

If possible, you should accompany such written comments with an electronic version of the submission. Such electronic copy may be filed on a copy-capable CD-Rom disk or send as an attachment to an Internet e-mail addressed to karen.nickerson@state.de.us.

The PSC will also conduct a public hearing on the new proposed regulations on Monday, November 19, 2007. That hearing will begin at 10:00 A.M. and will be held at the PSC's office at the address set forth above. You may also submit comments and materials at such public hearing.

If you are disabled and need assistance or help to participate in the proceedings, please contact the PSC

to discuss that assistance. If you want more information or have questions, you can contact the PSC about this matter at (800) 282-8574 (toll-free in Delaware) or (302) 736-7500. Inquiries can also be sent by Internet e-mail addressed to andrea.maucher@state.de.us.

PUBLIC SERVICE COMMISSION
PUBLIC NOTICE

Rules To Implement The Renewable Energy Portfolio Standards Act

ORDER NO. 7276

This 4th day of September, 2007, the Commission determines and Orders the following:

1. In 2005 the General Assembly and the Governor enacted the "Renewable Energy Portfolio Standards Act," 26 **Del.C.** §§351-363 (2006 Supp.) ("the Act"). As its name suggests, the Act requires each electric supplier to annually accumulate a portfolio of "renewable energy credits" equivalent to a specified percentage of its retail electric supply sales within this State. The obligation begins in 2007 and the particular percentages increase each year. In 2006, exercising the authority granted under 26 **Del.C.** §362 (2006 Supp.), the Commission promulgated "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" ("RPS Rules"). See PSC Order No. 6931 (June 6, 2006).¹

2. In the recently-ended legislative session, the General Assembly and Governor enacted significant changes to various provisions in the Act. See 76 **Del. Laws** ch. 165 §§1-9 (July 24, 2007) ("chapter 165"). The Commission now proposes to adopt revisions and amendments to its RPS Rules to incorporate, and assure consistency with, the statutory changes made by chapter 165. The revised RPS Rules, prepared by Staff and now being proposed for adoption, are set forth as Exhibit "B" to this Order.

3. The Commission continues to hold the authority to issue rules to implement the Act. See 26 **Del.C.** §362 (2006 Supp.). As noted, the proposed revisions are intended to mirror the recent changes in the statutory requirements. For example, the revisions incorporate the new "Schedule I" that increases the percentages of retail sales that electric suppliers must meet with renewable energy credits. Section 3.2.1.² The proposed revisions also implement the new requirement that electric suppliers also concurrently acquire, as part of their yearly portfolio obligation, specified levels of "solar renewable energy credits." Section 3.2.1.³ In addition, the proposed revisions provide for the statutory increases to the dollar amounts of "alternative compliance payments" for renewable credits and institute a new solar alternative compliance payment regime to be available as an alternative to solar renewable energy credits. Section 3.3.4.⁴

Now, therefore, **IT IS ORDERED:**

1. That, for the reasons set forth in the body of this Order, and pursuant to 26 **Del.C.** §362 and 29 **Del.C.** §10115, the Commission proposes to revise its "Rules and Procedures to Implement the Renewable Energy Portfolio Standard," originally adopted by PSC Order No. 6931 (June 6, 2006) and published at 10 DE Reg. 151-57. A copy of those rules, in their current form, are appended as Exhibit "A" to this Order. The proposed revised Rules, which include the changes, amendments, and revisions now being proposed for adoption, are attached to this Order as Exhibit "B."

2. That, pursuant to 29 **Del.C.** §§1133 and 10115(a), the Secretary shall transmit to the Registrar of Regulations for publication in the *Delaware Register of Regulations* a copy of this Order; a copy of the current

1. The RPS Rules (attached as Exhibit "A") were formally published at 10 DE Reg. 151-157 (July 1, 2006). Municipal electric utilities and the now self-regulated Delaware Electric Cooperative, Inc., can choose to be exempt from the Act's requirements by pursuing an alternative regime for supporting "renewable energy" resources. See 26 **Del.C.** §§ 353(a), 363 (2006 Supp.).
2. See 26 **Del.C.** § 354(a), as amended by chapter 165 § 4(b).
3. See 26 **Del.C.** §§ 352(22)-(23), 354(a), 356(a), as amended by chapter 165 §§ 3, 4(a)-(b), & 6.
4. See 26 **Del.C.** §§ 352(22), 358(d), 358(e), as amended by chapter 165 §§ 3, 7, & 8.

"Rules and Procedures to Implement the Renewable Energy Portfolio Standard" (adopted in PSC Order No. 6931 (June 6, 2006)) (Exhibit "A"); and a copy of the revised "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" now being proposed for adoption (Exhibit "B").

3. That, in addition, the Secretary shall transmit the Notice of Proposed Rule-Making, attached as Exhibit "C," to the Registrar of Regulations for publication in the *Delaware Register of Regulations*. In addition, the Secretary shall cause such Notice of Proposed Rule-Making to be published in *The News Journal* and the *Delaware State News* newspapers on October 1, 2007. The Secretary shall include proof of such publication in the docket file before the public hearing in this matter. Further, the Secretary shall serve (by regular mail or by electronic e-mail) a copy of such Notice on: (a) the Division of the Public Advocate; (b) the State Energy Office; (c) Delmarva Power & Light Company; (d) all certificated electric suppliers; and (e) each person or entity who has made a timely request for advance notice of regulation-making proceedings.

4. That, pursuant to 29 **Del.C.** §§10115(a) and 10116, persons or entities may file written comments, suggestions, compilations of data, briefs, or other written materials, on or before October 31, 2007. Pursuant to 29 **Del.C.** §10117, the Commission will conduct a public hearing on the proposed revisions and resulting new "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" on December 12, 2007 beginning at 10:00 AM at the Commission's office at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware.

5. That, pursuant to 26 **Del.C.** §502 and 29 **Del.C.** §10116, Hearing Examiner Ruth Ann Price is designated to supervise the comment period and to conduct the public hearing. Thereafter, Hearing Examiner Price shall organize, classify, and summarize the materials and comments and file a Report with the Commission with her recommendations concerning the proposed revisions to the "Rules and Procedures to Implement the Renewable Energy Portfolio Standard." Hearing Examiner Price is specifically delegated the power, under 26 **Del.C.** §102A, to determine the content and manner of any further public notices that might be necessary or appropriate. Hearing Examiner Price may also conduct further proceedings, including additional hearings, as may be necessary or appropriate.

6. That James McC. Geddes, Esquire, is designated Staff Counsel for this matter.

7. That, pursuant to 26 **Del.C.** §§114 and 1012(c)(2), all electric suppliers and electric public utilities are hereby notified that they may be charged the costs of this proceeding.

8. 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

Jaymes B. Lester, Commissioner

Jeffrey J. Clark, Commissioner

Joann T. Conaway, Commissioner

Dallas Winslow, Commissioner

ATTEST:

Karen J. Nickerson, Secretary

NOTICE OF PROPOSED RULE-MAKING: AMENDING "RULES and PROCEDURES TO IMPLEMENT THE RENEWABLE ENERGY PORTFOLIO STANDARD"

TO: ALL ELECTRIC SUPPLIERS, ELECTRIC UTILITIES, ELECTRIC GENERATORS USING RENEWABLE RESOURCES, AND OTHER INTERESTED PERSONS

Under the "Renewable Energy Portfolio Standards Act," 26 **Del.C.** §§351-363 (2006 Supp.) ("the Act"), each electric supplier making retail electric sales in Delaware must, beginning in 2007, accumulate a portfolio of "renewable energy credits" equivalent to a specified percentage of its overall retail electric supply sales. In 2006, the Public Service Commission ("PSC") adopted its "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" ("RPS Rules"). See 10 DE Reg. 151-157 (July 1, 2006).

On July 24, 2006, the General Assembly and Governor enacted significant changes to various provisions of the Act. See 76 **Del. Laws** ch. 164 (July 24, 2007). In light of those statutory amendments, the PSC now proposes revisions to its RPS Rules to have those rules reflect, and be consistent with, the recent statutory changes. See PSC Order No. 7276 (Sept. 4, 2007). For example, the proposed rule revisions incorporate the new statutory "Schedule I" that increases the percentages of retail sales that electric suppliers must meet with

renewable energy credits. The proposed rule changes also implement the new requirement that electric suppliers also concurrently acquire, as part of their yearly renewable energy portfolio obligation, specified levels of "solar renewable energy credits." In addition, the proposed revisions reflect the increases in the dollar amounts of "alternative compliance payments" for renewable credits and institute a new solar alternative compliance payment regime to be available as a substitute for solar renewable energy credits. The PSC is authorized to make rules to implement the Act under 26 **Del.C.** §362.

You can review PSC Order No. 7276 (Sept. 4, 2007) and the proposed revised RPS Rules in the October 1, 2007 issue of the *Delaware Register of Regulations*. You can also review the Order and the proposed, revised RPS Rules at the PSC's Internet website located at <http://depsec.delaware.gov>. If you wish to have written copies of the Order and proposed revised Rules, you can obtain them at the PSC's office at the address located below for \$0.25 per page.

The PSC now solicits comments, suggestions, compilations of data, briefs, or other written materials about the proposed revisions to its RPS Rules. If you wish to file any such materials, you should submit an original and ten copies of such written documents on or before October 31, 2007. You should file such materials with the PSC at the following address:

Public Service Commission
861 Silver Lake Boulevard
Cannon Building
Suite 100
Dover, Delaware, 19904
Attn: Reg. Dckt. No. 56

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

The PSC will also conduct a public evidentiary hearing on the new proposed regulations on Wednesday, December 12, 2007 at 10:00 AM at the Commission's office at the address set forth above. You may also submit comments and materials at such public evidentiary hearing.

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

EXECUTIVE DEPARTMENT
DELAWARE ECONOMIC DEVELOPMENT OFFICE
NOTICE OF PUBLIC HEARING

1104 Administration and Operation of Council on Development Finance

In accordance with procedures set forth in 29 **Del.C.** Ch. 11, Subch. III and 29 **Del.C.**, Ch. 101, the Director of the Delaware Economic Development Office, as Chairperson of The Delaware Economic Development Authority, is proposing to adopt a regulation for the administration and operation of the Council on Development Finance as recommended by the Joint Sunset Committee in accordance with 29 **Del.C.** §10214. The proposed regulation sets forth certain procedures for the administration and operation of the Council on Development Finance.

The Director of the Delaware Economic Development Office, as the Chairperson of The Delaware Economic Development Authority, or an employee of the Delaware Economic Development Office designated by the Director, will hold a public hearing at which members of the public may present comments on the proposed regulation on November 26, 2007 at 9:00 A.M. at Buena Vista, 661 South DuPont Highway in New Castle, Delaware 19720. Additionally, members of the public may present written comments on the proposed regulation by

submitting such written comments to Ms. Lee K. Porter, Delaware Economic Development Office, 99 Kings Highway, Dover, DE, 19901-7305. Written comments must be received on or before November 14, 2007. Members of the public may receive a copy of the proposed regulation at no charge by United States Mail by writing Ms. Lee K. Porter at the Dover, Delaware, address of the Delaware Economic Development Office set forth above, or by calling her at (302) 739-4271.
