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DELAWARE RIVER BASIN COMMISSION

Notice of Proposed Rulemaking; Proposed Amendment to the Basin Regulations—Water Supply Charges and Comprehensive Plan Relating to Certificates of Entitlement

AGENCY: Delaware River Basin
Commission.

SUMMARY: The Delaware River Basin Commission ("Commission" or "DRBC") will hold a public hearing to receive comments on proposed amendments to the Commission's Basin Regulations—Water Supply Charges and Comprehensive Plan concerning certificates of entitlement. No changes in the substance or administration of the rule are proposed. The purpose of the proposed amendments is to clarify the language of the rule to conform to the Commission's past decisions and current practices in order to provide better notice to users as to how the Commission is implementing its entitlements program and to avoid future controversy.

Background. The Delaware River Basin Compact ("Compact"), the 1961 statute that created the DRBC and defined its powers, authorizes the Commission to charge for the use of facilities that it may own or operate and for products and services rendered thereby. Compact, § 3.7. Congress limited this authority by providing that the Commission cannot charge for water withdrawals or diversions that could lawfully have been made without charge as of the effective date of the Compact. *Id.*, § 15.1(b).

By Resolution No. 64-16A in 1964 the Commission authorized a water charging program. It provided for the revenues generated by the program to be used for repayment of the nonfederal share of the investment cost of water supply storage facilities associated with federal projects within the Basin. In anticipation of Commission investment in storage at the Beltzville Lake and Blue Marsh Reservoir projects in Pennsylvania, the Commission by Resolution No. 1971-4 defined, among other things, the means by which it would establish water charging rates. Consistent with Section 15.1(b) of the

Compact, Resolution No. 1971-4 provided that charges would be applicable only to the amount of water withdrawn in excess of the amount taken or legally entitled to be taken by an entity during the preceding year. By Resolution No. 74-6, the Commission instituted a system of water supply charges for surface water withdrawals within the Basin. That resolution provided for the issuance of certificates of entitlement to then-current water users, establishing the amount of water each could lawfully take from the surface waters of the Basin without charge, consistent with Section 15.1(b) of the Compact. The resolution provided that a certificate of entitlement was not transferable, except under limited circumstances set forth in enumerated exceptions.

Because entitlements treat users that commenced water withdrawals before the enactment of the Compact more favorably than users who commenced water withdrawals later, even though all users benefit equally from the facilities financed by water supply charges, courts and the Commission have emphasized the need to eliminate entitlements over time. Both the Commission and the courts have construed narrowly the exceptions to the rule that entitlements are not transferable, and the Commission has in its decisions consistently held that changes in ownership or control would extinguish a certificate. However, the language of the regulations has never explicitly defined "changes in ownership or control." As a consequence, in the decisions that the Commission has been asked to make in its adjudicatory capacity and that the courts have subsequently been asked to decide, the matter of what constitutes a change of ownership or control has been controversial.

In 1994, in response to a ruling by the Third Circuit in *Texaco Refining and Marketing, Inc. v. DRBC*, 824 F. Supp. 500 (D.Del. 1993), *aff'd*, No. 93-7475 (3d Cir. June 24, 1994) (*per curiam*), the Commission adopted Resolution No. 94-20. That resolution incorporated an explicit "ownership and/or control" test and eliminated the merger exception included in the Commission's regulations at the time. In addition, the exception for corporate reorganizations embodied in Section 5.2.1.F.2 of the Water Charging Regulations was amended to apply only when the reorganization "does not affect ownership and/or control."

In spite of the 1994 amendment, some members of the Basin community have continued to interpret the language of the rule in a manner contrary to the

Commission's consistent interpretation. To avoid further controversy, the Commission proposes a more thorough revision of the language, intended to remove any ambiguity.

Key Provisions. In addition to defining "change in ownership and/or control" with much greater specificity, the proposed revisions also make clear that a merger at any tier in a corporate organization will extinguish a certificate held by a subsidiary in the same way as if the merger had occurred at the subsidiary level. Although the Commission has interpreted its rule this way in the past, the rules have never been explicit on this point.

The proposed amendments preserve and clarify the corporate reorganization exception contained in the current regulation. The Commission traditionally has not extinguished an entitlement in the case of an internal reorganization, and it does not propose a change in this practice.

The proposed amendments also preserve the existing exception for agricultural uses. Historically, agriculture has been treated differently than other uses. For purposes other than agriculture, an entitlement is issued to a user and would not be transferable to a different user, even if the use remained the same. In the case of agriculture, however, an entitlement effectively runs with the land, as long as the land remains in agriculture. The proposed amendments provide that an entitlement can be reissued to the successor of a holder of a certificate issued for agricultural water use, provided that the successor demonstrates that the water will continue to be used for agricultural irrigation purposes.

DATES: The public hearing will be held on Wednesday, December 7, 2005 at approximately 2:30 p.m. as part of the Commission's regularly scheduled business meeting. The time is approximate because the Commission will conduct hearings on several dockets (project approvals) beforehand, beginning at approximately 1:30 p.m. The hearing will continue until all those who wish to testify are afforded an opportunity to do so. In the event that all those who wish to testify cannot be heard on December 7, the hearing will be continued at a date, time and location to be announced by the Commission Chair that day. Persons wishing to testify at the hearing are asked to register in advance with the Commission Secretary by phoning 609-883-9500, extension 224. Written comments will be accepted through Tuesday, January 10, 2006.

ADDRESSES: The text of the proposed amendment and the text of the current regulation are posted on the Commission's Web site, <http://www.drbc.net>. The public hearing will be held in the Goddard Room at the Commission's office building, located at 25 State Police Drive in West Trenton, New Jersey. Directions to the Commission's office building are also posted on the Commission's Web site. Written comments should be addressed to the Commission Secretary as follows: by e-mail to

paula.schmitt@drbc.state.nj.us; by fax to the Commission Secretary—609-883-9522; by U.S. Mail to the Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628-0360; or by overnight mail to the Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628-0360.

FOR FURTHER INFORMATION CONTACT: Please contact Commission Secretary Pamela Bush, 609-883-9500 x203, with questions about the proposed rule or the rulemaking process.

Dated: October 12, 2005.

Pamela M. Bush,

Commission Secretary and Assistant General Counsel.

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DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 17, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or

waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 12, 2005.

Jeanne Van Vlandren,

Director, Regulatory Information Management Services, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Extension.

Title: Application for Approval to Participate in Federal Student Financial Aid Programs.

Frequency: Prior to Expiration of Eligibility.

Affected Public: Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 2,970.

Burden Hours: 20,830.

Abstract: The Higher Education Act of 1965 (HEA), as amended requires postsecondary institutions to complete and submit this application as a condition of eligibility for any of the Title IV student financial assistance programs and for the other postsecondary programs authorize by the HEA. The institution must submit the form (1) Initially when it first seeks to become eligible for the Title IV programs; (2) when its program participation agreement expires (recertification); (3) when it changes ownership, merges, or changes from structure, (4) to be reinstated to participate in the Title IV programs, (5) to notify the Department when it makes certain changes, e.g. name or address; and (5) if it wishes to have a new program (outside its current scope) or new location approved for Title IV purposes.

Requests for copies of the information collection submission for OMB review

may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2839. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to the Internet address OCIO_RIMG@ed.gov or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address Joe.Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

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DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

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