
Delaware Register of Regulations

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Silver Lake, Dover, Delaware

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Proposed
Final



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Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before December 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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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.
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CITATION TO THE DELAWARE REGISTER

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

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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
February 1	January 15	4:30 p.m.
March 1	February 15	4:30 p.m.
April 1	March 17	4:30 p.m.
May 1	April 15	4:30 p.m.
June 1	May 15	4:30 p.m.

DIVISION OF RESEARCH STAFF

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Symbol Key

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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.

DEPARTMENT OF EDUCATION**OFFICE OF THE SECRETARY**

Statutory Authority: 14 Delaware Code, Section 2901 (14 **Del.C.** §2901)
14 **DE Admin. Code** 1101

Education Impact Analysis Pursuant to 14 Del.C. Section 122(d)**1101 Standards for School Bus Chassis and Bodies Placed in Production After March 1, 1998****A. Type of Regulatory Action Required**

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** **1101 Standards for School Bus Chassis and Bodies For Buses placed in Production After March 1, 1998 (Terminology and School Bus Types are Those Described in the National Standards for School Transportation 1995)**. The amendment allows for the placement of a U.S. Flag decal or plate on a school bus.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before February 5, 2008 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 FEDERAL STREET, SUITE 2, DOVER, DELAWARE 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? This amendment is related to allowing a U.S. Flag plate or decal on a school bus and does not affect student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? This amendment is related to allowing a U.S. Flag plate or decal on a school bus and does not affect equitable education opportunities.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This amendment is related to allowing a U.S. Flag plate or decal on a school bus and does not affect

student health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? This amendment is related to allowing a U.S. Flag plate or decal on a school bus and does not affect student legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? This amendment is related to allowing a U.S. Flag plate or decal on a school bus and would not change any authority or flexibility of decision making at the 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 amendment is related to allowing a U.S. Flag plate or decal on a school bus and does not make any changes to reporting or administrative requirements at the local board or school levels.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? This amendment is related to allowing a U.S. Flag plate or decal on a school bus and continues the decision making authority with the same entity.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? This amendment is related to allowing a U.S. Flag plate or decal on a school bus and does not affect the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? This amendment is related to allowing a U.S. Flag plate or decal on a school bus and there is no other less burdensome method of addressing this issue.

10. What is the cost to the State and to the local school boards of compliance with the regulation? This amendment is related to allowing a U.S. Flag plate or decal on a school bus. The costs to securing a U.S. Flag decal or place would be incumbent with the local district or school; however, this is voluntary and not mandatory.

1101 Standards for School Bus Chassis and Bodies Placed in Production After March 1, 1998 (Terminology and School Bus Types are Those Described in the National Standards for School Transportation 1995)

(Break in Continuity of Sections)

2.0 Bus Body Standards

..... 2.18 Floor

2.18.1 Floor in under seat area, including tops of wheelhousing, driver's compartment and toeboard, shall be covered with rubber floor covering or equivalent, having a minimum overall thickness of .125". The driver's area on all Type A buses may be manufacturer's standard flooring and floor covering.

2.18.2 Floor covering in aisles shall be of aisle type rubber or equivalent, wear resistant and ribbed. Minimum overall thickness shall be .187" measured from tops of ribs.

2.18.3 Floor covering must be permanently bonded to floor and must not crack when subjected to sudden changes in temperature. Bonding or adhesive material shall be waterproof and shall be a type recommended by the manufacturer of floor covering material. All seams must be sealed with waterproof sealer.

2.18.4 On Types A-I, B, C and D buses a screw down plate that is secured and insulated shall be provided to access the fuel tank sending unit.

2.19 Heaters

2.19.1 Heater shall be a hot water type.

2.19.2 Every bus with a capacity of 36 or more shall have 2 heaters at the front: 1 to the left of the driver, and 1 to the right of the driver near the entrance door, and 1 heater in the rear portion of the bus.

4 DE Reg. 995 (12/1/00)

2.19.3 If only one heater is used, it shall be fresh air or combination fresh air and recirculation type.

2.19.4 If more than one heater is used, additional heaters may be recirculating air type.

2.19.5 The heating system shall be capable of maintaining bus interior temperatures as specified

in SAE test procedure J2233.

2.19.6 All heaters installed by body manufacturers shall bear a name plate that indicates the heater rating in accordance with SBMI Standard No. 001. The plate shall be affixed by the heater manufacturer and shall constitute certification that the heater performance is as shown on the plate.

2.19.7 Heater hoses shall be adequately supported to guard against excessive wear due to vibration. The hoses shall not dangle or rub against the chassis or any sharp edges and shall not interfere with or restrict the operation of any engine function. Heater hoses shall conform to SAE Standard J20c. Heater lines on the interior of bus shall be shielded to prevent scalding of the driver or passengers.

2.19.8 Each hot water system installed by a body manufacturer shall include one shut off valve in the pressure line and one shut off valve in the return line with both valves at the engine in an accessible location, except that on all Types A and B buses, the valves may be installed in another accessible location.

2.19.9 There shall be a water flow regulating valve installed in the pressure line for convenient operation by the driver while seated.

2.19.10 Accessible bleeder valves shall be installed in an appropriate place in the return lines of body company installed heaters to remove air from the heater lines.

2.19.11 Access panels shall be provided to make heater motors, cores, and fans readily accessible for service. Outside access panel may be provided for the driver's heater.

2.20 Hinges: All exposed metal door hinges subject to corrosion shall be designed to allow lubrication to be channeled to the center 75% of each hinge loop.

2.21 Identification

2.21.1 Body shall bear words "SCHOOL BUS" in black letters at least 8 inches high on both front and rear of body or on signs attached thereto. Lettering shall be placed as high as possible without impairment of its visibility. Letters shall conform to "Series B" of Standard Alphabets for highway signs. "SCHOOL BUS" lettering shall have a reflective background, or as an option, may be illuminated by backlighting. All lettering on NSBY surfaces shall be black, and lettering on black surfaces shall be NSBY or white.

2.21.2 Bus identification number shall be displayed on the sides, on the rear, and on the front.

2.21.3 Other lettering, numbering, or symbols which may be displayed on the exterior of the bus, shall be limited to:

2.21.3.1 District or company name or owner of the bus may be displayed.

2.21.3.2 Bus identification number on the top of the bus, in addition to required numbering on sides, rear, and front.

2.21.3.3 The location of the battery(ies) identified by the word "BATTERY" or "BATTERIES" on the battery compartment door in 2" lettering.

2.21.3.4 Lettering to identify the fuel type at the fuel filler location (2" letters maximum).

2.21.3.5 Symbols or letters near the service door displaying information for identification by the students of the bus or route served. Such symbols or lettering, if used, shall not exceed 36 square inches in size.

2.21.3.6 Symbols identifying the bus as equipped for or transporting students with special needs (see Specially Equipped School Bus section).

2.21.3.7 Manufacturer, company name, dealer, or school logo, or U.S. Flag (with no other wording or artwork) decal or plate not to exceed 6 inches x 12 inches may be displayed in the right side plate location on the rear of the bus.

2.22 Inside Height: Inside body height shall be 72" or more, measured metal to metal, at any point on longitudinal center line from front vertical bow to rear vertical bow. Inside body height of Type A buses shall be 62" or more.

2.23 Insulation

2.23.1 Thermal insulation shall be fire resistant, UL approved, and approximately 1 1/2" thick with minimum R value of 5.5. Insulation shall be installed to prevent sagging.

2.23.2 If floor insulation is required, it shall be either 5 ply nominal 5/8" thick plywood, or a material of equal or greater strength and insulation R value, and it shall equal or exceed properties of the exterior type softwood plywood, C-D Grade as specified in standard issued by U.S. Department of Commerce. When plywood is used, all exposed edges shall be sealed. Type A-II buses may be equipped with nominal 1/2" thick plywood meeting above requirements.

2.24 Interior

2.24.1 Interior of bus shall be free of all unnecessary projections, which include luggage racks and attendant hand rails, to minimize the potential for injury. This standard requires inner lining on ceilings and walls. If ceiling is constructed to contain lapped joints, forward panel shall be lapped by rear panel and exposed edges shall be beaded, hemmed, flanged, or otherwise treated to minimize sharp edges. Buses may be equipped with a storage compartment for tools, tire chains, and tow chains. (See Storage Compartment, Body section)

2.24.2 The driver's area forward of the foremost padded barriers will permit the mounting of required safety equipment and vehicle operation equipment.

2.24.3 Every school bus shall be constructed so that the noise level taken at the ear of the occupant nearest to the primary vehicle noise source shall not exceed 85 dBA when tested according to the procedure found in the 1995 National Standards.

***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:**

[1101 Standards for School Bus Chassis and Bodies Placed in Production After March 1, 1998](#)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 2901 (14 Del.C. §2901)
14 DE Admin. Code 1102

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

1102 Standards for School Bus Chassis and Bodies Placed in Production on or after March 1, 2002 and on or after March 1, 2003 with Specific Changes for Buses Placed in Production after January 1, 2004

A. Type of Regulatory Action Required
Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 1102 Standards for School Bus Chassis and Bodies For Buses placed in production on or after March 1, 2002 and on or after March 1, 2003 with Specific Changes for Buses Placed in Production after January 1, 2004 (Terminology and School Bus Types are those described in the *National School Transportation Specifications and Procedures (NSTSP), May 2000*). The amendment allows for the placement of a U.S. Flag decal or plate on a school bus.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before February 5, 2008 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 FEDERAL STREET, SUITE 2, DOVER, DELAWARE 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? This amendment is related to allowing a U.S. Flag plate or decal on a school bus and does not affect student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? This amendment is related to allowing a U.S. Flag plate or decal on a school bus and does not affect equitable education opportunities.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This amendment is related to allowing a U.S. Flag plate or decal on a school bus and does not affect student health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? This

amendment is related to allowing a U.S. Flag plate or decal on a school bus and does not affect student legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? This amendment is related to allowing a U.S. Flag plate or decal on a school bus and would not change any authority or flexibility of decision making at the 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 amendment is related to allowing a U.S. Flag plate or decal on a school bus and does make any changes to reporting or administrative requirements at the local board or school levels.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? This amendment is related to allowing a U.S. Flag plate or decal on a school bus and continues the decision making authority with the same entity.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? This amendment is related to allowing a U.S. Flag plate or decal on a school bus and does not affect the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? This amendment is related to allowing a U.S. Flag plate or decal on a school bus and there is no other less burdensome method of addressing this issue.

10. What is the cost to the State and to the local school boards of compliance with the regulation? This amendment is related to allowing a U.S. Flag plate or decal on a school bus. The costs to securing a U.S. Flag decal or place would be incumbent with the local district or school; however, this is voluntary and not mandatory.

1102 Standards for School Bus Chassis and Bodies Placed in Production on or after March 1, 2002 and on or after March 1, 2003 with Specific Changes for Buses Placed in Production after January 1, 2004 (Terminology and School Bus Types are those described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2000

(Break in Continuity of Sections)

2.0 Bus Body Standards

2.19 Handrails: At least one handrail shall be installed. The handrail(s) shall assist passengers during entry or exit, and be designed to prevent entanglement, as evidenced by the passage of the National Highway Transportation Safety Administration (NHTSA) string and nut test as defined in the NSTSP.

2.20 Heater and Air Conditioning Systems

2.20.1 Heating System

2.20.1.1 The heater shall be a hot water type.

2.20.1.2 Every bus with a capacity of 36 or more shall have 2 heaters at the front: 1 to the left of the driver, and 1 to the right of the driver near the entrance door, and 1 heater in the rear portion of the bus.

2.20.1.3 If only one heater is used, it shall be fresh air or combination fresh air and recirculation type.

2.20.1.4 If more than one heater is used, additional heaters may be temperatures as specified recirculating air type.

2.20.1.5 The heating system shall be capable of maintaining bus interior in SAE test procedure J2233.

2.20.1.6 All forced air heaters installed by body manufacturers shall bear a name plate that indicates the heater rating in accordance with SBMTC-001. The plate shall be affixed by the heater manufacturer and shall constitute certification that the heater performance is as shown on the plate.

2.20.1.7 Heater hoses shall be adequately supported to guard against excessive wear due to vibration. The hoses shall not dangle or rub against the chassis or any sharp edges and shall not interfere with or restrict the operation of any engine function. Heater hoses shall conform to SAE J20c. Heater lines

on the interior of bus shall be shielded to prevent scalding of the driver or passengers.

2.20.1.8 Each hot water system installed by a body manufacturer shall include one shut off valve in the pressure line and one shut off valve in the return line with both valves at the engine in an accessible location, except that on all Types A and B buses, the valves may be installed in another accessible location.

2.20.1.9 There shall be a water flow regulating valve installed in the pressure line for convenient operation by the driver while seated.

2.20.1.10 Accessible bleeder valves shall be installed in an appropriate place in the return lines of body company installed heaters to remove air from the heater lines.

2.20.1.11 Access panels shall be provided to make heater motors, cores and fans readily accessible for service. An outside access panel may be provided for the driver's heater.

2.20.2 Air Conditioning

2.20.2.1 Performance Specifications

2.20.2.1.1 The installed air conditioning system shall cool the interior of the bus down to at least 80 degrees Fahrenheit, measured at a minimum of three points, located 4' above the floor at the longitudinal centerline of the bus. The three points shall be: (1) near the driver's location, (2) at the midpoint of the body, and (3) 2' forward of the emergency door, or, for type D rear engine buses, 2' forward of the end of the aisle.

2.20.2.1.2 The test conditions under which the above performance must be achieved shall consist of: (1) placing the bus in a room (such as a paint booth) where ambient temperature can be maintained at 100 degrees Fahrenheit (2) heat soaking the bus at 100 degrees Fahrenheit with windows open for at least 1 hour and (3) closing windows, turning on the air conditioner with the engine running at the chassis manufacturer's recommended low idle speed, and cooling the interior of the bus to 80 degrees Fahrenheit or lower within a maximum of 30 minutes while maintaining 100 degrees Fahrenheit outside temperature.

2.20.2.1.3 Alternately, this test may be performed under actual summer conditions, which consist of temperatures above 85 degrees Fahrenheit, humidity above 50 percent with normal sun loading of the bus and the engine running at the engine manufacturer's recommended low idle speed. After a minimum of 1 hour of heat soaking, the system shall be turned on and must provide a minimum 20 degree temperature drop in the 30 minute time limit.

2.20.2.2 Other Requirements

2.20.2.2.1 Evaporator cases, lines and ducting (as equipped) shall be designed in such a manner that all condensation is effectively drained to the exterior of the bus below the floor level under all conditions of vehicle movement and without leakage on any interior portion of bus.

2.20.2.2.2 Any evaporator or ducting system shall be designed and installed so as to be free of injury prone projections or sharp edges. Any ductwork shall be installed so that exposed edges face the front of the bus and do not present sharp edges.

2.20.2.2.3 Evaporator cases and ducting systems shall be equipped with diffusers that are adjustable.

2.20.2.2.4 On specially equipped school buses, the evaporator and ducting (if used) shall be placed high enough that they will not obstruct occupant securement shoulder strap upper attachment points. This clearance shall be provided along entire length of the passenger area on both sides of the bus interior to allow for potential retrofitting of new wheelchair positions and occupant securement devices throughout the bus.

2.20.2.2.5 The condensers shall be equipped with a sight glass (or at least one for each part of a split system) that is accessible and directly visible for checking the level of the refrigerant.

2.20.2.2.6 The compressor system shall be equipped with both a high pressure and a low pressure switch to prevent compressor operation when system temperatures are above or below recommended safe levels. Lubrication of moving compressor parts shall be accomplished automatically. An automatic (electric) clutch shall be provided on each compressor.

2.20.2.2.7 All system operating controls, including on off switch(es), blower switch(es) and thermostat controls shall be accessible to the driver in a seated position.

2.20.2.2.8 Blowers shall be a minimum of two speeds.

2.20.2.2.9 Wiring shall be copper with color coded insulation. The air conditioning system shall be equipped with at least one manually resettable circuit breaker per side to provide

overload protection for the main power circuit feeding the evaporator blowers and condenser fans. System control circuits shall also have overload protection, but may be fused.

2.20.2.2.10 Refrigerant shall be R 134A.

2.20.2.2.11 All wiring, hoses, and lines shall be grommeted, routed, and supported so as to reduce wear. All flexible refrigerant hoses shall be double braided.

2.20.2.2.12 The body shall be equipped with insulation, including sidewalls, roof, firewall, rear, inside body bows and plywood (see "Insulation") or composite floor insulation to aid in heat dissipation and reflection.

2.20.2.2.13 All glass (windshield, service and emergency doors, side and rear windows) shall be equipped with maximum integral tinting allowed by federal or ANSI standards for the respective locations, except that windows rear of the driver's compartment shall have approximately 28 percent light transmission.

2.20.2.2.14 Type A buses equipped with air conditioning shall be furnished with an alternator with a minimum output rating of 120 amperes. Type B, C, and D buses equipped with air conditioning shall be furnished with an alternator with a minimum output rating of 160 amperes.

2.20.2.2.15 Roofs shall be painted white (see "Color").

2.21 Hinges: All exterior metal door hinges which do not have stainless steel, brass, or nonmetallic hinge pins or other designs that prevent corrosion shall be designed to allow lubrication to be channeled to the center 75 percent of each hinge loop without disassembly.

2.22 Identification

2.22.1 The body shall bear words "SCHOOL BUS" in black letters at least 8 inches high on both front and rear of body or on signs attached thereto. Lettering shall be placed as high as possible without impairment of its visibility. Letters shall conform to "Series B" of Standard Alphabets for Highway Signs. "SCHOOL BUS" lettering shall have a reflective background. All lettering on NSBY surfaces shall be black, and lettering on black surfaces shall be NSBY or white.

2.22.2 Bus identification number shall be displayed on the sides, on the rear, and on the front.

2.22.3 District or company name or owner of the bus shall be displayed;

2.22.4 Other lettering, numbering, or symbols which may be displayed on the exterior of the bus, shall be limited to:

2.22.4.1 The location of the battery(ies) identified by the word "Battery" or "Batteries" on the battery compartment door in 2" lettering;

2.22.4.2 Symbols or letters not to exceed 64 square inches of total display near the service door, displaying information for identification by the students of the bus or route served;

2.22.4.3 Symbols identifying the bus as equipped for or transporting students with special needs (see Specially Equipped School Bus section);

2.22.4.4 Lettering of fuel type in 2" lettering adjacent to the fuel filler opening; and

2.22.4.5 Manufacturer, company name, dealer, or school logo, or U.S. Flag (with no other wording or artwork) decal or plate not to exceed 6 inches x 12 inches may be displayed in the right side plate location on the rear of the bus.

2.23 Inside Height: Inside body height shall be 72" or more, measured metal to metal, at any point on longitudinal center line from front vertical bow to rear vertical bow. Inside body height of Type A-1 buses shall be 62" or more.

2.24 Insulation

2.24.1 If thermal insulation is specified, it shall be fire resistant, UL approved, with minimum R value of 5.5. Insulation shall be installed so as to prevent sagging.

2.24.2 If floor insulation is required, it shall be 5 ply nominal 5/8" thick plywood, and it shall equal or exceed properties of the exterior type softwood plywood, C-D Grade, as specified in standard issued by U.S. Department of Commerce. When plywood is used, all exposed edges shall be sealed. Type A-1 buses may be equipped with nominal 1/2" thick plywood meeting the above requirements. Equivalent material may be used to replace plywood, provided it has an equal or greater insulation R value, deterioration, sound abatement and moisture resistance properties.

2.25 Interior

2.25.1 The interior of bus shall be free of all unnecessary projections, which include luggage racks and attendant hand rails, to minimize the potential for injury. This standard requires inner lining on ceilings

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and walls. If the ceiling is constructed to contain lap joints, the forward panel shall be lapped by rear panel and exposed edges shall be beaded, hemmed, flanged, or otherwise treated to minimize sharp edges. Buses may be equipped with a storage compartment for tools, tire chains, and tow chains. (See "Storage Compartment")

2.25.2 The driver's area forward of the foremost padded barriers will permit the mounting of required safety equipment and vehicle operation equipment.

2.25.3 Every school bus shall be constructed so that the noise level taken at the ear of the occupant nearest to the primary vehicle noise source shall not exceed 85 dBA when tested according to the procedure found in the NSTSP, Appendix B. School buses with a capacity of 36 passengers or greater shall be equipped with a sound proof body package that includes firewall and engine cover. The headliner over the driver's compartment to the front barriers shall be perforated to absorb sound.

2.25.4 Interior overhead storage compartments may be provided if they meet the following criteria:

2.25.4.1 Meet head protection requirements of FMVSS 222 where applicable;

2.25.4.2 Have a minimum rated capacity displayed for each compartment;

2.25.4.3 Be completely enclosed and equipped with latching doors which must be sufficient to withstand a force five times the maximum rated capacity of the compartment;

2.25.4.4 Have all corners and edges rounded with a minimum radius of 1" or padded equivalent to door header padding;

2.25.4.5 Be attached to the bus sufficiently to withstand a force equal to 20 times the maximum rated capacity of the compartment; and

2.24.4.6 Have no protrusions greater than ¼ inch.

2.25.5 For bus chassis and bodies produced after March 1, 2003, the interiors shall have mar proof side walls.

***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:**

1102 Standards for School Bus Chassis and Bodies Placed in Production on or after March 1, 2002 and on or after March 1, 2003 with Specific Changes for Buses Placed in Production after January 1, 2004

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 2901 (14 Del.C. §2901)
14 DE Admin. Code 1103

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

1103 Standards for School Bus Chassis and Bodies For Buses placed in production on or after January 1, 2007

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 1103 **Standards for School Bus Chassis and Bodies For Buses placed in production on or after January 1, 2007 (Terminology and School Bus Types are Those Described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2005)**. The amendment allows for the placement of a U.S. Flag decal or plate on a school bus.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before February 5, 2008 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 FEDERAL STREET, SUITE 2, DOVER, DELAWARE 19901. A copy of this regulation is available

from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? This amendment is related to allowing a U.S. Flag plate or decal on a school bus and does not affect student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? This amendment is related to allowing a U.S. Flag plate or decal on a school bus and does not affect equitable education opportunities.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This amendment is related to allowing a U.S. Flag plate or decal on a school bus and does not affect student health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? This amendment is related to allowing a U.S. Flag plate or decal on a school bus and does not affect student legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? This amendment is related to allowing a U.S. Flag plate or decal on a school bus and would not change any authority or flexibility of decision making at the 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 amendment is related to allowing a U.S. Flag plate or decal on a school bus and does not make any changes to reporting or administrative requirements at the local board or school levels.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? This amendment is related to allowing a U.S. Flag plate or decal on a school bus and continues the decision making authority with the same entity.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? This amendment is related to allowing a U.S. Flag plate or decal on a school bus and does not affect the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? This amendment is related to allowing a U.S. Flag plate or decal on a school bus and there is no other less burdensome method of addressing this issue.

10. What is the cost to the State and to the local school boards of compliance with the regulation? This amendment is related to allowing a U.S. Flag plate or decal on a school bus. The costs to securing a U.S. Flag decal or plate would be incumbent with the local district or school; however, this is voluntary and not mandatory.

1103 Standards for School Bus Chassis and Bodies For Buses placed in production on or after January 1, 2007 (Terminology and School Bus Types are Those Described in the *National School Transportation Specifications and Procedures (NSTSP)*, May 2005).

(Break in Continuity of Sections)

2.0 Bus Body Standards

.....
2.19 Handrails: At least one handrail shall be installed. The handrail(s) shall assist passengers during entry or exit, and shall be designed to prevent entanglement, as evidenced by the passage of the National Highway Transportation Safety Administration (NHTSA) string and nut test.

2.20 Heater and Air Conditioning Systems

2.20.1 Heating System

2.20.1.1 The heater shall be a hot water type.

2.20.1.2 Every bus with a capacity of 36 or more shall have 2 heaters at the front:

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1 to the left of the driver, and 1 to the right of the driver near the entrance door, and 1 heater in the rear portion of the bus.

2.20.1.3 If only one heater is used, it shall be fresh air or combination fresh air and recirculation type.

2.20.1.4 If more than one heater is used, additional heaters may be recirculating air type.

2.20.1.5 The heating system shall be capable of maintaining bus interior temperatures, as specified in test procedure SAE J2233.

2.20.1.6 Auxiliary fuel fired heating systems are permitted, provided they comply with the following:

2.20.1.6.1 The auxiliary heating system shall utilize the same type fuel as specified for the vehicle engine;

2.20.1.6.2 The heater(s) shall be connected to the engine coolant system;

2.20.1.6.3 An auxiliary heating system when connected to the engine coolant system, may be used to preheat the engine coolant or preheat and add supplementary heat to the heating system;

2.20.1.6.4 Auxiliary heating systems must be installed pursuant to the manufacturer's recommendations and shall not direct exhaust in such a manner that will endanger bus passengers;

2.20.1.6.5 All combustion heaters shall be in compliance with current Federal Motor Carrier Safety Regulations;

2.20.1.6.6 The auxiliary heating system shall require low voltage; and

2.20.1.6.7 Auxiliary heating systems shall comply with FMVSS No. 301, Fuel System Integrity, and all other applicable FMVSSs, as well as with SAE test procedures.

2.20.1.7 All forced air heaters installed by body manufacturers shall bear a name plate that indicates the heater rating in accordance with SBMTC-001, Standard Code for Testing and Rating Automotive Bus Hot Water Heating and Ventilating Equipment. The plate shall be affixed by the heater manufacturer and shall constitute certification that the heater performance is as shown on the plate.

2.20.1.8 Heater hoses shall be adequately supported to guard against excessive wear due to vibration. The hoses shall not dangle or rub against the chassis or any sharp edges and shall not interfere with or restrict the operation of any engine function. Heater hoses shall conform to SAE J20c, Coolant System Hoses. Heater lines on the interior of the bus shall be shielded to prevent scalding of the driver or passengers.

2.20.1.9 Each hot water system installed by a body manufacturer shall include one shut off valve in the pressure line and one shut off valve in the return line with both valves at the engine in an accessible location, except that on all Types A and B buses, the valves may be installed in another accessible location.

2.20.1.10 Each hot water heating system shall be equipped with a device installed in the hot water pressure line that regulates the water flow to all heaters. The device shall be located for convenient operation by the driver while seated.

2.20.1.11 Accessible bleeder valves for removing air from the heater shall be installed in an appropriate place in the return lines of body company installed heater.

2.20.1.12 Access panels shall be provided to make heater motors, cores and fans readily accessible for service. An exterior access panel to the driver's heater may be provided.

2.20.2 Air Conditioning

2.20.2.1 Performance Specifications

2.20.2.1.1 The installed air conditioning system shall cool the interior of the bus from 100 degrees to 80 degrees Fahrenheit, measured at three points (minimum), located four feet above the floor on the longitudinal centerline of the bus. The three required points shall be: (1) near the driver's location, (2) at the longitudinal midpoint of the body, and (3) two feet forward of the emergency door, or, for Type D rear engine buses, two feet forward of the end of the aisle.

2.20.2.1.2 The test conditions under which the above performance must be achieved shall consist of: (1) placing the bus in a room (such as a paint booth) where ambient temperature can be maintained at 100 degrees Fahrenheit; (2) heat soaking the bus at 100 degrees Fahrenheit with windows open for

at least one hour; and (3) closing windows, turning on the air conditioner with the engine running at the chassis manufacturer's recommended low idle speed, and cooling the interior of the bus to 80 degrees Fahrenheit, or lower, within 30 minutes while maintaining 100 degrees Fahrenheit outside temperature.

2.20.2.1.3 Alternately, this test may be performed under actual summer conditions, which consist of temperatures above 85 degrees Fahrenheit, humidity above 50 percent with normal sun loading of the bus and the engine running at the engine manufacturer's recommended low idle speed. After a minimum of 1 hour of heat soaking, the system shall be turned on and must provide a minimum of a 20 degree temperature drop in the 30 minute time limit.

2.20.2.1.4 The manufacturer shall provide facilities for the user or user's representative to confirm that a pilot model of each bus design meets the above performance requirements.

2.20.2.2 Other Requirements

2.20.2.2.1 Evaporator cases, lines and ducting (as equipped) shall be designed in such a manner that all condensation is effectively drained to the exterior of the bus below the floor level under all conditions of vehicle movement and without leakage on any interior portion of bus.

2.20.2.2.2 Evaporators or ducting systems shall be designed and installed to be free of projections or sharp edges. Ductwork shall be installed so that exposed edges face the front of the bus and do not present sharp edges.

2.20.2.2.3 Evaporator cases and ducting systems shall be equipped with diffusers that are adjustable.

2.20.2.2.4 Air intake for any evaporator assembly(ies), except for front evaporator of Type A-I, shall be equipped with replaceable air filter(s) accessible without disassembly of evaporator case.

2.20.2.2.5 On school buses equipped with Type 2 seatbelts having anchorages above the windows, the evaporator and ducting (if used) shall be placed at a height sufficient to not obstruct occupant securement anchorages. This clearance shall be provided along the entire length of the passenger area on both sides of the bus interior;

2.20.2.2.6 The condensers shall be equipped with a sight glass (or at least one for each part of a split system) that is accessible and directly visible for checking the level of the refrigerant.

2.20.2.2.7 The compressor system shall be equipped with both a high pressure and a low pressure switch to prevent compressor operation when system temperatures are above or below recommended safe levels. Lubrication of moving compressor parts shall be accomplished automatically. An automatic (electric) clutch shall be provided on each compressor.

2.20.2.2.8 All system operating controls, including on off switch(es), blower switch(es) and thermostat controls shall be within reach of a seated 5th percentile adult female driver.

2.20.2.2.9 Blowers shall be a minimum of two speeds.

2.20.2.2.10 Wiring shall be copper with color coded insulation. The air conditioning system shall be equipped with at least one manually resettable circuit breaker per side to provide overload protection for the main power circuit feeding the evaporator blowers and condenser fans. System control circuits shall also have overload protection, but may be fused.

2.20.2.2.11 Refrigerant shall be R 134A.

2.20.2.2.12 All wiring, hoses, and lines shall be grommeted, routed, and supported so as to reduce wear. All flexible refrigerant hoses shall be double braided.

2.20.2.2.13 The body shall be equipped with insulation, including sidewalls, roof, firewall, rear, inside body bows and plywood (see "Insulation", this section) or composite floor insulation to reduce thermal transfer.

2.20.2.2.14 All glass shall be tinted (see "Windows", this section and "Special Service Entrance Door", section 3).

2.20.2.2.15 Type A buses equipped with air conditioning shall be furnished with an alternator with a minimum output rating of 130 amperes. Type B, C, and D buses equipped with air conditioning shall be furnished with an alternator with a minimum output rating of 200 amperes.

2.20.2.2.16 Roofs shall be painted white to aid in heat dissipation (see "Color", this section).

2.21 Hinges: All exterior metal door hinges shall be designed to allow lubrication to be channeled to the

center 75% of each hinge loop without disassembly, unless they are constructed of stainless steel, brass or non metallic hinge pins or other designs that prevent corrosion.

2.22 Identification

2.22.1 The body shall bear words "SCHOOL BUS" in black letters at least 8 inches high on both front and rear of the body or on signs attached thereto. Lettering shall be placed as high as possible without impairment of its visibility. Letters shall conform to "Series B" of Standard Alphabets for Highway Signs. "SCHOOL BUS" lettering shall have a reflective background. It may not be illuminated by backlighting.

2.22.2 All lettering on NSBY surfaces shall be black, and lettering on black surfaces shall be NSBY or white.

2.22.3 Bus identification number shall be displayed on both sides, on the rear, and on the front.

2.22.4 District, company name or owner of the bus shall be displayed (letters 3 inch minimum to 6 inches maximum;

2.22.5 Other lettering, numbering, or symbols which may be displayed on the exterior of the bus, shall be limited to:

2.22.5.1 The location of the battery(ies) identified by the word "BATTERY" or "BATTERIES" on the battery compartment door in 2 inch lettering;

2.22.5.2 Symbols or letters not to exceed 64 square inches of total display near the service door, displaying information for identification by the students of the bus or route served;

2.22.5.3 Symbols identifying the bus as equipped for or transporting students with special needs (see Standards for Specially Equipped School Bus section);

2.22.5.4 Identification of fuel type in 2 inch lettering adjacent to the fuel filler opening; and

2.22.5.5 Manufacturer, company name, dealer, or school logo, or U.S. Flag (with no other wording or artwork) decal or plate not to exceed 6 inches by 12 inches may be displayed in the right side plate location on the rear of the bus.

2.23 Inside Height: Inside body height shall be 72 inches or more, measured metal to metal, at any point on longitudinal center line from the front vertical bow to the rear vertical bow. Inside body height of Type A-1 buses shall be 62 inches or more.

2.24 Insulation

2.24.1 If thermal insulation is specified, it shall be fire resistant, UL approved, with minimum R value of 5.5. Insulation shall be installed so as to prevent sagging.

2.24.2 If floor insulation is required, it shall be 5 ply softwood plywood, nominal 5/8 inch thickness, and shall equal to or exceed properties of the exterior type, C-D Grade, as specified in the standard issued by U.S. Department of Commerce. When plywood is used, all exposed edges shall be sealed. Type A-1 buses may be equipped with nominal 1/2 inch thick plywood or equivalent material meeting the above requirements. Equivalent material may be used to replace plywood, provided it has an equal or greater insulation R value, sound abatement, deterioration resistant and moisture resistant properties.

2.25 Interior

2.25.1 The interior of bus shall be free of all unnecessary projections, which include luggage racks and attendant handrails, to minimize the potential for injury. This standard requires inner lining on ceilings and walls. If the ceiling is constructed with lap joints, the forward panel shall be lapped by rear panel and exposed edges shall be beaded, hemmed, flanged, or otherwise treated to minimize sharp edges. Buses may be equipped with a storage compartment for tools, tire chains, and/or tow chains. (See "Storage Compartment", this section)

2.25.2 The driver's area forward of the foremost padded barriers will permit the mounting of required safety equipment and vehicle operation equipment.

2.25.3 Every school bus shall be constructed so that the noise level at the ear of the occupant nearest to the primary vehicle noise source shall not exceed 85 dBA when tested according to the procedure found in the NSTSP, Appendix B.

2.25.4 School buses with a capacity of 36 passengers or greater shall be equipped with a sound proof body package that includes firewall and engine cover. The headliner over the driver's compartment to the front barriers shall be perforated to absorb sound.

2.25.5 Buses shall have mar proof sidewalls.

2.25.6 Interior overhead storage compartments may be provided if they meet the following criteria:

2.25.6.1	Head protection requirements of FMVSS No. 222, School Bus Passenger Seating and Crash Protection, where applicable;
2.25.6.2	Have a maximum rated capacity displayed for each compartment;
2.25.6.3	Be completely enclosed and equipped with latching door (both door and latch sufficient to withstand a pushing force of 50 pounds applied at the center of the door);
2.25.6.4	Have all corners and edges rounded with a minimum radius of 1 inch or be padded equivalent to door header padding;
2.25.6.5	Be attached to the bus sufficiently to withstand a force equal to 20 times the maximum rated capacity of the compartment; and
2.25.6.6	Have no protrusions greater than ¼ inch.

***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:**

1103 Standards for School Bus Chassis and Bodies For Buses placed in production on or after January 1, 2007

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 1505

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

1505 Standard Certificate

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** 1505 Standard Certificate. The regulation concerns the requirements for certification of educational personnel, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation to provide clarification on the requirements for a Delaware educator to attain a second or subsequent certification.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Monday, February 4, 2008 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.

1505 Standard Certificate

1.0 Content

1.1 This regulation shall apply to the issuance of a Standard Certificate, pursuant to 14 **Del.C.** §1220(a).

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

7 DE Reg. 629 (11/1/03)

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 in addition to 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. 161 (8/1/03)

7 DE Reg. 629 (11/1/03)

7 DE Reg. 1742 (6/1/04)

10 DE Reg. 98 (07/01/06)

3.0 Standard Certificate

The Department shall issue a Standard Certificate to an educator who holds a valid Delaware Initial, Continuing or Advanced License; or Limited Standard, Standard, or Professional Status Certificate issued 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 Meeting the requirements set forth in the relevant Department or Standards Board regulation governing the issuance of a Standard Certificate in the area for which a Standard Certificate is sought; or

3.1.3 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 the area of the Standard Certificate requested, or

3.1.4 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

3.1.5 Holding a bachelor's degree from a regionally accredited college or university in any content area and

3.1.5.1 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) or their equivalent 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, achieved 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 Met the requirements for licensure and holding a valid and current license or certificate from another state in the area for which a Standard Certificate is requested; or

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

3.5 If additional criteria are imposed by a specific regulation in the area for which a Standard Certificate is sought, the additional requirement must also be met.

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

7 DE Reg. 629 (11/1/03)
 7 DE Reg. 1004 (2/1/04)
 7 DE Reg. 1742 (6/1/04)
 10 DE Reg. 97 (07/01/06)
 10 DE Reg. 1593 (04/01/07)

4.0 Multiple Certificates

4.1 Educators may hold certificates in more than one area.

4.2 Educators applying for their second or subsequent Standard Certificate(s) must meet the qualifications in section 3.0 for each additional standard certificate.

7 DE Reg. 161 (8/1/03)
 7 DE Reg. 629 (11/1/03)
 10 DE Reg. 97 (07/01/06)

5.0 Application Requirements

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.

7 DE Reg. 161 (8/1/03)
 7 DE Reg. 629 (11/1/03)
 7 DE Reg. 1004 (2/1/04)
 7 DE Reg. 1742 (6/1/04)
 10 DE Reg. 97 (07/01/06)

6.0 Application Procedures for License Holders

6.1 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.

~~6.2 If additional criteria are imposed by a specific regulation in the area for which a Standard Certificate is sought, the additional requirements must also be met; and,~~

6.3~~2~~ Notwithstanding any provision to the contrary herein, or in any Department or Standards Board content area, subject or category standard certificate regulation (including 14 **DE Admin. Code**, 1500, et. seq.), the Department shall not act on an application for certification if the applicant is under official investigation by any national, 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.

7 DE Reg. 161 (8/1/03)
 7 DE Reg. 629 (11/1/03)
 7 DE Reg. 1742 (6/1/04)
 10 DE Reg. 97 (07/01/06)
 10 DE Reg. 1593 (04/01/07)

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. 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, 2009.

- 7 DE Reg. 161 (8/1/03)
- 7 DE Reg. 629 (11/1/03)
- 7 DE Reg. 1742 (6/1/04)
- 10 DE Reg. 97 (07/01/06)

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.

- 7 DE Reg. 161 (8/1/03)
- 7 DE Reg. 629 (11/1/03)
- 7 DE Reg. 1004 (2/1/04)
- 7 DE Reg. 1742 (6/1/04)
- 10 DE Reg. 97 (07/01/06)

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.

- 7 DE Reg. 161 (8/1/03)
- 7 DE Reg. 629 (11/1/03)
- 10 DE Reg. 1593 (04/01/07)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

Temporary Assistance for Needy Families Employment and Training Program

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 (DSS) is proposing to amend the Division of Social Services Manual (DSSM) regarding the Temporary Assistance for Needy Families (TANF) Employment and Training Program. 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 and Program Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by January 31, 2008.

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.

PROPOSED REGULATIONS

SUMMARY OF PROPOSAL

The purpose of this regulatory action is to amend the Division of Social Services Manual (DSSM) regarding participation and participation rates provisions for the TANF Employment and Training Program.

Statutory Authority

- Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193)
- 45 CFR §261.22, *How will we determine a State's overall work rate?*
- 45 CFR §261.31, *How many hours must an individual participate to count in the numerator of the overall rate?*
- 45 CFR §261.32, *How many hours must an individual participate to count in the numerator of the two-parent rate?*
- 45 CFR §261.35, *Are there any special work provisions for single custodial parents?*

Summary of Proposed Change

DSSM 3006.2, *TANF Employment and Training Participation and Participation Rates*: These rule modifications clarify the calculation of the work participation rate and the required participation of TANF recipients in employment and training activities. Previously implemented in January 2007, this policy was already a federal exemption option but DSS was more restrictive with the thirteen (13) weeks option.

DSS PROPOSED REGULATION #07-58

REVISIONS:

3006.2 TANF Employment and Training Participation and Participation Rates

Under the Temporary Assistance For Needy Families Block Grant, DSS is required to meet the following work participation rates with respect to all families that include an adult or minor child head of household receiving assistance:

ALL FAMILIES (~~SINGLE PARENTS AND TEEN PARENTS~~)

Fiscal Year	Minimum Participation Rate	Required weekly hours of participation
2002 and after	50%	30 hrs

TWO PARENT FAMILIES

Fiscal Year	Minimum Participation Rate	Required weekly hours of participation
1999 and after	90%	35 hrs a weeks
		55 hrs a week if receiving Federal Child Care Subsidy.

DSS may face a lower work participation rate if it experiences a net caseload reduction compared to FY 2005.

Example: If it is determined that DSS' average monthly caseload in FY 2006 was 4 percentage points lower than average monthly caseloads in FY 2005, then, rather than having to meet a 50% work participation rate requirement in FY 2006, the rate would be lowered by 4 percentage points to 46%.

To be counted toward meeting the work participation rate, each individual must meet the required number of hours each week.

Single parents who are not working 30 hours a week or making an equivalent of 30 hours a week times minimum wage are required to participate in work and/or work related activities. Participation in work and work related activities must equal at least a minimum average of 30 hours a week; and, at least 20 of the hours per week must come from participation in federally defined core activities.

Single parent/caretaker TANF recipients with a child in the TANF household under six are deemed to be engaged in work for a month if the recipient is engaged in federally defined core work activities for an average of at least 20 hours per week during the month.

Two-parent families where one parent is not working at least 35 hours a week or making the equivalent of 35 hours a week times minimum wage are required to participate in work and/or work related activities. Participation in work and work related activities must equal an average of at least 35 hours a week; and, at least 30 of the hours per week must come from participation in federally defined core activities.

Two parent families who receive federally funded Purchase of Care services who are not working at least 55 hours a week or making the equivalent of 55 hours a week times minimum wage are required to participate in work and/or work related activities. Participation in work and work related activities for one parent must equal 35 hours a week. Combined hours of participation in work and work related activities must equal an average of at least 55 hours a week. Of the average 55 hours a week the participants must average at least 50 hours a week of federally defined core activities.

Teen parents are required to attend school, work, or participate in the employment and training activities. ~~Elementary,~~ ~~s~~Secondary, post-secondary, vocational, training school, and participation in a GED program meets participation requirements for the month and is the equivalent to work. If they are not attending one of the above types of school or working for 30 hours a week they must participate in employment and training activities for 20 or 30 hours a week.

Single custodial parents with a child under 12 months of age are able to receive an exemption from Employment and Training requirements for a total of 12 months in their lifetime. These 12 months can be used any time the parent has a child less than 12 months of age. Once the youngest child reaches 12 months of age the parents are required to participate in Employment and Training. If they are already working the equivalent of their required Employment and Training Hours (20, 30, 35, 55), the DCIS II system will code them as volunteers for Employment and Training.

The monthly participation rate is calculated as follows:

REQUIRED EMPLOYMENT AND TRAINING HOURS

<u>Family Composition</u>	<u>Required Hours Per Week</u>	<u>Minimum required Core Hours</u>
<u>Single Parent Family</u>		
<u>A. With child under 12 months*</u>	<u>0</u>	<u>0</u>
<u>B. With a child under 6 years old</u>	<u>20</u>	<u>20</u>
<u>C. No children under 6 years old</u>	<u>30</u>	<u>20</u>
<u>Two Parent Family</u>		
<u>A. Not receiving subsidized child care</u>	<u>35</u>	<u>30</u>
<u>B. Receiving subsidized child care</u>	<u>55</u>	<u>50</u>

* subject to 12 month lifetime limit

PROPOSED REGULATIONS

Numerator: # of TANF and ~~SSP-MOE~~ families with a work-eligible-individual who meet the participation requirement for the month

divided by

Denominator: # of TANF and ~~SSP-MOE~~ families that include a work-eligible individual, less # of families sanctioned in that month for failure to participate in work (for up to 3 months in preceding 12 month period), less the number of non-needy caretaker households less the number of single custodial parents opting to use one of the 12 months allowable exemptions for caring for a child under one year of age. A parent can only use this exemption for a total of 12 months in their lifetime.

8 DE Reg. 1618 (5/01/05)

10 DE Reg. 706 (10/01/06)

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

FOOD STAMP PROGRAM Child Support Cooperation and Sanctions

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 the child support provisions.

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 and Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by January 31, 2008.

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 CHANGES

Statutory Authority

- 7 CFR 273.11(o), *Custodial Parent's Cooperation with the State Child Support Agency*
- 7 CFR 273.11(c), *Treatment of Income and Resources of Certain Non-Household Members*

Summary of Proposed Changes

DSSM 9076.2 (Revision), *SSN Disqualification, Child Support Sanctions and Ineligible ABAWDs*: Currently TANF and Child Care require DSS applicants and recipients to cooperate with DCSE to get benefits. DSS is proposing to require the same cooperation for food stamp clients. The only difference is that only the custodial parent or responsible individual will be sanctioned for non-compliance, not the other household members. The sanctioned individual will have his/her income and deductions prorated like other prorated, sanctioned deemers.

DSSM 9094 (New), *Cooperation with the Division of Child Support Enforcement (DCSE)*: DSS is proposing to take the option to require custodial parents and other individuals responsible for the care of minor dependents to cooperate with the Division of Child Support Enforcement (DCSE) as a condition of eligibility for the Food Stamp

Program.

Requiring the cooperation with child support will help facilitate the client towards self-sufficiency by identifying and locating absent parents, establishing paternity, and establishing support payments for the dependent children. Also, requiring cooperation may uncover unreported income. Child support payments may reduce the household's benefit; however, the household will have more money to spend on household expenses and food.

**DSS PROPOSED REGULATION #07-59
REVISION:**

9076.2 SSN Disqualification, Child Support Sanctions and Ineligible ABAWDs

Determine ~~as follows~~ the eligibility and benefit level of remaining household members of a household containing individuals determined ineligible due to:

- ~~Because of~~ disqualification for refusal to obtain or provide an SSN; ~~or~~
- non-cooperation with the Division of Child Support Enforcement; or
- ~~Because of~~ meeting the time limit for able-bodied adults without dependents.

1) Resources - The resources of such ineligible members continue to count in ~~their entirety~~ full to the remaining household members.

2) Income - Count a prorata share of the income of such ineligible members as income to the remaining members. ~~This prorata share is calculated by first subtracting the allowable exclusions from the ineligible member's income and dividing the income evenly among the household members, including the ineligible members. All but the ineligible member's share is counted as income for the remaining household members. To get the prorated share, subtract the allowable income exclusions from the ineligible member's income, divide the amount by the household size, and use all the income except for the prorated share of the ineligible household member.~~

3) Deductible expenses - ~~The Allow the earned income deduction applies to for the prorated share of income used by the remaining household members, earned by such ineligible members which is attributed to their households. That portion of~~ Divide the household's allowable child support payment, shelter (except any utility allowances), and dependent care expenses, which are either paid by or billed to the excluded members, ~~will be divided evenly among the household's members including the ineligible members. Allow All but the ineligible member's share is counted as a deductible child support payment, shelter (except any utility allowances), or minor care expense for the remaining household members.~~

4) Eligibility and benefit level - ~~Such ineligible members will not be included when in~~ determining their household's size for the purposes of when:

- a) Assigning a benefit level to the household;
- b) Comparing the household's monthly income with the income eligibility standards; or
- c) Comparing the household's resources with the resource eligibility limits.

(Break in Continuity of Sections)

9094 Cooperation with the Division of Child Support Enforcement (DCSE)

Cooperation as Condition of Eligibility

In order to get food stamp benefits, all applicants must cooperate with the Division of Child Support Enforcement (DCSE) to receive child support for minor children in their care. Custodial parents/caretakers cannot get food

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stamps if they fail to cooperate with DCSE. A custodial parent is a natural or adoptive parent who lives with his or her child, or a person who is living with and exercises parental control over a child under the age of 18.

Both applicants and recipients must cooperate, unless they can show good cause, in:

1. Identifying and locating absent parents;
2. Proving paternity for minor children born out of wedlock; and
3. Getting support payments and/or other properties for the minor child(ren).

DCSE is the single State agency that:

- Establishes paternity of and secures support for children born out of wedlock;
- Gets support from parents who have abandoned or deserted their children; and
- Enters into cooperative arrangements with appropriate courts and law enforcement officials in order to get support.

Applicants and recipients will be told of this requirement in writing at the time of application and recertification for continued benefits. DSS will refer caretakers to DCSE based on the following:

- DSS will refer a person to DCSE who is receiving food stamps and the food stamp assistance unit has children under the age of 18 with an absent parent(s).
- DSS will refer a person to DCSE who is receiving TANF or Child Care and the food stamp assistance unit has children not included in the TANF or Child Care case.
- DSS will not refer a person who is receiving TANF or Child Care and has cooperated as long as the assistance units contain the same persons.
- DSS will not refer a person who had good cause for not cooperating or made a good faith effort to cooperate as long as the assistance units contain the same persons.

Cooperation Responsibilities

Clients must cooperate with DCSE to get food stamp benefits. All families are required to provide enough information to permit DCSE to get child support on behalf of the family.

DCSE can make exceptions when the caretaker can prove that trying to get child support would create a danger to the caretaker or the children. This is called a good cause claim. The client is responsible to get proof to verify good cause claims.

DCSE can also determine a caretaker has cooperated when he/she makes a good faith effort to provide all the information he/she can about the non-custodial parent.

To cooperate with DCSE, applicants or recipients of food stamps must participate in the following activities, if required:

- To appear at an office of DSS or DCSE to give verbal or written information or written documents known to or possessed by the applicant or recipient;
- To appear as a witness in court or other hearings or proceedings; or
- To provide information or to confirm to the lack of information under penalty of perjury.

Penalties for Non-Cooperation

When a caretaker fails to cooperate with DCSE without good cause or fails to make a good faith effort to cooperate, that person will not get food stamp benefits. The sanction applies only to the caretaker, not the entire household.

Income, Expenses and Resources of Sanctioned Household Member

All resources of the sanctioned caretaker count toward the food stamp benefits. Income and expenses are prorated and count toward the food stamp benefits. See policy under 9076.2.

Curing the Child Support Sanction

To cure the child support sanction, the caretaker will provide enough information to permit DCSE to pursue child support collections on behalf of the minor children in his/her care. Once it is determined that the caretaker has cooperated, DSS will add him/her to the case.

Reopening the Sanctioned Person

Once DCSE provides proof that the caretaker cooperated, DSS will reopen him/her. The caretaker will be added to the case effective the month after the month he/she cooperated. The household's certification period is not shortened or extended because of the sanction.

Good Faith Effort

If the applicant or recipient cannot provide the minimum information required about the absent parent, DCSE may still determine the person as cooperating if the person completes a Good Faith Affidavit. The Affidavit lists the steps the caretaker took to get the information and what barriers the person faced.

Good Cause Determination

DCSE is responsible to determine if good cause for refusing to cooperate exists. When good cause exists, the person may get food stamp benefits and will not have to cooperate in support collection activities.

Claiming Good Cause for Non-Cooperation

DSS will tell applicants and recipients, at application and recertification, of the right to good cause as an exception to the cooperation requirement. DSS will also tell applicants and recipients about the reasons they have to claim good cause.

Caretakers will not have to cooperate if they believe that their cooperation would not be in the best interest of their child. They must give proof to support their claim.

DCSE may decide that a person has good cause for refusing to cooperate if one or more of the following conditions exist:

- Cooperation is likely to result in serious physical or emotional harm to the child;
- Cooperation is likely to cause physical or emotional harm to the person which is so serious as to reduce his/her capacity to care for the child adequately;
- The child was conceived as a result of incest or forcible rape;
- Legal proceedings for adoption of the child are pending before a court;
- The person is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep his/her child or give the child up for adoption;
- Cooperating with DCSE would make it more difficult for the person to escape domestic violence or unfairly penalize the person who is or has been victimized by such violence, or the person is at risk of further domestic violence. (Domestic violence for purposes of this provision means that the person or child would be subject to physical acts that result in, or are threatened to result in, physical injury or sexual abuse.)

Proof of Good Cause Claim

It is the custodial parent's or responsible persons' responsibility to provide DCSE with the proof needed to determine whether they have good cause for refusing to cooperate. If the reason for claiming good cause is a fear of physical harm and it is impossible to obtain proof, DCSE may still be able to make a good cause decision after reviewing the claim.

The following are examples of acceptable kinds of proof DCSE can use to decide if good cause exists:

- A birth certificate or medical or law enforcement record which indicates that the child was conceived as the result of incest or forcible rape;
- A court document or other record which indicates the legal proceedings for adoption are pending before a court;
- A court, medical, criminal, psychological, child protection services, social services or law enforcement record which indicates that the putative father or absent parent might inflict physical or emotional harm on the child or person;
- A medical record which indicates the emotional health history and present emotional health status of the person or the child; or, a written statement from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of the person or child;
- A written statement from a public or licensed private social agency that the person is being assisted by the agency to resolve the issue of whether to keep the child or give him/her up for adoption; and
- Sworn statements from persons, including friends, neighbors, clergymen, social workers, and medical professionals who might know the conditions providing the basis of the good cause claim.

When requested, DCSE will try to help persons obtain necessary documents to support their claim.

Investigations of Good Cause Claim

The caretaker must give the necessary proof to DCSE within 20 days after claiming good cause. DCSE will give the parent or person more time if they decide that more than 20 days are required because of the difficulty in getting the proof.

DCSE may decide on the claim based on the proof which is given, or conduct a review to verify the claim. If DCSE decides they need to review the claim, DCSE may require the person to give information, such as the absent parent's name and address, to help the review. The DCSE will not contact the absent parent without first telling the person.

Delayed finding of good cause

DSS will not deny, delay, or discontinue assistance when DCSE has not made a decision on the good cause claim as long as the caretaker has given proof and other information needed by DCSE. DSS will follow the normal processing standards for these cases.

Administrative Hearings

Applicants and recipients have the right to request an administrative hearing if they disagree with the decision of non-cooperation made by DCSE. When caretakers request an administrative hearing regarding the decision of non-cooperation or failure by DCSE to accept good cause claims, DCSE will schedule and conduct the administrative hearing.

The caretaker can ask for a hearing by sending in his or her request in writing within 20 days to:

Administrative Hearing Officer – DCSE
P.O. Box 11564
Wilmington, DE 19805

The request should include the caretaker's name, case number, social security number and daytime telephone number.

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 311, 2501, 2304(15)(c) and 2312
(18 Del.C. §§311, 2501, 2304(15)(c) & 2312)
18 DE Admin. Code 906

PUBLIC NOTICE

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of intent to adopt proposed Department of Insurance **Regulation 906** relating to **THE USE OF CREDIT SCORES IN SETTING INSURANCE PREMIUMS IN AUTOMOBILE, MOTORCYCLE, BOAT AND PERSONAL WATERCRAFT, SNOWMOBILES AND OTHER RECREATIONAL VEHICLES, HOMEOWNERS, MOBILE-HOMEOWNERS, MANUFACTURED HOMES AND NON-COMMERCIAL DWELLING FIRE INSURANCE FOR PERSONAL OR FAMILY PROTECTION**. The docket number for the proposed amendment is 538. This proposed regulation replaces the previous proposed regulation.

The purpose for proposing amendments to Regulation 906 is to comply with Delaware law and to prohibit insurance companies using consumer credit information in the setting of renewal premiums in insurance policies in areas noted above, except that consumers may request the use of credit information in renewals if such information would result in a reduction of premiums, and to establish procedures for consumers to request a re-rating of their insurance policy. The text of the proposed regulation is reproduced in the January 2008 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 hearing on this proposed regulation. Written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments are being solicited from any interested party. Written comments or other written materials concerning the proposed change to the regulation must be received by the Department of Insurance no later than 4:30 p.m., Monday February 3, 2008, and should be addressed to Regulatory Specialist Mitchell G. Crane, Esquire, c/o 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.

906 Use of Credit Information [Formerly Regulation 87]

1.0 Authority

This regulation is adopted by the Commissioner pursuant to the authority granted by 18 Del.C. §§311, 2501, 2304(15)(c), and 2312, and promulgated in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Chapter 101.

6 DE Reg. 1706 (6/1/03)

2.0 Scope

This regulation shall apply to all insurers offering automobile, motorcycle, boat and personal watercraft, snowmobiles and other recreational vehicles, homeowners, mobile-homeowners, manufactured homeowners and non-commercial dwelling fire insurance policies for personal or family protection. This regulation shall not apply to any line of commercial insurance.

6 DE Reg. 1706 (6/1/03)

3.0 Purpose

The purposes of this regulation are:

3.1 To prohibit insurers from engaging in unfair discrimination in the offering or granting of insurance due to the grouping of risks based on criteria which are not actuarially supported and shown to be relevant to risk.

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3.2 To prohibit insurers from engaging in unfair discrimination in the cancellation or non-renewal of insurance coverage based on criteria which are not actuarially supported and shown to be relevant to risk or experience.

3.3 To assure that consumers, whether on initial application or renewal, applicants are given notice when consumer reports will be requested and reviewed in connection with a consumer's their eligibility for and/or the continuance of insurance coverage and/or a consumer's their tier or level of premium payment.

3.4 To prohibit the practice of assigning a consumer an applicant to a premium level based solely on the consumer's applicant's credit rating or credit score.

3.5 To prohibit the practice of using a policyholder's credit rating or credit score except as provided in 18 Del.C. §§ 8301 through 8304.

3.5~~6~~ To assure that the consumer has adequate relief from any adverse action taken by an insurer through the use of credit scoring.

3.7 To establish a procedure for policyholders to request, on an annual basis, a recalculation of their insurance score based on a current credit report.

6 DE Reg. 1706 (6/1/03)

4.0 Definitions

"**Adverse action**" has the meaning given that term in the Fair Credit Reporting Act, 15 U.S.C. sec. 1681 et seq. (referred to in this regulation as "the FCRA"). An adverse action includes but is not limited to the following:

- Cancellation, denial or nonrenewal of insurance coverage;
- Charging a higher insurance premium than would have been offered if the credit history or insurance score had been more favorable in the absence of a rate change occasioned by other applicable underwriting factors independent of credit related information, whether the charge is by:
 - application of a rating rule;
 - assignment to a rating category within a single insurer, into which insureds with substantially like insuring, risk or exposure factors and expense elements are placed for purposes of determining rate or premium, that does not have the lowest available rates; or
- A reduction or an adverse or unfavorable change in the terms of coverage or amount of insurance owing to a consumer's credit history or insurance score. A reduction or an adverse or unfavorable change in the terms of coverage occurs when:
 - coverage provided to the consumer is not as broad in scope as coverage requested by the consumer but available to other insureds of the insurer or any affiliate; or
 - the consumer is not eligible for benefits such as dividends that are available through affiliate insurers.
- The placement of the consumer with an affiliated company shall not be considered an adverse action under this regulation.
- Notwithstanding the foregoing, a decision to reject an insurance application, to deny renewal or to condition renewal, to assign an application or renewal to a tier, class or group, or to issue the policy based on or with restrictions that would not apply but for the consideration of the consumer report.
- Notwithstanding the foregoing, if a consumer, upon renewal, is not assigned to a less favorable tier or if there is a change in premium not resulting from any use of credit information, such event shall not be deemed an adverse action.

"Applicant" shall mean an applicant for insurance coverage but shall not include persons receiving a quote for premium that would be due under a policy of insurance, provided however, that such insurance is not ultimately applied for and that the process for making and delivering such quotes is not used as a means for denying coverage on the basis of a credit score in violation of this regulation.

"**Commissioner**" shall mean the Insurance Commissioner of the State of Delaware, or any person designated by the Commissioner to enforce the provisions of this regulation or any related statute or regulation.

"Consumer" shall mean applicants or policyholders.

"**Consumer report**" means any written, oral, or other communication of any information by a consumer reporting agency (as defined in the FCRA) bearing on a consumer's credit worthiness, credit standing, or credit capacity, which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for personal lines automobile or homeowner insurance to be used primarily

for person, family, or household purposes. Consumer report shall not include motor vehicle reports or claims history reports or any other report that is not credit related.

“**Credit score**” means any alpha, numeric and/or alpha-numeric rating or classification of any person based on information contained in said person’s consumer report created by an insurer or any person, firm or entity for use by an insurer.

“**Document**” or “public record” shall have the same meaning as described in 29 **Del.C.** §10002(d) and 18 **Del.C.** §§ 320, 321.

“**Insurance score**” shall have the same meaning as “credit score.”

~~“**Insured,**” or “**consumer**” “**Policyholder**” shall mean the applicant(s) for coverage or person or persons insured under a policy of insurance but shall not include persons receiving a quote for premium that would be due under a policy of insurance, provided however, that such insurance is not ultimately applied for and that the process for making and delivering such quotes is not used as a means for denying coverage on the basis of a credit score in violation of this regulation.~~

6 DE Reg. 1706 (6/1/03)

5.0 Prohibited Practices

5.1 No individual consumer report or credit score shall be valid if the age of the consumer report upon which it is based is greater than two years from the date of its first use for an individual application, ~~or renewal of coverage or if the consumer report or credit score~~ utilizes in any manner, factors which include any or all of race, color, creed, sex, religion, national origin, place of residency, marital status, nature of employment, physical disability, or any similar category prohibited by federal or state law.

5.2 Each insurer proposing to use an insurance score as part of its rating or underwriting criteria shall file with the Commissioner, as part of its rate filings required pursuant to 18 **Del.C.** Ch. 25, such supporting models, algorithms, actuarial and statistical data and reports sufficient, in the discretion of the Commissioner, to permit the Commissioner to determine ~~that the use of such credit report or score shall not:~~

5.2.1 ~~That the use of such credit report or score shall not~~ Unfairly discriminate or assign a consumer to a class or tier based on criteria which are not actuarially supported and shown to be relevant to risk or experience, or

5.2.2 ~~That the use of such credit report or score shall not be~~ Be the sole basis upon which the insurer denies coverage, ~~or upon which the insurer cancels, refuses to renew or sets a premium or rate for insurance coverage for an applicant without consideration of other underwriting or rating factors, or-~~

5.2.3 ~~That, with respect to any policy currently in force, the insurer's insurance scoring methodology does not result in any adverse underwriting decision based in any way upon changes in a policyholder's credit information or consumer report.~~

5.3 No insurer shall be permitted to use the services of a third party to develop a consumer report or credit score unless the third party shall, without qualification, consent to provide any information, documents, reports (except for consumer reports which may not be disclosed), actuarial and/or statistical bases or models, or other such information required by the Commissioner as part of the insurer’s rate approval process.

5.4 In rating a policy or assigning a consumer to a premium level or tier, no insurer shall be permitted to consider the consumer report or score of any person other than the named applicant or policyholder or person(s) who have an insurable interest to be covered under the policy. In the case of homeowner’s coverage, no insurer shall be permitted to deny, penalize, impose a higher rate or take any action adverse or detrimental to an applicant current or prospective policyholder based solely on the credit score of a spouse who has no title or ownership interest in the property to be insured and is not a named ~~policyholder or applicant.~~

5.5 No insurer, or entity from which the insurer may obtain credit scoring information, shall use credit or consumer reports in any manner prohibited by law.

5.6 No insurer shall be permitted to use obsolete information which shall be defined as follows:

5.6.1 Bankruptcies which, from date of the adjudication of the most recent bankruptcy, antedate the report by more than 10 years;

5.6.2 Suits and judgments which, from date of entry, antedate the report by more than 7 years or until the governing statute of limitations has expired, whichever is the longer period;

5.6.3 Paid tax liens which, from date of payment, antedate the report by more than 7 years;

5.6.4 Accounts placed for collection or charged to profit and loss which antedate the report by more than 7 years;

5.6.5 Records of arrest, indictment, or conviction of crime which, from date of disposition, release, or parole, antedate the report by more than 7 years; and

5.6.6 Any other adverse item of information which antedates the report by more than 7 years.

5.7 The following factors shall not be used by an insurer or by any entity retained by the insurer for the purposes of generating a credit score for underwriting, tier placement or rating purposes:

5.7.1 Information that is disputed by the consumer and has been identified by the consumer reporting agency and coded as such, if the use of such disputed information would result in an adverse action;

5.7.2 Information that has been identified by the consumer reporting agency as related to insurance inquiries and/or non-consumer initiated inquiries and coded as such;

5.7.3 Information that has been identified by the consumer reporting agency as related to collection accounts with a medical industry code;

5.7.4 Information that includes multiple lender inquiries, if coded by the consumer reporting agency as being from the home mortgage industry and made within 30 days of one another, unless only one inquiry is considered.

5.7.5 Information that includes multiple lender inquiries, if coded by the consumer reporting agency as being from the automobile lending industry and made within 30 days of one another, unless only one inquiry is considered.

5.7.6 The total available line of credit, however, an insurer may consider the total amount of outstanding debt in relation to the total available line of credit.

5.8 If a consumer has no available credit history or has insufficient credit history to develop a credit score, the consumer must be underwritten and rated in accordance with the remaining actuarial principles and standards of practice set forth in the appropriate rate filing that are exclusive of the credit score. However, an insurer may consider insufficient credit history or no available credit history in setting a premium or rate, or underwriting an insurance policy for an applicant, to the extent such use is actuarially justified and consistent with the rate filing in the office of the Commissioner.

5.9 No insurer shall, by underwriting standards or practices, use a consumer's credit score inconsistent with or in violation of this regulation.

6 DE Reg. 1706 (6/1/03)

6.0 Written Notice to Consumers

6.1 If an insurer uses credit information in underwriting or rating a consumer, the insurer ~~or its agent~~ shall make the following disclosures to the consumer:

~~6.1.1 disclose, e~~Either on the insurance application or at the time the insurance application is taken, the insurer shall disclose to the applicant that it may obtain credit information on the ~~consumer~~ applicant, other persons residing in the ~~consumer's~~ applicant's home, or other persons whose credit information may affect the underwriting or rating of the policy in connection with such application. Such disclosure shall be either written or provided to an applicant in the same medium as the application for insurance. ~~The insurer need not provide the disclosure statement required under this section to any insured on a renewal policy if such consumer has previously been provided a disclosure statement.~~ The use of the following example disclosure statement constitutes compliance with this section: "In connection with this application for insurance, we may review your credit report or obtain or use a credit based (credit) (insurance) score based on the information contained in that credit report. We may use a third party in connection with the development of your (credit) (insurance) score."

6.1.2 Either on the insurance application or at the time the insurance application is taken, the insurer shall inform the applicant that, if the application is approved and the applicant becomes a policyholder, he or she has the right to have their insurance score reviewed on an annual basis based on a new consumer report, in accordance with the procedures set forth in section 8 of this Regulation. The notice shall state that the review will be conducted for the sole purpose of determining whether the consumer's credit information would lead to a reduction in insurance premiums and will not be used for any other purpose, including an increase in premiums. The use of the following example disclosure statement constitutes compliance with this section: "If we do use a credit based score, you will have the right on an annual basis to request that we obtain a current credit report for you and determine whether use of the new credit report would result in a decrease in your insurance premiums. If the new credit report that we receive would result in a decrease in your insurance premiums, we will make that reduction. If the new credit information would not reduce your insurance premiums, the credit report will not be used to impact your premiums in any way." This paragraph does not apply if an insurer's filed rating plan does not

use any credit information for the purpose of rating renewals, including any residual effect from the use of credit at initial underwriting.

6.1.3 On an annual basis, the insurer shall inform its policyholders of their right to have their credit information reviewed to determine whether the use of the current credit report would result in a lower premium, in accordance with the procedures set forth in section 8 of this Regulation. This notification shall be prominently included in at least 18 point type in the renewal notification required by Department of Insurance Regulation 608, Section 3. The notification shall be accompanied by a form that the policyholder must complete and send to the insured to request that the credit report be obtained and reviewed. The notification shall inform the policyholder that the policyholder must mail the request form within two weeks of the date of mailing of the renewal notification by the insurer in order for the re-rating to occur in time for a premium adjustment to be made for the upcoming policy period. The notification shall also inform the policyholder that they must comply with the renewal notice's requirements regarding the payment amount and due date regardless of whether they choose to request a review of their credit report, and that any decrease in premium as a result of the credit review will be effective as of the upcoming renewal date provided in the renewal notice. This subsection does not apply to any renewal for which the insurer's filed rating plan does not use any credit information, including residual effect from the use of credit information at initial underwriting. An insurer that is exempt from this subsection shall inform its policyholder of the exemption and the reason for the exemption in the renewal notification required by Department of Insurance Regulation 608, Section 3.

6.2 A notice denying an application for insurance ~~or a notice refusing to renew or cancel insurance~~ shall, to the extent that the insurer's action is based on information contained in a consumer report relating to the applicant, ~~insured~~ and/or other named person, contain the following:

6.2.1 The name, address and toll free number of the institutional source from whom the insurer obtained the credit information;

6.2.2 A summary of the most significant reasons for the adverse action that relate to the ~~consumer's~~ applicant's credit history or to the credit factors of the credit score. The reasons need not exceed four, shall be specific and shall identify the information associated with each reason. The notice shall be sufficiently clear and specific that ~~a consumer~~ an applicant of reasonable intelligence can identify the basis for the insurer's decision without making further inquiry. For the purpose of the summary, the use of a generalized term such as "poor credit history," "poor credit rating," or "poor credit score" does not meet the requirement of a sufficiently clear and specific summary, however standardized credit explanations provided by consumer reporting agencies or other third party vendors that satisfy the requirements of this section are deemed to comply with this section.

6.2.3 A statement advising the applicant ~~or insured~~ that, if the ~~insured~~ applicant wishes to inquire further about the credit information on which the refusal, ~~denial or nonrenewal~~ is based and obtain a free copy of the "consumer report," the ~~insured~~ applicant may do so by mailing a written request to the insurer, or such other party as the insurer shall identify in the notice, no more than thirty days after the date on which the notice of refusal, ~~denial or nonrenewal~~ was mailed to the ~~insured~~ applicant.

6.2.4 A statement that the consumer reporting agency that provided the information upon which the credit score was based did not make the decision to take the adverse action and is unable to provide the applicant ~~or insured~~ the specific reasons why the adverse action was taken.

6.3 If the applicant ~~or insured~~ submits the written notification required under section 6.2.3, the refusal, ~~denial or nonrenewal~~ shall not become effective until thirty days after the accuracy of the credit information, which the applicant ~~or insured~~ has questioned and on which the refusal, ~~denial or nonrenewal~~ was based, has been verified and communicated to the applicant ~~or insured~~. Such verification shall be deemed to have been made upon completion of the investigation of the credit information which the applicant ~~or insured~~ has questioned and on which the refusal, ~~denial or nonrenewal~~ was based. The applicant ~~or insured~~ must cooperate in the investigation of the credit information, including responding to any communication submitted by, or on behalf of, the insurer or credit reporting agency no more than ten days after the date on which such communication subsequent to the notice required under section 6.2.3 was mailed to the applicant ~~or insured~~. If the applicant ~~or insured~~ fails to cooperate in the investigation of the credit information, the insurer may, after providing a minimum of fifteen days' written notice to the applicant ~~or insured~~, terminate such investigation and may refuse to insure the applicant ~~or cancel or nonrenew the policy~~.

6.4 If the applicant or insured, after receipt of a notice under this section, and pursuant to procedures established under the FCRA, obtains changes, modifications or corrections to his/her credit information maintained by one or more credit reporting agencies, the insured shall notify the insurer who shall recalculate or obtain a new

credit score. In that case, the provisions of section 7.2 shall apply to any adjustments to be made to the insured's premium.

6 DE Reg. 1706 (6/1/03)

7.0 Corrections or Changes to a Consumer's Credit Score

7.1 When an insurer uses credit histories or credit scores for the purpose of rating, if the insurer receives notice of corrected information affecting the credit history or the credit factors of the credit score of a consumer from the consumer reporting agency of the insurer, the insurer shall correct the consumer's credit score or obtain a corrected credit score or credit history, as appropriate, based on the corrected information.

7.2 When an insurer has taken an adverse action against a consumer on the basis of the consumer's credit history or the credit factors of the consumer's credit score, if the insurer subsequently makes or obtains a correction or change under section 6.4 or 7.1, the insurer shall determine the difference between the premium paid by the consumer based on the prior credit history or credit score and the premium based on the current history or score. If the policy period is 12 months or more, the difference shall be determined for the most recent 12 months. If the policy period is less than 12 months, the difference shall be determined for the current period of the policy. If the difference is in favor of the consumer, the insurer shall credit or refund the difference to the consumer. If the difference is in favor of the insurer, the insurer may charge the difference to the consumer or collect the difference from the consumer.

7.3 ~~An insured or an applicant for insurance~~ A consumer, upon written request to an insurer, shall have a right to seek review by the insurer of its use of a credit score in the event ~~an insured's or applicant's consumer~~ a consumer's credit report is adversely affected by extraordinary personal circumstances.

7.3.1 Extraordinary personal circumstance is defined as serious illness or injury, involuntary unemployment, divorce, identity theft, and involuntary interruption of alimony or support payments. An insurer may elect to extend this definition to consider an extraordinary personal circumstance not listed in this section. In no event is an insurer required to review repeated events or events the insurer reviewed previously as an extraordinary personal circumstance.

7.3.2 An insurer may require that ~~an insured or applicant~~ a consumer provide sufficient documentation to establish the existence and duration of such extraordinary personal circumstance.

7.3.3 An insurer may elect to eliminate the credit score from consideration in such instance and rely its other underwriting and rating guidelines, may assign a neutral credit score or may elect to establish such procedural guidelines as will allow the insurer to consider such requests in a consistent manner.

7.3.4 An insurer will not be considered out of compliance with any law or rule relating to underwriting, rating or rate filing as a result of granting an exception under this section.

6 DE Reg. 1706 (6/1/03)

8.0 Requesting Re-rating Based on Current Credit Report

8.1 Any policyholder whose credit report has been used by his/her insurer for the purpose of rating renewals or initial underwriting and who wishes to have a current credit report reviewed by his/her insurer to determine whether the current report will result in an improvement in the policyholder's insurance score must make the request to his/her insurer using the form provided pursuant to paragraph 6.1.3 of this Regulation. The policyholder must mail the completed request form within two weeks of the date the insurer mailed the notice and form required by paragraph 6.1.3.

8.2 After receiving notice from a policyholder that he/she is requesting that the applicable credit reports be obtained and reviewed for the purpose of improving the insurance score applicable to the policy, the insurer shall obtain the current credit information and recalculate the insurance score for the policyholder to determine whether the credit information will lower the policyholder's premium. The policyholder's premium adjustment, if he or she is entitled to one, shall be effective as of the renewal date provided in the renewal offer that accompanies the policyholder's notification of the request for re-rating, as described in paragraph 6.1.3 of this Regulation.

8.3 If the policyholder's premium is adjusted pursuant to Section 8.2, the insurer shall notify the policyholder of the premium adjustment within 90 days of the insurer's receipt of the policyholder's request for a new credit report.

8.4 If the credit report would result in no change or an increase in the premium or in any adverse action, the insurer shall take no further action regarding the credit report except that the policyholder's next notice

of insurance renewal shall inform the policyholder that the review was conducted and that it did not result in any changes to the premium or policy.

8.5 Sections 8.1 through 8.4 do not apply to any renewal for which the insurer's filed rating plan does not use any credit information, including any residual effect from the use of credit information at initial underwriting.

~~8-0~~ 9.0 General Business Practices

~~89.1~~ Any insurer that elects to use credit scoring to determine, in whole or in part, the premium to be paid by the insured or the tier or class of risk to which the insured shall be assigned, shall be deemed to have done so under the provisions of 18 **Del.C.** Ch. 25.

~~89.2~~ No insurer shall implement credit scoring for rate making or underwriting purposes without first having obtained the approval of the Commissioner as part of a rate filing under 18 **Del.C.** Ch. 25. Policies and renewal notices issued on or before ~~the effective date of this regulation~~ September 1, 2003 in which credit information was used in the underwriting or rating of the policy shall be deemed valid for the term thereof but not for any renewal thereunder in the absence of compliance with this regulation.

~~89.3~~ No insurer shall alter or modify the approved tier or classification structure or change the premiums applicable to any such tier or classification system without having first obtained the Commissioner's approval to do so under 18 **Del.C.** Ch. 25.

~~89.4~~ When an insurer denies ~~or fails to renew~~ a policy, evidence of the notice of denial ~~or nonrenewal~~ shall be retained by the insurer and a record of the insurance score, related notice and correspondence with the ~~insured~~ applicant shall be maintained by the insurer and/or by the appropriate vendor (source of the credit score) pursuant to the insurer's agreement with such vendor for a minimum of three years from the date of notice to the ~~insured~~ applicant.

~~89.5~~ An insurer shall indemnify, defend, and hold agents harmless from and against all liability, fees, and costs arising out of or relating to the actions, errors, or omissions of an insurer who obtains or uses credit information and/or credit scores from an independent source, provided that the agent follows the instructions of or procedures established by the insurer and complies with any applicable law or regulation. Nothing in this section shall be construed to provide a consumer or other insured with a cause of action that does not exist in the absence of this section.

6 DE Reg. 1706 (6/1/03)

~~9-0~~ 10.0 Confidentiality

~~910.1~~ Any document, report, model or other supporting information filed with the Commissioner, irrespective of the format or media in which it is contained, shall be considered proprietary or trade secret and subject to the confidentiality provisions of 18 **Del.C.** §321(g) and/or, upon the request of the insurer or owner of the document, 29 **Del.C.** §10002(d)(2). Where an insurer or third party is required to file proprietary or trade secret insurance scoring algorithms, models, documents or supporting information as part of its filed rates, the insurer or third party may elect to segregate such materials from the remainder of its rate filing by filing such materials separately in a sealed envelope or container. Materials filed in this manner shall remain segregated from the publicly accessible portions of the rate filing for so long as these materials are on file with the Department, or until the insurer or third party notifies the Department that such materials are no longer proprietary or trade secret. In the event there is a dispute with respect to the confidentiality of a document, the Commissioner shall make the final determination of whether any part or the whole of a disputed document shall be given confidential treatment.

6 DE Reg. 1706 (6/1/03)

~~10-0~~ 11.0 Severability

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

6 DE Reg. 1706 (6/1/03)

~~11-0~~ 12.0 Causes of Action and Defenses

This regulation shall not create a cause of action for any person or entity, other than the Delaware Insurance Commissioner, against an insurer or its representative based upon a violation of 18 **Del.C.** §2304(15)(c).

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In the same manner, nothing in this regulation shall establish a defense for any party to any cause of action based upon a violation of 18 **Del.C.** §2304(15)(c).

6 DE Reg. 1706 (6/1/03)

~~42-0~~ **13.0 Effective Date**

~~This regulation shall become effective on September 1, 2003. These regulations shall be effective on January 1, 2008, with the exception of subsections 6.1.2 and 6.1.3, which shall take effect on April 1, 2008.~~

6 DE Reg. 1706 (6/1/03)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Section 6010, (7 **Del.C.** §6010)

7 DE Admin. Code 1138

REGISTER NOTICE

SAN # 2007-03

1. TITLE OF THE REGULATION:

Amendment to Regulation No. 1138 Emission Standards for Hazardous Air Pollutants for Source Categories

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

Delaware adopted by reference the federal Maximum Achievable Control Technology (MACT) standard applicable to perchloroethylene dry cleaning facilities (40 CFR Part 63 Subpart M) into Regulation No. 1138 (formerly 38) on February 1, 1999. Since this initial adoption, the EPA has revised the federal MACT standard several times. The most significant of the revisions were the adoption of the residual risk requirements that will eliminate the use of perchloroethylene in dry cleaning systems located in building with residences and will reduce the emissions of perchloroethylene from existing dry cleaning systems and from all newly installed dry cleaning systems (71 FR 42724, July 27, 2006). These more stringent requirements were incorporated after the EPA determined that despite the full implementation of the MACT requirements, the remaining level of risk of adverse health affects was unacceptable.

The purpose of this amendment to Subpart M of Regulation No. 1138 is to be consistent, where appropriate, with federal requirements and to further reduce the remaining risk of adverse health affects, where reasonably and economically feasible.

The Department will also change from our past adoption by reference format and provide the complete regulatory text. This latter change will eliminate the need for the public and regulated community to interpret the adopted federal standards and the changes made when the Department originally adopted these standards into Regulation No. 1138.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Delaware Code**, Chapter 60

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

None

6. NOTICE OF PUBLIC COMMENT:

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Tuesday, January 22, 2008 beginning at 6:00 PM in the DNREC Conference Rooms A/B located at 391 Lukens

Drive, New Castle, DE. Interested parties may submit comments in writing to: Jim Snead, DNREC Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720.

7. PREPARED BY:

James R. Snead, (302) 323-4542, james.snead@state.de.us, December 11, 2007

1138 Emissions Standards For Hazardous Air Pollutants For Source Categories

7/28/08 10/11/00

5.0 ~~Subpart M~~ Perchloroethylene Air Emission Standards for Dry Cleaning Facilities

5.1 Applicability.

5.1.1 The provisions of Section 5.0 of this regulation apply to the owner or operator of each dry cleaning facility that uses perchloroethylene.

5.1.2 The compliance date for a new dry cleaning system depends on the date that construction or reconstruction commences.

5.1.2.1 Each dry cleaning system that commences construction or reconstruction on or after December 9, 1991 and before December 21, 2005, shall be in compliance with the provisions of Section 5.0 of this regulation except 5.3.15 of this section beginning on June 30, 1999 or immediately upon startup, whichever is later, except for dry cleaning systems complying with section 112(i)(2) of the Clean Air Act; and shall be in compliance with the provisions of 5.3.15 beginning on July 28, 2008.

5.1.2.2 The compliance dates for a new dry cleaning systems that commence construction or reconstruction on or after December 21, 2005, but before July 13, 2006.

5.1.2.2.1 Each dry cleaning system that commences construction or reconstruction on or after December 21, 2005, but before July 13, 2006, and is not located in a building with a residence, shall be in compliance with the provisions of Section 5.0 of this regulation, except 5.3.15 of this section, immediately upon startup; and shall be in compliance with the provisions of 5.3.15 beginning on July 28, 2008 or immediately upon startup, whichever is later.

5.1.2.2.2 Each dry cleaning system that commences construction or reconstruction on or after December 21, 2005, but before July 13, 2006, and is located in a building with a residence, shall be in compliance with the provisions of Section 5.0 of this regulation, except 5.3.15 of this section, immediately upon startup; shall be in compliance with the provisions of 5.3.15.3 and 5.3.15.5 of this section beginning on July 28, 2008.

5.1.2.3 Each dry cleaning system that commences construction or reconstruction on or after July 13, 2006, shall be in compliance with the provisions of Section 5.0 of this regulation, including 5.3.15 of this section, immediately upon startup.

5.1.3 Each dry cleaning system that commenced construction or reconstruction before December 9, 1991, and each new transfer machine system and its ancillary equipment that commenced construction or reconstruction on or after December 9, 1991 and before September 22, 1993, shall be in compliance with the provisions of Section 5.0 of this regulation except 5.3.15 of this section beginning on June 30, 1999 and shall be in compliance with 5.3.15 beginning on July 28, 2008.

5.1.4 [Reserved]. Each existing dry to dry machine and its ancillary equipment located in a dry cleaning facility that includes only dry to dry machines, and each existing transfer machine system and its ancillary equipment, and each new transfer machine system and its ancillary equipment installed between December 9, 1991 and September 22, 1993, as well as each existing dry to dry machine and its ancillary equipment, located in a dry cleaning facility that includes both transfer machine system(s) and dry to dry machine(s) is exempt from Sec. 63.322, Sec. 63.323, and Sec. 63.324, except paragraphs 63.322 (c), (d), (i), (j), (k), (l), (m), 63.323(d), and 63.324 (a), (b), (c), (d)(1), (d)(2), (d)(3), (d)(4), and (e) if the total perchloroethylene consumption of the dry cleaning facility is less than 530 liters (140 gallons) per year. Consumption is determined according to Sec. 63.323(d).

5.1.5 [Reserved]. Each existing transfer machine system and its ancillary equipment, and each new transfer machine system and its ancillary equipment installed between December 9, 1991 and September 22, 1993, located in a dry cleaning facility that includes only transfer machine system(s) is exempt from Sec. 63.322, Sec. 63.323, and Sec. 63.324, except paragraphs 63.322 (c), (d), (i), (j), (k), (l), (m), 63.323(d), and 63.324 (a), (b),

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~~(c), (d)(1), (d)(2), (d)(3), (d)(4), and (e) if the perchloroethylene consumption of the dry cleaning facility is less than 760 liters (200 gallons) per year. Consumption is determined according to Sec. 63.323(d).~~

5.1.6 [Reserved].

~~(1) If the total yearly perchloroethylene consumption of a dry cleaning facility determined according to Sec. 63.323(d) is initially less than the amounts specified in paragraph (d) or (e) of this section, but later exceeds those amounts, the existing dry cleaning system(s) and new transfer machine system(s) and its (their) ancillary equipment installed between December 9, 1991 and September 22, 1993 in the dry cleaning facility must comply with Sec. 63.322, Sec. 63.323, and Sec. 63.324 by 180 calendar days from the date that the facility determines it has exceeded the amounts specified, or by June 30, 1999, whichever is later.~~

~~(2) Following review of notification submitted in accordance with 63.324(c)(1), the Department may determine that the dry cleaning facility shall not be subject to the additional requirements imposed under paragraph (f)(1), if there has been no exceedance during the prior 36 months and—~~

~~(i) The total yearly perchloroethylene consumption falls below and remains below the amounts specified in paragraph (d) or (e) before and after the next purchase of perchloroethylene, or~~

~~(ii) The exceedance occurred due to the initial filling of a newly installed dry-to-dry machine and the total yearly perchloroethylene consumption, exclusive of the quantity of perchloroethylene purchased to initially fill the newly installed dry-to-dry machine, remains below the amounts specified in paragraph (d) or (e).~~

5.1.7 A dry cleaning facility is a major source if the facility emits or has the potential to emit more than 9.1 megagrams per year (10 tons per year) of perchloroethylene to the atmosphere. In lieu of measuring a facility's potential to emit perchloroethylene emissions or determining a facility's potential to emit perchloroethylene emissions, a dry cleaning facility is a major source if:

5.1.7.1 It includes only dry-to-dry machines and has a total yearly perchloroethylene consumption greater than 8,000 liters (2,100 gallons) as determined according to 5.4.4 of this section or

5.1.7.2 It includes only transfer machine systems or both dry-to-dry machines and transfer machine systems and has a total yearly perchloroethylene consumption greater than 6,800 liters (1,800 gallons) as determined according to 5.4.4 of this section.

5.1.8 A dry cleaning facility is an area source if it does not meet the conditions of 5.1.7 of this section.

5.1.9 Change in facility status to major source.

5.1.9.1 If the total yearly perchloroethylene consumption of a dry cleaning facility determined according to 5.4.4 of this section is initially less than the amounts specified in 5.1.7 of this section, but then exceeds those amounts, the dry cleaning facility becomes a major source and all dry cleaning systems located at that dry cleaning facility must comply with the appropriate requirements for major sources in 5.3, 5.4, and 5.5 of this section by 180 calendar days from the date that the facility determines it has exceeded the amounts specified, or by June 30, 1999, whichever is later.

5.1.9.2 Following review of notification submitted in accordance with 5.5.3.1 of this section, the Department may determine that the dry cleaning facility shall not be subject to the additional requirements imposed in 5.1.9.1 of this section, if there has been no exceedance during the prior 36 months and

5.1.9.2.1 The total yearly perchloroethylene consumption falls below and remains below the amounts specified in 5.1.7 of this section before and after the next purchase of perchloroethylene or

5.1.9.2.2 The exceedance occurred due to the initial filling of a newly installed dry-to-dry machine and the total yearly perchloroethylene consumption, exclusive of the quantity of perchloroethylene purchased to initially fill the newly installed dry-to-dry machine, remains below the amounts specified in 5.1.7 of this section.

5.1.10 Coin-operated dry cleaning machines.

(1) All coin-operated dry cleaning machines are subject to the provisions of Section 5.0 of this regulation exempt from Sec. 63.320(f) 5.1.6, Sec. 63.322, Sec. 63.323, and Sec. 63.324, except paragraphs 63.322 (c), (d), (i), (j), (k), (l), and (m), 63.323(d), and 63.324 (a), (b), (c), (d)(1), (d)(2), (d)(3), (d)(4), and (e).

(2) ~~Facilities consisting of only coin-operated dry cleaning machines, unless otherwise subject to Regulation 30 permitting requirements, are exempt from paragraph 63.320(k).~~

~~5.1.11 The owner or operator of any source subject to the provisions of this subpart M is subject to Regulation 30 permitting requirements. These affected sources, if not major or located at major sources as defined under Regulation 30, are deferred by the Department from Regulation 30 permitting requirements until December 9, 2004. All sources receiving deferrals shall submit Regulation 30 permit applications by December 9, 2005. All sources receiving deferrals still must meet the compliance schedule as stated in Sec. 63.320. The owner or operator of an area source subject to Section 5.0 of this regulation is exempt from the obligation to obtain a Title V operating permit under Regulation 30 of State of Delaware "Regulations Governing the Control of Air Pollution", if the owner or operator is not required to obtain a Title V operating permit under 3.a. of Regulation 30 for a reason other than the owner or operator's status as an area source under Section 5.0. Notwithstanding the previous sentence, the owner or operator shall continue to comply with the provisions of Section 5.0 applicable to area sources.~~

2 DE Reg. 1390 (2/1/99)

4 DE Reg. 707 (10/1/00)

5.2 Definitions.

"Administrator" means the Administrator of the United States Environmental Protection Agency.

"Ancillary equipment" means the equipment used with a dry cleaning machine in a dry cleaning system including, but not limited to, emission control devices, pumps, filters, muck cookers, stills, solvent tanks, solvent containers, water separators, exhaust dampers, diverter valves, interconnecting piping, hoses, and ducts.

"Area source" means any perchloroethylene dry cleaning facility that meets the conditions in 5.1.8 of this section.

"Articles" mean clothing, garments, textiles, fabrics, leather goods, and the like, that are dry cleaned.

~~**"Biweekly"** means any 14-day period of time.~~

"Carbon adsorber" means a bed of activated carbon into which an air-perchloroethylene gas-vapor stream is routed and which adsorbs the perchloroethylene on the carbon.

"Coin-operated dry cleaning machine" means a dry cleaning machine that is operated by the customer (that is, the customer places articles into the machine, turns the machine on, and removes articles from the machine).

"Colorimetric detector tube" means a glass tube (sealed prior to use), containing material impregnated with a chemical that is sensitive to perchloroethylene and is designed to measure the concentration of perchloroethylene in air.

"Construction", for purposes of Section 5.0 of this regulation, means the fabrication (onsite), erection, or installation of a dry cleaning system subject to Section 5.0.

"Department" means the Department of Natural Resources and Environmental Control as defined in Title 29, **Delaware Code**, Chapter 80, as amended.

"Desorption" means regeneration of a carbon adsorber by removal of the perchloroethylene adsorbed on the carbon.

"Diverter valve" means a flow control device or flow control devices that prevents room air from passing through a refrigerated condenser when the door of the dry cleaning machine is open.

"Dry cleaning" means the process of cleaning articles using perchloroethylene.

"Dry cleaning cycle" means the washing and drying of articles in a dry-to-dry machine or transfer machine system.

"Dry cleaning facility" means an establishment with one or more dry cleaning systems.

"Dry cleaning machine" means a dry-to-dry machine or each machine of a transfer machine system.

"Dry cleaning machine drum" means the perforated container inside the dry cleaning machine that holds the articles during dry cleaning.

"Dry cleaning system" means a dry-to-dry machine and its ancillary equipment or a transfer machine system and its ancillary equipment.

"Dryer" means a machine used to remove perchloroethylene from articles by tumbling them in a heated air stream (see reclaimer).

"Dry-to-dry machine" means a one-machine dry cleaning operation in which washing and drying

are performed in the same machine.

“Equivalent control device”, for purposes of Section 5.0 of this regulation, means an equivalent emission control technology approved under 5.6 of this section.

“Exhaust damper” means a flow control device that prevents the air-perchloroethylene gas-vapor stream from exiting the dry cleaning machine into a carbon adsorber before room air is drawn into the dry cleaning machine.

“Existing” means commenced construction or reconstruction before December 9, 1991.

“Filter” means a porous device through which perchloroethylene is passed to remove contaminants in suspension. Examples include, but are not limited to, lint filter, button trap, cartridge filter, tubular filter, regenerative filter, prefilter, polishing filter, and spin disc filter.

“Halogenated hydrocarbon detector” means a portable device capable of detecting vapor concentrations of perchloroethylene of 25 parts per million by volume and indicating a concentration of 25 parts per million by volume or greater by emitting an audible or visual signal that varies as the concentration changes.

“Heating coil” means the device used to heat the air stream circulated from the dry cleaning machine drum, after perchloroethylene has been condensed from the air stream and before the stream reenters the dry cleaning machine drum.

“Major source” means any dry cleaning facility that meets the conditions in 5.1.7 of this section.

“Muck cooker” means a device for heating perchloroethylene-laden waste material to volatilize and recover perchloroethylene.

“New” means commenced construction or reconstruction on or after December 9, 1991.

~~**“Perceptible leaks”** mean any perchloroethylene vapor or liquid leaks that are obvious from:~~

~~(1) The odor of perchloroethylene;~~

~~(2) Visual observation, such as pools or droplets of liquid; or~~

~~(3) The detection of gas flow by passing the fingers over the surface of equipment.~~

“Perchloroethylene consumption” means the total volume of perchloroethylene purchased based upon purchase receipts or other reliable measures.

“Perchloroethylene gas analyzer” means a flame ionization detector, photoionization detector, or infrared analyzer capable of detecting vapor concentrations of perchloroethylene of 25 parts per million by volume.

“Reclaimer” means a machine used to remove perchloroethylene from articles by tumbling them in a heated air stream (see dryer).

“Reconstruction”, for purposes of Section 5.0 of this regulation, means replacement of a washer, dryer, or reclaimer; or replacement of any components of a dry cleaning system to such an extent that the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new source.

“Refrigerated condenser” means a vapor recovery system into which an air-perchloroethylene gas-vapor stream is routed and the perchloroethylene is condensed by cooling the gas-vapor stream.

“Refrigerated condenser coil” means the coil containing the chilled liquid used to cool and condense the perchloroethylene.

“Residence” means any dwelling or housing in which people reside excluding short-term housing that is occupied by the same person for a period of less than 180 days (such as a hotel room).

“Responsible official” means one of the following:

- For a corporation: A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more dry cleaning facilities;
- For a partnership: A general partner;
- For a sole proprietorship: The owner; or
- For a municipality, State, Federal, or other public agency: Either a principal executive officer or ranking official.

“Room enclosure” means a stationary structure that encloses a transfer machine system, and is vented to a carbon adsorber or an equivalent control device during operation of the transfer machine system.

“**Source**”, for purposes of Section 5.0 of this regulation, means each dry cleaning system.

“**Still**” means any device used to volatilize and recover perchloroethylene from contaminated perchloroethylene.

“**Temperature sensor**” means a thermometer or thermocouple used to measure temperature.

“**Transfer machine system**” means a multiple-machine dry cleaning operation in which washing and drying are performed in different machines. Examples include, but are not limited to:

- A washer and dryer or dryers;
- A washer and reclaimer or reclaimers; or
- A dry-to-dry machine and reclaimer or reclaimers.

“**Vapor barrier enclosure**” means a room that encloses a dry cleaning system and is constructed of vapor barrier material that is impermeable to perchloroethylene. The enclosure shall be equipped with a ventilation system that exhausts outside the building and is completely separate from the ventilation system for any other area of the building. The exhaust system shall be designed and operated to maintain negative pressure and a ventilation rate of at least one air change per five minutes. The vapor barrier enclosure shall be constructed of glass, plexiglass, polyvinyl chloride, PVC sheet 22 mil thick (0.022 in.), sheet metal, metal foil face composite board, or other materials that are impermeable to perchloroethylene vapor. The enclosure shall be constructed so that all joints and seams are sealed except for inlet make-up air and exhaust openings and the entry door.

“**Vapor leak**” means a perchloroethylene vapor concentration exceeding 25 parts per million by volume (50 parts per million by volume as methane) as indicated by a halogenated hydrocarbon detector or perchloroethylene gas analyzer.

“**Washer**” means a machine used to clean articles by immersing them in perchloroethylene. This includes a dry-to-dry machine when used with a reclaimer.

“**Water separator**” means any device used to recover perchloroethylene from a water-perchloroethylene mixture.

“**Year or Yearly**” means any consecutive 12-month period of time.

2 DE Reg. 1390 (2/1/99)

5.3 Standards.

5.3.1 The owner or operator of each existing dry cleaning system and of each new transfer machine system and its ancillary equipment installed between December 9, 1991 and September 22, 1993 shall comply with either 5.3.1.1 or 5.3.1.2 of this section and shall comply with 5.3.1.3 of this section if applicable.

5.3.1.1 Route the air-perchloroethylene gas-vapor stream contained within each dry cleaning machine through a refrigerated condenser, a refrigerated condenser and carbon adsorber, or an equivalent control device.

5.3.1.2 Route the air-perchloroethylene gas-vapor stream contained within each dry cleaning machine through a carbon adsorber installed on the dry cleaning machine prior to September 22, 1993.

5.3.1.3 Contain the dry cleaning machine inside a room enclosure if the dry cleaning machine is a transfer machine system located at a major source. Each room enclosure shall be:

5.3.1.3.1 Constructed of materials impermeable to perchloroethylene and

5.3.1.3.2 Designed and operated to maintain a negative pressure at each

opening at all times that the transfer machine system is operating.

5.3.2 The owner or operator of each new dry-to-dry machine and its ancillary equipment and of each new transfer machine system and its ancillary equipment installed on or after September 22, 1993 and before December 22, 2005:

5.3.2.1 Shall route the air-perchloroethylene gas-vapor stream contained within each dry cleaning machine through a refrigerated condenser, a refrigerated condenser and carbon adsorber, or an equivalent control device;

5.3.2.2 Shall eliminate any emission of perchloroethylene during the transfer of articles between the washer and the dryer or dryers; and

5.3.2.3 Shall pass the air-perchloroethylene gas-vapor stream from inside the dry cleaning machine drum through a carbon adsorber or equivalent control device immediately before or as the door

of the dry cleaning machine is opened if the dry cleaning machine is located at a major source.

5.3.3 The owner or operator shall close the door of each dry cleaning machine immediately after transferring articles to or from the machine, and shall keep the door closed at all other times.

5.3.4 The owner or operator of each dry cleaning system shall operate and maintain the system according to the manufacturers' specifications and recommendations.

5.3.5 Each refrigerated condenser used for the purposes of complying with 5.3.1, ~~or~~ 5.3.2, 5.3.15.2, or 5.3.15.5.2.2 of this section and installed on a dry-to-dry machine, dryer, or reclaimer:

5.3.5.1 Shall be operated to not vent or release the air-perchloroethylene gas-vapor stream contained within the dry cleaning machine to the atmosphere while the dry cleaning machine drum is rotating;

5.3.5.2 Shall be monitored according to 5.4.1.1 of this section; and

5.3.5.3 Shall be operated with a diverter valve, which prevents air drawn into the dry cleaning machine when the door of the machine is open from passing through the refrigerated condenser.

5.3.6 Each refrigerated condenser used for the purpose of complying with 5.3.1 of this section and installed on a washer:

5.3.6.1 Shall be operated to not vent or release the air-perchloroethylene gas-vapor stream contained within the washer to the atmosphere until the washer door is opened;

5.3.6.2 Shall be monitored according to 5.4.1.2 of this section; and

5.3.6.3 Shall not use the same refrigerated condenser coil for the washer that is used by a dry-to-dry machine, dryer, or reclaimer.

5.3.7 Each carbon adsorber used for the purposes of complying with 5.3.1, ~~or~~ 5.3.2, 5.3.15.2 or 5.3.15.5.2.2 of this section:

5.3.7.1 Shall not be bypassed to vent or release any air-perchloroethylene gas-vapor stream to the atmosphere at any time and

5.3.7.2 Shall be monitored according to the applicable requirements in 5.4.2 or 5.4.3 of this section.

5.3.8 Each room enclosure used for the purposes of complying with 5.3.1.3 of this section:

5.3.8.1 Shall be operated to vent all air from the room enclosure through a carbon adsorber or an equivalent control device and

5.3.8.2 Shall be equipped with a carbon adsorber that is not the same carbon adsorber used to comply with 5.3.1.2 or 3.2.3 of this section.

5.3.9 The owner or operator of an affected facility shall drain all cartridge filters in their housing, or other sealed container, for a minimum of 24 hours, or shall treat such filters in an equivalent manner, before removal from the dry cleaning facility.

5.3.10 The owner or operator of an affected facility shall store all perchloroethylene and wastes that contain perchloroethylene in solvent tanks or solvent containers with no perceptible vapor leaks. The exception to this requirement is that containers for separator water may be uncovered, as necessary, for proper operation of the machine and still.

5.3.11 ~~[Reserved]. The owner or operator of a dry cleaning system shall inspect the following components weekly for perceptible leaks while the dry cleaning system is operating:~~

~~(1) Hose and pipe connections, fittings, couplings, and valves;~~

~~(2) Door gaskets and seatings;~~

~~(3) Filter gaskets and seatings;~~

~~(4) Pumps;~~

~~(5) Solvent tanks and containers;~~

~~(6) Water separators;~~

~~(7) Muck-cookers;~~

~~(8) Stills;~~

~~(9) Exhaust dampers;~~

- (10) Diverter valves; and
- (11) Cartridge filter housings.

5.3.12 [Reserved]. The owner or operator of a dry cleaning facility with a total facility consumption below the applicable consumption levels of Sec. 63.320(d) or (e) shall inspect the components listed in paragraph (k) of this section biweekly for perceptible leaks while the dry cleaning system is operating.

5.3.13 The owner or operator of a dry cleaning system shall repair all perceptible vapor leaks detected in 5.3.15.1 of this section within 24 hours. If repair parts must be ordered, either a written or verbal order for those parts shall be initiated within 2 working days of detecting such a leak. Such repair parts shall be installed within 5 working days after receipt.

5.3.14 If parameter values monitored under 5.3.5, 5.3.6, or 5.3.7 of this section do not meet the values specified in 5.4.1, 5.4.2, or 5.4.3 of this section, adjustments or repairs shall be made to the dry cleaning system or control device to meet those values. If repair parts must be ordered, either a written or verbal order for such parts shall be initiated within 2 working days of detecting such a parameter value. Such repair parts shall be installed within 5 working days after receipt.

5.3.15 Additional requirements.

5.3.15.1 The owner or operator of a dry cleaning system shall inspect the components listed in 5.3.15.1.4 of this section for vapor leaks weekly while the component is in operation.

5.3.15.1.1 Area sources shall conduct the inspections using a halogenated hydrocarbon detector or perchloroethylene gas analyzer that is operated according to the manufacturer's instructions. The operator shall place the probe inlet at the surface of each component interface where leakage could occur and move it slowly along the interface periphery.

5.3.15.1.2 Major sources shall conduct the inspections using a perchloroethylene gas analyzer operated according to Method 21 in Appendix A of 40 CFR Part 60.

5.3.15.1.3 [Reserved].

5.3.15.1.4 System components to be inspected weekly for vapor

leaks.

valves:

5.3.15.1.4.1 Hose and pipe connections, fittings, couplings, and

5.3.15.1.4.2 Door gaskets and seatings;

5.3.15.1.4.3 Filter gaskets and seatings;

5.3.15.1.4.4 Pumps;

5.3.15.1.4.5 Solvent tanks and containers;

5.3.15.1.4.6 Water separators;

5.3.15.1.4.7 Muck cookers;

5.3.15.1.4.8 Stills;

5.3.15.1.4.9 Exhaust dampers;

5.3.15.1.4.10 Diverter valves; and

5.3.15.1.4.11 All filter housings.

5.3.15.2 The owner or operator of each dry cleaning system installed after December 21, 2005, at an area source shall route the air-perchloroethylene gas-vapor stream contained within each dry cleaning machine through a refrigerated condenser and pass the air-perchloroethylene gas-vapor stream from inside the dry cleaning machine drum through a non-vented carbon adsorber or equivalent control device immediately before the door of the dry cleaning machine is opened. The carbon adsorber must be desorbed in accordance with manufacturer's instructions.

5.3.15.3 The owner or operator of any dry cleaning system shall eliminate any emission of perchloroethylene during the transfer of articles between the washer and the dryers or reclaimers.

5.3.15.4 Beginning on July 28, 2008, the owner or operator shall eliminate any emission of perchloroethylene from any dry cleaning system that is installed (including relocation of a used machine) on or after July 13, 2006, and that is located in a building with a residence.

5.3.15.5 Additional requirements for dry cleaning systems located in a building with a residence.

5.3.15.5.1 After December 21, 2020, the owner or operator shall eliminate

any emission of perchloroethylene from any dry cleaning system that is located in a building with a residence.

5.3.15.5.2 Each owner or operator of a dry cleaning system installed on or after December 21, 2005, but before July 13, 2006, in a building with a residence, shall be in compliance with 5.3.15.5.2.1 through 5.3.15.5.2.2 of this section, in addition to the other applicable requirements in Section 5.0 of this regulation.

5.3.15.5.2.1 Operate the dry cleaning system inside a vapor barrier enclosure. The exhaust system for the enclosure shall be operated at all times that the dry cleaning system is in operation and during maintenance. The entry door to the enclosure may be open only when a person is entering or exiting the enclosure.

5.3.15.5.2.2 Route the air-perchloroethylene gas-vapor stream contained within each dry cleaning machine through a refrigerated condenser and pass the air-perchloroethylene gas-vapor stream from inside the dry cleaning drum through a non-vented carbon adsorber or equivalent control device immediately before the door of the dry cleaning machine is opened. The carbon adsorber must be desorbed in accordance with manufacturer's instructions.

5.3.15.5.2.3 [Reserved].

2 DE Reg. 1390 (2/1/99)

5.4 Test methods and monitoring.

5.4.1 When a refrigerated condenser is used to comply with 5.3.1.1, or 5.3.2.1, 5.3.15.2, or 5.3.15.5.2.2 of this section:

5.4.1.1 The owner or operator shall ~~measure~~ monitor the following parameters, as applicable, on a weekly basis:

5.4.1.1.1 The refrigeration system high pressure and low pressure during the drying phase to determine if the pressures are in the range specified in the manufacturer's operating instructions.

5.4.1.1.2 If the dry cleaning machine is not equipped with refrigeration system pressure gauges, the temperature of the air-perchloroethylene gas-vapor stream on the outlet side of the refrigerated condenser on a dry-to-dry machine, dryer, or reclaimer with a temperature sensor to determine if it is equal to or less than of 7.2°C (45°F) before the end of the cool-down or drying cycle while the air-perchloroethylene gas-vapor stream is flowing through the condenser. The temperature sensor shall be used according to the manufacturer's instructions and shall be designed to measure a temperature of 7.2°C (45°F) to an accuracy of ±1.1°C (±2°F).

5.4.1.2 The owner or operator shall calculate the difference between the temperature of the air-perchloroethylene gas-vapor stream entering the refrigerated condenser on a washer and the temperature of the air-perchloroethylene gas-vapor stream exiting the refrigerated condenser on the washer weekly to determine that the difference is greater than or equal to 11.1°C (20°F).

5.4.1.2.1 Measurements of the inlet and outlet streams shall be made with a temperature sensor. Each temperature sensor shall be used according to the manufacturer's instructions, and designed to measure at least a temperature range from 0°C (32°F) to 48.9°C (120°F) to an accuracy of ±1.1°C (±2°F).

5.4.1.2.2 The difference between the inlet and outlet temperatures shall be calculated weekly from the measured values.

5.4.2 When a carbon adsorber is used to comply with 5.3.1.2 of this section, 5.3.8 of this section, or exhaust is passed through a carbon adsorber immediately upon the machine door opening to comply with 5.3.1.1, 5.3.2.1, 5.3.2.3, 5.3.15.2, or 5.3.15.5.2.2 of this section, the owner or operator shall measure the concentration of perchloroethylene in the exhaust of the carbon adsorber weekly with a colorimetric detector tube or perchloroethylene gas analyzer. The measurement shall be taken while the dry cleaning machine is venting to that carbon adsorber at the end of the last dry cleaning cycle prior to desorption of that carbon adsorber or removal of the activated carbon to determine that the perchloroethylene concentration in the exhaust is equal to or less than 100 parts per million by volume. The owner or operator shall:

5.4.2.1 Use a colorimetric detector tube or perchloroethylene gas analyzer

designed to measure a concentration of 100 parts per million by volume of perchloroethylene in air to an accuracy of ± 25 parts per million by volume;

5.4.2.2 Use the colorimetric detector tube or perchloroethylene gas analyzer according to the manufacturer's instructions; and

5.4.2.3 Provide a sampling port for monitoring within the exhaust outlet of the carbon adsorber that is easily accessible and located at least 8 stack or duct diameters downstream from any flow disturbance such as a bend, expansion, contraction, or outlet; downstream from no other inlet; and 2 stack or duct diameters upstream from any flow disturbance such as a bend, expansion, contraction, inlet, or outlet.

5.4.3 If the air-perchloroethylene gas-vapor stream is passed through a carbon adsorber immediately prior to machine door opening to comply with 5.3.1.1, 5.3.2.1, 5.3.2.3, 5.3.15.2, or 5.3.15.5.2.2 of this section, the owner or operator of an affected facility shall measure the concentration of perchloroethylene in the dry cleaning machine drum at the end of the dry cleaning cycle weekly with a colorimetric detector tube or perchloroethylene gas analyzer to determine that the perchloroethylene concentration is equal to or less than 300 parts per million by volume. The owner or operator shall:

5.4.3.1 Use a colorimetric detector tube or perchloroethylene gas analyzer designed to measure a concentration of 300 parts per million by volume of perchloroethylene in air to an accuracy ± 75 parts per million by volume; ~~and~~

5.4.3.2 Use the colorimetric detector tube or perchloroethylene gas analyzer according to the manufacturer's instructions; and

5.4.3.3 Conduct the weekly monitoring by inserting the colorimetric detector tube or perchloroethylene gas analyzer into the open space above the articles at the rear of the dry cleaning machine drum immediately upon opening the dry cleaning machine door.

5.4.4 When calculating yearly perchloroethylene consumption for the purpose of demonstrating applicability according to 5.1 of this section, the owner or operator shall perform the following calculation on the first day of every month:

5.4.4.1 Sum the volume of all perchloroethylene purchases made in each of the previous 12 months, as recorded in the log described in 5.5.4.1 of this section.

5.4.4.2 If no perchloroethylene purchases were made in a given month, then the perchloroethylene consumption for that month is zero gallons.

5.4.4.3 The total sum calculated in 5.4.4 of this section is the yearly perchloroethylene consumption at the facility.

2 DE Reg. 1390 (2/1/99)

5.5 Reporting and recordkeeping requirements.

5.5.1 Each owner or operator of a dry cleaning facility shall notify the Department in writing by June 30, 1999 or upon startup, whichever is later, and provide the following information:

5.5.1.1 The name and address of the owner or operator;

5.5.1.2 The address (that is, physical location) of the dry cleaning facility;

5.5.1.3 A brief description of the type of each dry cleaning machine at the dry cleaning facility;

5.5.1.4 Documentation as described in 5.4.4 of this section of the yearly perchloroethylene consumption at the dry cleaning facility for the previous year to demonstrate applicability according to 5.1 of this section; or an estimation of perchloroethylene consumption for the previous year to estimate applicability with 5.1; ~~and~~

5.5.1.5 A description of the type of control device or devices that will be used to achieve compliance with 5.3.1 or 5.3.2 of this section and whether the control device or devices are currently in use or will be purchased;

5.5.1.6 Documentation to demonstrate to the Department's satisfaction that each room enclosure used to meet the requirements in 5.3.1.3 of this section meets the requirements in 5.3.1.3.1 and 5.3.1.3.2 of this section;

5.5.1.7 Documentation to demonstrate to the Department's satisfaction that each vapor barrier enclosure used to meet the requirements in 5.3.15.5.2.1 of this section meets the requirements in 5.2 of this section;

5.5.1.8 Whether or not the dry cleaning facility is located in a building with a

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residence, even if the residence is vacant at the time of this notification:

5.5.1.9 Whether or not the dry cleaning facility is located in a building with no other tenants, leased space, or owner occupants:

5.5.1.10 Whether or not the refrigeration system on each dry cleaning system located at the dry cleaning facility is equipped with high and low pressure gauges; and

5.5.1.11 Whether or not a dry cleaning system has been newly installed, constructed or added at the dry cleaning facility since December 21, 2005.

~~5.5.2 [Reserved]. Each owner or operator of a dry cleaning facility shall submit to the Department on or before the 30th day following start up or June 30, 1999, whichever is later, a notification of compliance status providing the following information and signed by a responsible official who shall certify its accuracy:~~

~~(1) The yearly perchloroethylene solvent consumption limit based upon the yearly solvent consumption calculated according to Sec. 63.323(d);~~

~~(2) Whether or not they are in compliance with each applicable requirement of Sec. 63.322; and~~

~~(3) All information contained in the statement is accurate and true.~~

5.5.3 Exceedance of solvent consumption amounts.

5.5.3.1 Each owner or operator of an area source dry cleaning facility that exceeds the solvent consumption amounts specified in ~~paragraphs 63.320 (d), (e), or (g)~~ 5.1.7 of this section shall notify the Department not later than 30 days after the exceedance occurred. The notification shall provide the following information and shall be signed by a responsible official who shall certify its accuracy:

5.5.3.1.1 The name and address of the dry cleaning facility;

5.5.3.1.2 A copy of the yearly perchloroethylene consumption records that indicate that there was an exceedance of the applicable amount specified in ~~paragraphs 63.320 (d), (e), or (g)~~ 5.1.7 of this section;

5.5.3.1.3 The circumstances that led to the exceedance; and

5.5.3.1.4 A statement that all information contained in the notification is

true and accurate.

5.5.3.2 Each owner or operator of an area source dry cleaning facility that becomes subject to additional requirements ~~under Sec. 63.320 (f)(1) or (i)(1) in 5.1.9.1 of this section~~ shall submit to the Department on or before the dates specified in ~~Sec. 63.320 (f)(1) or (i)(1)~~ 5.1.9.1, a notification of compliance status providing the following information ~~in 5.5.6.1 through 5.5.6.11 of this section~~ and signed by a responsible official who shall certify its accuracy:

~~(i) The new yearly perchloroethylene solvent consumption limit based upon the yearly solvent consumption calculated according to Sec. 63.323(d);~~

~~(ii) Whether or not they are is in compliance with each applicable requirement of Sec. 63.322; and~~

~~(iii) All information contained in the statement is accurate and true.~~

5.5.4 Each owner or operator of a dry cleaning facility shall keep receipts of perchloroethylene purchases and a log of the following information and maintain such information on site and show it upon request for a period of 5 years:

5.5.4.1 The volume of perchloroethylene purchased each month by the dry cleaning facility as recorded from perchloroethylene purchases; if no perchloroethylene is purchased during a given month then the owner or operator would enter zero gallons into the log;

5.5.4.2 The calculation and result of the yearly perchloroethylene consumption determined on the first day of each month as specified in 5.4.4 of this section;

5.5.4.3 The dates when the dry cleaning system components are inspected for ~~perceptible vapor~~ leaks, as specified in ~~Sec. 63.322(k) or (l)~~ 5.3.15.1 of this section, and the name or location of dry cleaning system components where ~~perceptible vapor~~ leaks are detected;

5.5.4.4 The dates of repair and records of written or verbal orders for repair parts to demonstrate compliance with 5.3.13 and 5.3.14 of this section;

5.5.4.5 The dates and high and low pressure gauge monitoring results, as specified in 5.4 of this section, if a refrigerated condenser is used to comply with 5.3.1, 5.3.2, or 5.3.15 of this section;

5.5.4.6 If the dry cleaning machine is not equipped with refrigeration system pressure gauges, the The dates and temperature sensor monitoring results, as specified in 5.4 of this section, if a refrigerated condenser is used to comply with 5.3.1, ~~or 5.3.2,~~ or 5.3.15 of this section; and

5.5.4.7 The dates and monitoring results for carbon adsorbers, as specified in 5.4 of this section, if a carbon adsorber is used to comply with 5.3.1.1, 5.3.1.2, 5.3.2.1, ~~or 5.3.2.3,~~ 5.3.8, or 5.3.15.5 of this section.

5.5.5 Each owner or operator of a dry cleaning facility shall retain onsite a copy of the design specifications and the operating manuals for each dry cleaning system and each emission control device located at the dry cleaning facility.

5.5.6 Each owner or operator of a dry cleaning facility shall submit to the Department by registered mail not later than July 28, 2008 or within 30 days of startup, whichever is later, a notification of compliance status providing the following information and signed by a responsible official who shall certify its accuracy:

5.5.6.1 The name and address of the owner or operator;

5.5.6.2 The address (that is, physical location) of the dry cleaning facility;

5.5.6.3 Whether or not the dry cleaning facility is located in a building with a residence, even if the residence is vacant at the time of this notification;

5.5.6.4 Whether or not the dry cleaning facility is located in a building with no other tenants, leased space, or owner occupants;

5.5.6.5 Whether or not the refrigeration system on each dry cleaning system located at the dry cleaning facility is equipped with high and low pressure gauges;

5.5.6.6 Whether or not a dry cleaning system has been newly installed, constructed or added at the dry cleaning facility since December 21, 2005;

5.5.6.7 All information necessary to demonstrate to the Department's satisfaction that each vapor barrier enclosure used to meet the requirements in 5.3.15.5.2.1 of this section meets the requirements in 5.2 of this section;

5.5.6.8 Whether the dry cleaning facility is a major or area source;

5.5.6.9 The yearly perchloroethylene solvent consumption based upon the yearly solvent consumption calculated according to 5.4.4 of this section;

5.5.6.10 Whether or not the dry cleaning facility is in compliance with each applicable requirement in 5.3 of this section; and

5.5.6.11 All information contained in the statement is accurate and true.

2 DE Reg. 1390 (2/1/99)

5.6 Determination of equivalent emission control technology.

5.6.1 Any person requesting that the use of certain equipment or procedures be considered equivalent to the requirements in 5.3 of this section shall collect, verify, and submit to the Administrator (with copy to the Department) the following information to show that the alternative achieves equivalent emission reductions:

5.6.1.1 Diagrams, as appropriate, illustrating the emission control technology, its operation, and integration into or function with dry-to-dry machines or transfer machine systems and their ancillary equipment during each portion of the normal dry cleaning cycle;

5.6.1.2 Information quantifying vented perchloroethylene emissions from the dry-to-dry machines or transfer machine systems during each portion of the dry cleaning cycle with and without the use of the candidate emission control technology;

5.6.1.3 Information on solvent mileage achieved with and without the candidate emission control technology. Solvent mileage is the average weight of articles cleaned per volume of perchloroethylene used. Solvent mileage data must be of continuous duration for at least 1 year under the conditions of a typical dry cleaning operation. This information on solvent mileage must be accompanied by information on the design, configuration, operation, and maintenance of the specific dry cleaning system from which the solvent mileage information was obtained;

5.6.1.4 Identification of maintenance requirements and parameters to monitor to ensure proper operation and maintenance of the candidate emission control technology;

5.6.1.5 Explanation of why this information is considered accurate and representative of both the short-term and the long-term performance of the candidate emission control technology on the specific dry cleaning system examined;

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5.6.1.6 Explanation of why this information can or cannot be extrapolated to dry cleaning systems other than the specific systems examined; and

5.6.1.7 Information on the cross-media impacts (to water and solid waste) of the candidate emission control technology and demonstration that the cross-media impacts are less than or equal to the cross-media impacts of a refrigerated condenser.

5.6.2 For the purpose of determining equivalency to control equipment required in 5.3 of this section, the Administrator will evaluate the petition to determine whether equivalent control of perchloroethylene emissions has been adequately demonstrated.

5.6.3 Where the Administrator determines that certain equipment and procedures may be equivalent, the Administrator will publish a notice in the Federal Register proposing to consider this equipment or these procedures as equivalent. After notice and opportunity for public hearing, the Administrator will publish the final determination of equivalency in the Federal Register.

2 DE Reg. 1390 (2/1/99)

5.7 [Reserved]

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(e)(2)(a), (7 Del.C. §903(e)(2)(a))
7 DE Admin. Code 3531

PUBLIC NOTICE

SAN# 2007-17

1. TITLE OF THE REGULATIONS:

Tidal Finfish Regulation 3531 Tautog; Size Limits, Creel Limits and Seasons. (Formerly Tidal Finfish Regulation 22).

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

In order to come into compliance with addendum V of the Atlantic States Marine Fisheries Commission's (ASMFC) Fishery Management Plan (FMP) for Tautog, Delaware Tidal Finfish Regulation 3531 must be changed to incorporate one of twelve management options, approved by the ASMFC Tautog Technical Committee. Each option will reduce tautog exploitation by a minimum of 25.6%, as mandated in addendum V. Both recreational and commercial fishermen will be affected, as commercial size limits, creel limits and seasons are identical to recreational management measures.

One of the following harvest reduction options will be selected to reduce harvest by 25.6%:-

OPTION #1

CREEL LIMIT	SIZE LIMIT	START DATE	END DATE
2 Fish	14"	1-Jan	31-Mar
3 Fish	15"	1-Apr	30-Jun
3 Fish	14"	1-Jul	29-Aug
0 Fish		30-Aug	30-Sep
3 Fish	14"	1-Oct	31-Dec

OPTION #2a

3 Fish	14"	1-Jan	31-Mar
3 Fish	15"	1-Apr	30-Jun
3 Fish	14"	1-Jul	16-Jul
0 Fish		17-Jul	28-Sep

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	3 Fish	14"	29-Sep	31-Dec
OPTION #2b	3 Fish	14"	1-Jan	31-Mar
	3 Fish	15"	1-Apr	30-Jun
	3 Fish	14"	1-Jul	30-Aug
	0 Fish		1-Sep	2-Oct
	3 Fish	14"	3-Oct	31-Dec
OPTION #3	3 Fish	14"	1-Jan	31-Mar
	2 Fish	15"	1-Apr	30-Jun
	3 Fish	14"	1-Jul	31-Aug
	0 Fish		1-Sep	28-Sep
	3 Fish	14"	29-Sep	31-Dec
OPTION #4a	4 Fish	14"	1-Jan	31-Mar
	2 Fish	15"	1-Apr	30-Jun
	4 Fish	14"	1-Jul	5-Jul
	0 Fish		6-Jul	28-Sep
	4 Fish	14"	29-Sep	31-Dec
OPTION #4b	4 Fish	14"	1-Jan	31-Mar
	2 Fish	15"	1-Apr	30-Jun
	4 Fish	14"	1-Jul	31-Aug
	0 Fish		1-Sep	2-Oct
	4 Fish	14"	3-Oct	31-Dec
OPTION #5	5 Fish	14"	1-Jan	31-Mar
	1 Fish	15"	1-Apr	30-Jun
	5 Fish	14"	1-Jul	31-Aug
	0 Fish		1-Sep	28-Sep
	5 Fish	14"	29-Sep	31-Dec
OPTION #6	5 Fish	14"	1-Jan	31-Mar
	2 Fish	15"	1-Apr	30-Jun
	5 Fish	14"	1-Jul	31-Aug
	0 Fish		1-Sep	7-Oct
	5 Fish	14"	8-Oct	31-Dec
OPTION #7	6 Fish	14"	1-Jan	31-Mar
	2 Fish	15"	1-Apr	30-Jun
	6 Fish	14"	1-Jul	31-Aug
	0 Fish		1-Sep	10-Oct
	6 Fish	14"	11-Oct	31-Dec
OPTION #8a	10 Fish	14"	1-Jan	31-Mar
	0 Fish		1-Apr	16-Jun

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	3 Fish	15"	17-Jun	30-Jun
	10 Fish	14"	1-Jul	31-Aug
	0 Fish		1-Sep	28-Sep
	10 Fish	14"	29-Sep	31-Dec
OPTION #8b	10 Fish	14"	1-Jan	31-Mar
	3 Fish	15"	1-Apr	11-May
	0 Fish		12-May	30-Jun
	10 Fish	14"	1-Jul	31-Aug
	0 Fish		1-Sep	28-Sep
	10 Fish	14"	29-Sep	31-Dec
OPTION #8c	10 Fish	14"	1-Jan	31-Mar
	3 Fish	15"	1-Apr	31-May
	0 Fish		1-Jun	2-Oct
	10 Fish	14"	3-Oct	31-Dec

3. POSSIBLE TERMS OF THE AGENCY ACTION:

Delaware is required to comply with regional FMP's, approved by the ASMFC. Failure to do so may result in total closure of the tautog fishery in Delaware by order of the Secretary of Commerce.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. §903(e)(2)(a)

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

None

6. NOTICE OF PUBLIC COMMENT:

Individuals may present their opinions on this issue at a Public Hearing in the DNREC auditorium, 89 Kings Highway, Dover, DE 19901 at 7:00p.m. Wednesday, January 23, 2008. The hearing record will remain open for written or e-mail comments until 4:30 January 31, 2008.

7. PREPARED BY:

Jeff C. Tinsman (302) 739-4782, December 7, 2007

3531 Tautog; Size Limits, Creel Limits and Seasons (Formerly Tidal Finfish Reg. 22)

(Penalty Section 7 Del.C. §936(b)(2))

1.0 It shall be unlawful for any person to possess any tautog, *Tautoga onitis*, less than fourteen (14) inches in total length during the period beginning at 12:01 a.m. on July 1 and ending at 12:00 p.m. on March 31, next ensuing.

(Size limits will not change based on the twelve harvest reduction options under consideration).

2.0 It shall be unlawful for any person to possess any tautog less than fifteen (15) inches in total length during the period beginning at 12:01 a.m. on April 1 and ending at 12:00 p.m. on June 30, next ensuing.

(Size limits will not change based on the twelve harvest reduction options under consideration).

3.0 Notwithstanding the provisions of 7 Del.C. §§938, 939, it shall be unlawful for any person to possess more than three (3) tautog during the period beginning at 12:01 on April 1 and ending at 12:00 p.m. on June 30, next ensuing, at or between the place where said tautog were caught and said person's personal abode

or temporary or transient place of lodging.

(Following a public hearing, one of twelve harvest reduction options will be selected, which will reduce tautog exploitation by 25.6% based upon reduced creel limits, or an increased seasonal closure, or a combination of these measures. Options 3, 4a, 4b, 6 and 7 would reduce the creel limit during this part of the year to two (2) fish. Option 5 would reduce the creel limit during this part of the year to one (1) fish. Options 1, 2, 8a, 8b and 8c would not change the creel limit during this part of the year).

4.0 It shall be unlawful for any person to possess more than ten (10) tautog during the period beginning at 12:01 a.m. on July 1 and ending at 12:00 p.m. on March 31, next ensuing, at or between the place where said tautog were caught and said person's personal abode or temporary or transient place of lodging.

(Following a public hearing, one of twelve harvest reductions options will be selected, which will reduce tautog exploitation by 25.6% based upon reduced creel limits, or an increased seasonal closure, or a combination of these measures. Options 1, 2a, 2b, and 3 would reduce the creel limit to three (3) fish during this part of the year. Options 4a and 4b would reduce the creel limit to four (4) fish during this part of the year. Options 5 and 6 would reduce the creel limit to five (5) fish during this part of the year. Option 7 would reduce the creel limit to 6 fish during this part of the year. Options 8a, 8b and 8c would not change the creel limit during this part of the year).

5.0 Notwithstanding the provisions of subsections 1.0 and 4.0 of this regulation, it shall be unlawful for any person to possess any tautog during the period beginning at 12:01 a.m. on September 1 and ending at 12:00 p.m. on September 28, next ensuing, except in said person's personal abode or temporary or transient place of lodging.

(Following a public hearing, one of twelve harvest reduction options will be selected, which will reduce tautog exploitation by 25.6% based upon reduced creel limits, or an increased seasonal closure, or combinations of these measures. Options 1, 2b, and 4b would each close four (4) additional days to tautog harvesting. Option 6 would close nine (9) additional days to tautog harvesting. Option 7 would close twelve additional days to tautog harvesting. Option 2a would close forty-six additional days to tautog harvesting. Option 8b would close fifty (50) additional days to tautog harvesting. Option 4a would close fifty-seven (57) additional days to tautog harvesting. Option 8a would close seventy-six additional days to tautog harvesting. Option 8c would close ninety-six additional days to tautog harvesting. Options 3 and 5 would not change the existing seasonal closure.)

1 DE Reg 1771 (5/1/98)

6 DE Reg. 1360 (4/1/03)

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(e)(2)(a), (7 **Del.C.** §903(e)(2)(a))
7 DE Admin. Code 3553

PUBLIC NOTICE**START ACTION NOTICE #2007-18****1. TYPE OF ACTION:**

Amend Tidal Finfish Regulation 3553. River Herring Creel Limit

2. PURPOSE OF ACTION:

The stocks of blueback herring (*Alosa aestivalis*) and alewife (*Alosa pseudoharengus*), both commonly referred to as river herring, are currently in steep decline throughout the Atlantic coast. Concern over the status of these stocks has prompted four states to close their river herring fisheries entirely. A significant harvest by recreational fishermen has recently developed in the spawning areas where river herring concentrate (at the base of spillways and dams) and are easily exploited. Most are captured using nets and transported alive to use as live bait for striped bass. The current regulation is insufficient to protect remaining stocks of river herring from over-exploitation and is difficult to enforce. The existing regulation is a possession limit that allows for multiple trips per

day with no daily cap on landings. We are proposing to amend the current regulation from a possession limit to a daily creel (harvest) limit, and to reduce that limit from 25 river herring per person to 10 fish per person per day. This action would be consistent with the intent of the current Fisheries Management Plan for Shad and River Herring, and should protect stocks from overfishing until new requirements are adopted by the Atlantic States Marine Fisheries Commission Management Board for Shad and River Herring. River herring are currently managed under Amendment 1 to the Fisheries Management Plan and Technical Addendum #1 with the goal to protect, enhance, and restore East Coast migratory spawning stocks of shad and river herring to achieve stock restoration and maintain sustainable levels of spawning stock biomass. One of the stated objectives in the Plan is to prevent increases in fishing mortality by maintaining existing or implement more conservative regulations for hickory shad and river herring fisheries.

3. STATUTORY BASIS:

7 Delaware Code §903(e)(2)(a), and Chapter 15.

4. LIKELY AFFECTED PUBLIC:

Recreational fishermen

5. PROPOSED SCHEDULE OF ACTIVITIES:

Public hearing – January 24, 2008, 7:00 p.m. at the Univ. of DE, CMS, Lewes, DE
Effective date – March 2008

6. REVIEW COMMITTEE:

Advisory Council on Tidal Finfisheries

7. RESPONSIBLE STAFF MEMBER:

Craig A. Shirey 739-9914 (work)
739-6157 (fax)
craig.shirey@state.de.us

8. APPROVALS:

Responsible Staff Member	Date	Division Director	Date

3553 River Herring Creel Limit
(Penalty Section 7 Del.C. 936(b)(2))

Unless otherwise authorized, it shall be unlawful for any person to have in possession, except a person with a valid Delaware commercial food fishing license, more than ~~twenty-five (25)~~ ten (10) blueback herring and/or alewife (*Alosa aestivalis* and/or *Alosa pseudoharengus*), collectively known as river herring, ~~at or between the place caught and his/her personal abode or temporary or transient place of lodging;~~ or unless said person has a valid bill-of-sale or receipt for said river herring that indicates the date said river herring were received, the number of said river herring received and the name, address and signature of the commercial food fisherman who legally caught said river herring;, or a bill-of-sale or receipt from a person who is a licensed retailer and legally obtained said river herring for resale.

8 DE Reg. 1315 (03/01/05)

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 |
AND REGULATIONS TO IMPLEMENT THE PROVISIONS |
OF 26 DEL.C. CH 10 RELATING TO THE CREATION OF |
A COMPETITIVE MARKET FOR RETAIL ELECTRIC | PSC REGULATION DOCKET NO. 49
SUPPLY SERVICE (OPENED APRIL 27, 1999; |
RE-OPENED JANUARY 7, 2003; RE-OPENED AUGUST |
21, 2007 |

ORDER NO. 7326

This 4th day of December, 2007, the Commission determines and Orders the following:

1. By PSC Order No. 7252 (Aug. 21, 2007), this Commission re-opened the captioned docket¹ and directed Commission Staff to review the July 2007 statutory amendments² to 26 **Del.C.** §1014 regarding an electric utility's "net metering" obligations and report back with proposed revisions to § 8 of the Commission's *Rules for Certification and Regulation of Electric Suppliers* ("Electric Supplier Rules") relating to such obligations.³

2. By Memorandum dated November 26, 2007, Staff identified several complex provisions from the statutory amendments that require interpretation including the definition of "NEG" (likely "net excess generation"), the treatment of Renewable Energy Credits ("RECs") associated with NEG, and the payment obligations arising from a supplier's transfer of excess RECs to the Green Energy Fund, all under 26 **Del.C.** §1014(e)(1), as amended. With its Memorandum, Staff proposed certain revisions to § 8 of the Commission's *Electric Supplier Rules* to reflect its interpretation of the changes to the statutory "net metering" requirements.

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 1014(d) and 29 **Del.C.** §10115, the Commission proposes to revise the "Net Energy Metering" provisions of its *Rules for Certification and Regulation of Electric Suppliers*, originally adopted by PSC Order No. 5207 (Aug. 31, 1999) and revised by PSC Orders Nos. 7023 (Sept. 5, 2006) and 7078 (Nov. 21, 2006). A copy of the redlined version of the "Net Energy Metering" rules (*i.e.*, § 8) is appended as Exhibit "A" to this Order.

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 redlined version of § 8 of the *Rules for Certification and Regulation of Electric Suppliers* (Exhibit "A"); and the Notice of Proposed Rule-Making, attached hereto as Exhibit "B." 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 January 3, 2008. The Secretary shall include proof of such publication in the docket file before the public hearing in

1. By Order No. 7252 (Aug. 21, 2007), the Commission also opened Docket No. 07-219, *In the Matter of the Commission's Consideration of the "Net Metering" Standard Set Forth in 16 U.S.C. § 2621(d)(11) Related to the "Net Metering" of Customer-Generated Electric Supply*, but then, at Ordering ¶ 1, decided that no further proceedings in that docket were necessary.

2. See 76 Del. Laws ch. 164 §§ 1-3 (July 24, 2007), amending 26 **Del.C.** §§ 1014(d), (d)(1) & (d)(2) and adding § 1014(e) & (f).

3. The Electric Supplier Rules were originally adopted by PSC Order No. 5207 (Aug. 31, 1999) and revised by PSC Orders Nos. 7023 (Sept. 5, 2006) and 7078 (Nov. 21, 2006)).

PROPOSED REGULATIONS

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) Delaware Electric Cooperative, Inc.; (e) all certificated electric suppliers; and (f) each person or entity who has made a timely request for advance notice of regulation-making proceedings. The Secretary shall also post an electronic version of this Order on the Commission's website under an appropriate heading.

3. 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 February 6, 2008. Pursuant to 29 **Del.C.** §10117, the Commission will conduct a public hearing on the proposed revisions to § 8 of the *Rules for Certification and Regulation of Electric Suppliers* on March 25, 2008 beginning at 10:00 AM at the Commission's office at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware.

4. That, pursuant to 26 **Del.C.** §502 and 29 **Del.C.** §10116, Senior 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 §8 of the *Rules for Certification and Regulation of Electric Suppliers*. 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.

5. That William F. O'Brien, Deputy Attorney General, is designated Staff Counsel for this matter.

6. 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.

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

BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair
Joann T. Conaway, Commissioner
Jaymes B. Lester, Commissioner
Dallas Winslow, Commissioner
Jeffrey J. Clark, Commissioner

ATTEST:

Karen J. Nickerson, Secretary

NOTICE OF PROPOSED RULE-MAKING TO AMEND "NET ENERGY METERING" PROVISIONS OF ELECTRIC SUPPLIER RULES

TO: ALL RETAIL ELECTRIC SUPPLIERS IN DELAWARE, ALL DELAWARE RETAIL ELECTRIC CUSTOMERS WHO GENERATE ELECTRICITY AND OTHER INTERESTED PERSONS

Since 1999, Commission-jurisdictional electric utilities and electric suppliers have been obligated to permit residential and smaller commercial customers to use limited capacity generators (powered by renewable resources) to "net meter" their electric production and consumption. See *Rules for Certification and Regulation of Electric Suppliers* ("*Electric Supplier Rules*"), § 8.0 (adopted by PSC Orders Nos. 7023 (Sept. 5, 2006) & 7078 (Nov. 21, 2006)).

In July of 2007, the General Assembly expanded that statutory command: (a) to widen the customer classes eligible for net metering; (b) to increase permissible generator capacities for these additional classes of eligible customers; (c) to more particularly define the types of renewable generation eligible for net metering; and (d) to expand the "net metering" obligation beyond Commission-jurisdictional utilities. See 76 Del. Laws ch. 164 §§1-3 (July 24, 2007), amending 26 **Del.C.** §1014.

As a result of these statutory changes, the Commission now proposes changes to the "net metering" section of its *Electric Supplier Rules*. You can review the proposed amendments at the Commission's office in Dover at the address below (and obtain copies for \$0.25 per page) or visit the Commission's Internet website located at <http://depsec.delaware.gov>, under PSC Order No. 7326 (Dec. 4, 2007). You can also review PSC Order

No. 7326 and the proposed amendments in the January 2008 issue of the *Delaware Register of Regulations*.

The PSC now solicits comments, suggestions, compilations of data, briefs, or other written materials concerning the proposed revisions to its "net metering" rules. If you wish to file any such materials, you should submit an original and ten copies of such written documents on or before **Wednesday, February 6, 2008**. 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. 49

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.

A Commission Hearing Examiner will conduct an Evidentiary Hearing to consider the proposed amendments and to receive comment and evidence concerning it on **Tuesday, March 25, 2008** at 10:00 a.m. at the address for the Commission listed above. The Commission will make its decision to adopt, reject, or adopt with modification, the proposed "net metering" amendments on the basis of the evidence and information presented of record in this docket. The Commission is authorized to promulgate the proposed amendments under 26 **Del.C.** §§362 and 1014(d).

If you have questions about this proceeding, you can contact the Commission at 1-800-282-8574 (in Delaware only) or (302) 736-7500 (text telephone available). You can also send inquiries by Internet e-mail addressed to funmi.jegade@state.de.us. If you are disabled and need assistance to be able to participate, please contact the Commission to make arrangements for such assistance.

3006 Rules for Certification and Regulation of Electric Suppliers

(Break in Continuity of Sections)

8.0 Net Energy Metering

~~8.1 Each Electric Supplier providing Electric Supply Service to Residential, Small Commercial and Medium Commercial Customers shall offer these Retail Electric Customers the option of net energy metering if a Retail Electric Customer generates electricity at the Customer's premises, subject to all of the following requirements:~~

~~8.1.1 The Retail Electric Customer owns or operates the electric generation facility;~~

~~8.1.2 The facility uses renewable resources;~~

~~8.1.3 The facility has a capacity of not more than 25 kilowatts;~~

~~8.1.4 The facility is not used by the Retail Electric Customer to supply property other than the~~

~~Customer's premises.~~

~~8.2 Net metering is the interconnection with Distribution Facilities through a single meter that runs forward and backward in order to measure net energy flow during a billing period.~~

~~8.3 If, during any billing period, a Retail Electric Customer's facility generates more energy than that consumed by the Customer, the Electric Supplier will credit the Customer such additional power in the following billing period at least at the same price the Electric Supplier charged or would have charged the Customer under the contract.~~

~~8.4 Any requirements necessary to permit interconnected operations between the Retail Electric Customer's generating facility and the EDC, and the costs associated with such requirements, shall be dealt with in a manner consistent with a standard tariff filed with the Commission by the EDC.~~

8.1 Definitions

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

"Annualized Period" means a period of 12 consecutive monthly billing periods ending at the

PROPOSED REGULATIONS

discretion of the Customer, either December 31st or July 31st of each year or the nearest billing cycle. A Customer-generator's first Annualized Period begins on the first day of the first full monthly billing period after which the Customer-generator's facility is interconnected and is generating electricity.

"Avoided Cost of Wholesale Power" means the annual average locational marginal price ("LMP") of energy in the applicable energy supplier's transmission zone. This cost (including the method of calculation) can be obtained through the Electric Supplier's tariff as approved by the Commission.

"Customer-generator" means a residential, commercial, or industrial Customer that generates electricity on the Customer's side of the meter.

"Customer-generator Facility" means the equipment used by a Customer-generator to generate, manage, and monitor electricity. A Customer-generator facility typically includes an electric generator and/or an equipment package, as defined herein (also referred to as the "generating facility" or "generator").

"NEG" means Net Excess Generation.

"Net Metering" means a system of metering electricity in which the Electric Supplier credits a Customer-generator at the full applicable retail rate by classification for each kilowatt-hour produced by a renewable energy system installed on the Customer-generator's side of the electric revenue meter, up to the total amount of electricity used by that Customer during an Annualized Period. At the end of the Annualized Period, any remaining credits are to be credited to the Green Energy Fund at a rate equal to the Electric Supplier's Avoided Cost of Wholesale Power.

8.2 General Provisions

8.2.1 Each Electric Supplier providing Electric Supply Service to Residential and Non Residential Customers shall offer these Retail Electric Customers the option of net energy metering if a Retail Electric Customer generates electricity at the Customer's premises, subject to all of the following requirements:

8.2.1.1 The Retail Electric Customer owns or operates the electric generation facility; with a capacity that:

8.2.1.2 Will not exceed 25 kW per DP&L meter for Residential Customers;

8.2.1.3 Will not exceed 2 MW per DP&L meter for Non Residential Customers;

8.2.1.4 Is intended primarily to offset all or part of the Customer's own electricity requirements;

8.2.1.5 Uses as its primary source of fuel - solar, wind, hydro, a fuel cell powered by renewable fuels, or gas from the anaerobic digestion of organic material;

8.2.1.6 Is interconnected and operated in parallel with an Electric Supplier's transmission and distribution facilities; and

8.2.1.7 Is not used by the Retail Electric Customer to supply property other than the Customer's premises.

8.3 Net metering is the interconnection with Distribution Facilities through a single meter at the supplier's expense, that runs forward and backward in order to measure net energy flow during a billing period.

8.3.1 An additional meter or meters to monitor the flow of electricity in each direction may be installed with the consent of the net-metering Customer, at the expense of the Electric Supplier.

8.3.2 Where a larger capacity meter is required to serve the Customer, or a larger capacity meter is requested by the Customer, the Customer shall pay the Electric Supplier the difference between the larger capacity meter investment and the metering investment normally provided under the Customer's service classification. If an additional meter or meters are installed, the net energy metering calculation shall yield a result identical to that of a single meter.

8.4 If, during any billing period, a Retail Electric Customer's facility generates more energy than that consumed by the Customer, the Electric Supplier will credit the Customer in kilowatt-hours (kWh), valued at an amount per kilowatt-hour: (1) equal to the sum of delivery service charges and supply service charges for Residential Customers but does not include the monthly Customer charge; and (2) the sum of the volumetric energy (kWh) components of the delivery service charges and supply service charges for non Residential Customers for any excess production of their generating facility that exceeds the Customer's on-site consumption of kWh in a billing period.

8.4.1 Excess kWh credits shall be credited to subsequent billing periods to offset a Customer's consumption in those billing periods until all credits are used or until the end of the annualized billing period.

8.4.2 Any unused credits at the end of the 12-month period shall be forfeited to the Electric

Supplier at the Electric Supplier's Avoided Cost of Wholesale Power for use solely to augment existing funding for the Green Energy Fund.

8.4.3 Any excess kWh credits shall not reduce any fixed monthly Customer charges imposed by the Electric Supplier.

8.4.4 The Customer-generator retains ownership of Renewable Energy Credits ("REC") associated with electric energy produced and consumed by the Customer-generator. The RECs associated with NEG convey to the purchasing Electric Supplier.

8.4.5 Electric Suppliers shall provide net-metered Customers electric service at non-discriminatory rates that are identical, with respect to rate structure and monthly charges, to the rates that a Customer who is not net-metering would be charged. Electric Suppliers shall not charge a net-metering Customer any stand-by fees or similar charges.

8.4.6 If a net metering Customer terminates its service with the electric provider (or switches electric providers), the electric provider shall treat the end of service period as if it were the end of the Annualized Period for any excess kWh credits at the electric provider's Avoided Cost of Wholesale Power.

8.4.7 If the total generating capacity of all Customer-generation using net metering systems served by an electric utility exceeds 1 percent (1%) of the capacity necessary to meet the electric utility's aggregated Customer monthly peak demand for a particular calendar year, the electric utility may elect not to provide net metering services to any additional Customer-generators

8.5 Any requirements necessary to permit interconnected operations between the Retail Electric Customer's generating facility and the Electric Supplier, and the costs associated with such requirements, shall be dealt with in a manner consistent with a standard tariff filed with the Commission by the Electric Supplier. An Electric Supplier's interconnection rules shall be developed by using the Interstate Renewable Energy Council's ("IREC") Model Interconnection Rules and best practices identified by the U.S. Department of Energy.

8.6 Each Electric Supplier shall submit an annual net-metering report to the Commission 90 days after the annualized billing period. The report shall include the following information from the prior compliance year:

8.6.1 The total number of Customer-generator facilities;

8.6.2 The total estimated rated generating capacity of its net-metered Customer-generators;

8.6.3 The total estimated net kilowatt-hours received from Customer-generators; and

8.6.4 The total estimated amount of energy produced by Customer-generators, using a methodology approved by the Commission.

8.7 The Commission shall periodically review the impact of net-metering rules in this section and recommend changes or adjustments necessary for the economic health of utilities.

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:

[The Creation of a Competitive Market for Retail Electric Supply Service](#)

PROPOSED REGULATIONS

PUBLIC SERVICE COMMISSION

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

PUBLIC NOTICE

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

ORDER NO. 7318

This 4th day of December, 2007, the Commission determines and Orders the following:

1. In Order No. 7263 (Aug. 21, 2007), the Commission opened this docket to consider promulgating rules that will govern Delmarva Power & Light Company's ("DP&L") development of integrated resource plans, or IRPs, for its Standard Offer Service ("SOS") customers, as authorized by the Electric Utility Retail Customer Supply Act of 2006 ("the Act").⁴ Pursuant to that Order, the Commission Staff drafted proposed IRP rules after consulting with the parties in DP&L's ongoing IRP docket (PSC Dckt. No. 07-20) and with the three state agencies involved in DP&L's IRP process.⁵ On November 14, 2007, Staff submitted a set of proposed rules entitled "Integrated Resource Planning Regulation."

2. By this Order, the Commission accepts Staff's draft rules and initiates the formal rule-making procedure dictated by the Administrative Procedures Act.⁶

Now, therefore, **IT IS ORDERED:**

1. That, for the reasons set forth in the body of this Order, and pursuant to 26 Del.C. §1007(c)(1)c and 29 Del.C. §10115, the Commission promulgates a proposed Integrated Resource Planning Regulation, a copy of which is appended as Exhibit "A" to this Order.

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 and a copy of the "Integrated Resource Planning Regulation" now being proposed for adoption (Exhibit "A").

3. That, in addition, the Secretary shall transmit the Notice of Proposed Rule-Making, attached as Exhibit "B," to the Registrar of Regulations for publication in the *Delaware Register of Regulations*. The Secretary also shall cause such Notice of Proposed Rule-Making to be published in *The News Journal* and the *Delaware State News* newspapers on December 19, 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 the service list already established in this docket and 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 February 1, 2008. Pursuant to 29 Del.C. §10117, the Commission will conduct a public hearing on the proposed "Integrated Resource Planning Regulation" on Wednesday, March 12, 2008 beginning at 10:00 AM at the Commission's office at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware.

4. See 26 Del.C. § 1007(c)(1)c. (as amended by 75 Del. Laws ch. 242 §6 (2006)).

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

6. See 29 Del.C. § 10111, et seq.

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

BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair
Joann T. Conaway, Commissioner
Jaymes B. Lester, Commissioner
Dallas Winslow, Commissioner
Jeffrey J. Clark, Commissioner

ATTEST:

Karen J. Nickerson, Secretary

NOTICE OF PROPOSED RULE-MAKING TO ADOPT AN "INTEGRATED RESOURCE PLANNING REGULATION"

**TO: ALL STANDARD OFFER SERVICE RETAIL CUSTOMERS OF DELMARVA POWER & LIGHT COMPANY
AND OTHER INTERESTED PERSONS**

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

The Commission now proposes an "Integrated Resource Planning Regulation" to govern DP&L's IRP process pursuant to the Act. You can review the proposed regulation at the Commission's office in Dover at the address below or at the Commission's Internet website located at <http://depssc.delaware.gov>, under PSC Order No. 7318. If you wish to submit comments on the proposed regulation, you must file such comments with the Commission on or before **Tuesday, February 1, 2008**.

A Commission Hearing Examiner will conduct an Evidentiary Hearing to consider the proposed regulation and to receive comment and evidence concerning it on **Wednesday, March 12, 2008** at 10:00 a.m. at the address for the Commission listed below. The Commission will make its decision to adopt, reject, or adopt with modification, the proposed IRP regulation on the basis of the evidence and information presented of record in this docket. The Commission is authorized to make rules to accomplish the development of IRPs by DP&L under 26 **Del.C.** §1007(c)(1)c.

You should file written comments with the Commission at the following address:

Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, Delaware 19904
Attn: PSC Reg. Dckt. No. 60

If you have questions about this proceeding, you can contact the Commission at 1-800-282-8574 (in Delaware only) or (302) 736-7500 (text telephone available). You can also send inquiries by Internet e-mail addressed to pamela.knotts@state.de.us. If you are disabled and need assistance to be able to participate, please contact the Commission to make arrangements for such assistance.

3009 Integrated Resource Planning for the Provision of Standard Offer Service by Delmarva Power & Light Company

1.0 General

1.1 The Reliability of electric service and the security of energy supply are of great importance to the Delaware Public Service Commission ("Commission"), because they are essential services to the citizens of Delaware. This regulation, in support of 26 Del.C. §1007, sets forth the minimum Delmarva Power and Light ("DP&L" or "Company") Integrated Resource Plan ("IRP" or "the Plan") requirements needed to ensure a cost effective, price stable, reliable, efficient and environmentally sound energy supply for all Standard Offer Service ("SOS") customers.

1.2 Nothing in this regulation relieves DP&L from compliance with any requirement set forth under any other regulation, statute, or order. Compliance with this regulation meets the minimum IRP requirements. Compliance with this regulation does not imply plan approval or automatic cost recovery.

1.3 In accord with 26 Del.C. §1007, DP&L, as the Standard Offer Service Supplier, shall file an IRP on December 1st, 2006 and on the anniversary date of the first filing date every other year thereafter (i.e. 2008, 2010 et seq.). The Company may request and the Commission may change the filing date for good cause shown. These regulations will apply to all IRPs filed pursuant to 26 Del.C. §1007. These regulations shall not apply to an IRP docket opened prior to the effective date of these regulations.

1.4 The IRP will be filed in compliance with normal Commission policies and practices.

1.5 The plan shall identify the year of the filing, the individuals responsible for its preparation and those individuals who shall be available to respond to inquires during the Commission's review of the plan.

1.6 Because an IRP may contain business sensitive information, the Company may request that information, required under this regulation, be classified as confidential, proprietary and/or privileged material. The Company must attest that such information is not subject to inspection by the public or other parties without execution of an appropriate proprietary agreement. In requesting such treatment of information the Company is also obligated to file an additional copy of the information, excluding the confidential or proprietary information. The Commission, in accordance with Rule 11, Rules of Practice and Procedure of the Delaware Public Service Commission, effective May 10, 1999, will treat such information as "confidential, not for public release" upon receipt of a properly filed request. Any dispute over the confidential treatment of information shall be resolved by the Commission, designated Presiding Officer or Hearing Examiner. Confidential utility documents shall be presented under separate seal.

1.7 Commission Acknowledgement of a filed IRP implies only that the plan, as put forth, does not appear to be unreasonable to the Commission at the time the acknowledgement is given. The acknowledgement of an IRP does not confer or imply Commission approval. Any specific ratemaking treatment for the plan or any portions thereof is neither directly nor indirectly guaranteed by virtue of the acknowledgement.

1.8 The utility shall provide whatever detail and commentary are necessary to demonstrate that it has met or exceeded the planning requirements as set forth in this regulation. An effort shall be made to ensure that the IRP is clearly stated and can be readily comprehended by the Commission, State Agencies, and other interested parties. The IRP must include an Executive Summary.

1.9 Compliance with this regulation is a minimum standard for IRPs. The Company needs to exercise its professional judgment based on its systems and customer needs. The Company shall include all information that assists the reader to fully understand the IRP concept and the Company's plans to meet SOS energy needs.

1.10 This regulation requires the maintenance and retention of supply resource planning data and the reporting of plan achievements on an annual basis starting in 2009 to the Commission, Governor and General Assembly. The Company shall retain such data, consistent with Federal data retention guidelines and make it available for further review as necessary.

1.11 The Company shall submit a total of 14 copies of its IRP - eight (8) copies to the Commission, two (2) copies to the Controller General's office, two (2) copies to the Office of Management and Budget, and two (2) copies to the Energy Office. The Commission may request up to six (6) additional copies of combined and common filings as may be necessary for review.

1.12 These Integrated Resource Planning Regulations shall be effective for IRP dockets opened after the effective date of these regulations through December 1, 2014 and may be reviewed, revised, or extended as necessary to ensure continued compliance with 26 Del.C. §1007 and to ensure adequate SOS energy supply.

1.13. Failure of the Company to file an IRP or to provide progress reports as required may subject the Company to the penalty and remedial provisions of Delaware statute (26 Del.C. §1019).

2.0 Definitions

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

“Brownfield” or **“Industrial site”** means a site that has been previously used for industry and may be contaminated, or need environmental remediation for continued use or redevelopment.

“Commission” means the Delaware Public Service Commission.

“Commission Acknowledgement” means that the IRP as put forth does not appear to be unreasonable.

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

“Demand-Side Management (“DSM”)” means cost effective energy efficiency programs that are designed to reduce customers’ electricity consumption, especially during peak periods.¹

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

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

“Environmental Benefit” means the positive environmental impact of environmental services, practices or other ecological influences attained by specific actions, minus the negative environmental impacts caused by those actions as determined by DNREC.

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

“Generation Attributes” means non-price characteristics of the electrical energy output of a Generation Unit including, but not limited to, the Units fuel type, geographical location, emissions, vintage and RPS eligibility.

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

“Integrated Resource Plan (IRP)” means the planning process of an Electric Distribution Company that systematically evaluates all available options, including but not limited to: generation, Supply Contracts, transmission and Demand-Side Management programs, during the planning period to ensure that the electric distribution Company acquires sufficient and reliable resources over time that meet their customers’ needs at a minimal cost.²

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

“Load Forecast” means the estimated future annual electricity use, commonly measured as peak summer and winter demands, and used to help electric utilities make resource allocation decisions.

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

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

“Portfolio” or **“Resource Portfolio”** means the combination of physical assets (e.g. electric generating and transmission assets), financial products (e.g. Supply Contracts for energy and related services), market resources (e.g. spot market energy purchases), DSM and energy efficiency programs, and distributed and renewable resources that the Electric Distribution Company uses to satisfy current and future energy procurement requirements for SOS customers, while managing the risk of adverse price changes to SOS customers.

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

1. 26 Del.C. §1001 (5)

2. 26 Del.C. §1001,(13)

IRP objectives.

"Price Stability" means the variation in the real price paid by SOS customers over the planning period.

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

"Adequacy" is the ability of the electric system to supply the aggregate electrical demand and energy requirements of customers at all times, taking into account scheduled and reasonably expected unscheduled outages of system elements.

"Security" is the ability of the electric system to withstand sudden disturbances such as electric short circuits or unanticipated loss of system elements.³

As applied to distribution facilities, Reliability is further described as the degree to which safe, proper and adequate electric service is supplied to customers without interruption.

"Resource Portfolio" see **"Portfolio"**

"Retail Competition" means the right of a customer to purchase electricity from an Electric Supplier.

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

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

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

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

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

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

3.0 General Requirements

3.1 Consistent with the requirements of 26 Del.C. §1007 and these regulations, the Company shall file an IRP every two years, starting on December 1 of the first even-numbered year after the effective date of these regulations, that adheres to the following general principals:

3.1.1 The IRP shall provide a framework for comparing a comprehensive resource mix of supply- and demand-side and Transmission Service resource costs and attributes.

3.1.2 The IRP shall utilize a Resource Portfolio in achieving the objectives of the IRP, shall incorporate a Portfolio approach to securing resources and incorporating an analysis of risk versus certainty into the planning process, or absent such a Portfolio approach, the rationale supporting the exclusion.

3.1.3 The IRP process shall provide for regulatory, stakeholder and public input to the formulation of the IRP.

3.1.4 The IRP shall include provisions for the IRP to be modified from time to time, as may be necessary to conform with any subsequent legislative or regulatory directives.

3.2 The IRP shall include the following minimum requirements:

3.2.1 An executive summary with a short description of the utility, its customers, service territory, current facilities and planning objectives, Load Forecast, recommended Resource Portfolio and action plan.

3.2.2 Established Plan Objectives in quantitative and qualitative terms by which the plan achievements may be measure and shall not be biased against any particular resource option. Measures must be ascribed to each objective. The Company must include a summary of the overall process, and models used in

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

developing the IRP.

3.2.3 A description of the demand and energy forecast, the assumptions used or implicit in creating the forecast, the range of forecast examined, and the forecast selected for the filing period.

3.2.4 A listing of all the resource options considered to meet the demand and energy forecast, identification of those chosen for further evaluation and possible inclusion in the plan, and a discussion of the rationale for such selections including any key assumptions. This planning information shall include a full 10-year planning horizon, starting with the year immediately following the filing year (i.e. filing year of 2010 shall include planning information for years 2011 through 2020).

3.2.5 A description of the process or Scenario Analysis used to integrate the demand and supply options into a single resource plan or individual scenario for further review and analysis, to include a listing of the various scenarios considered and any key assumptions.

3.2.6 A description of the process used to develop the recommended IRP, including the assumptions and analysis leading up to the decision and the application of the valuation criteria as specified in 26 Del.C. §1007 (c)(1)a. and b.

3.2.7 An analysis of the risk and sensitivity of the recommended IRP in comparison to other options also considered.

3.2.8 Planning information for a 10 year planning horizon, starting with the year immediately following the filing year (i.e. filing year of 2010 shall include planning information for years 2011 through 2020).

3.2.9 Action plans for implementation of the IRP, for no less than five (5) years, starting with the year immediately following the filing year.

4.0 Load Forecast

4.1 The Company shall consider a range of load growth forecasts that includes both historical data and future estimates. Load forecasts shall include both winter and summer peak demand for total Delmarva Delaware load and Delmarva Delaware SOS load by customer class, assuming a status quo for any programs which may impact forecast load estimates. Load estimates shall be weather adjusted, including consideration of climate change potential. Load Forecast shall include the following:

4.1.1 Five (5) year historical loads, current year-end estimate and ten (10) year forecast showing individually and aggregated Delmarva Delaware and Delmarva Delaware SOS load, and both Delmarva Delaware and Delmarva Delaware SOS load disaggregated by customer classes, including both capacity (kW) and energy requirements (kWh).

4.1.2 Analyses of how existing and forecast Conservation, load management, various economic and demographic factors, including the prices of electricity and alternative energy sources, will affect the consumption of electric services, and how customer choice under Retail Competition of utility service may affect future loads.

4.1.3 Description of the process the company used to develop these forecasts. Forecasts shall include the probability of occurrence. Within the forecasting modeling descriptions the Company shall demonstrate how well its model predicted past load data for the prior five (5) years.

5.0 Resource Options

5.1 The Company shall include a description of the overall process and the analytical techniques it used to identify its proposed resource options. The Company shall not rely exclusively on any particular resource or purchase procurement process.

5.2 The Company shall identify and evaluate all reasonable Supply Contracts, both short- and long-term procurement or demand side management strategies, even if a particular strategy is ultimately not recommended by the Company. The IRP must show an investigation of all reasonable opportunities for a more diverse supply at the lowest reasonable cost. It shall contain a description of each option and an evaluation that considers the economic and environmental value of the following:

5.2.1 Resources that utilize New or Innovative Baseload Technologies:

5.2.2 Resources that provide short or long term Environmental Benefits to the citizens of this

State:

5.2.3 Facilities that have existing fuel and transmission infrastructure

5.2.4 Facilities that utilize existing brownfield or industrial sites:

5.2.5 Resources that promote Fuel Diversity:

PROPOSED REGULATIONS

5.2.6 Resources or facilities that support or improve Reliability; or

5.2.7 Resources that encourage Price Stability

5.3 The Company shall provide a description of the resource options recommended for inclusion in the proposed plan, including a description of the mechanism or process used for valuing each option. Such valuation shall also include consideration for the life expectancy of the resource, if the resource provides capacity and/or energy, any improvements to system Reliability, the dispatchability of the source, any lead time requirements, the flexibility of the resource, the Generation Attributes of the resource, the efficiency of the resource, and the opportunities for customers' participation. The valuation shall assess the probability of securing the resource options according to modeling information used, including any key assumptions. The Company shall provide the estimated energy and demand impacts for each resource option and the rationale behind the estimate.

5.4 Where Transmission Service is identified as a planning option, the Company shall describe the transmission enhancement, the location, and provide PJM's assessment of the impact of the proposed transmission asset.

5.5 At least 30 percent of the resource mix shall be acquired through the regional Wholesale Electricity Market via a bid procurement or auction process held by DP&L. (Docket No. 04-391)

5.6 The Company shall also include discussion of known plans to reduce existing physical, contractual or service related Portfolio resources during the IRP planning period.

5.7 The Company shall evaluate all demand-side, technically feasible, and cost effective improvements in the efficient use of electricity, including load management, Conservation, and energy efficiency programs. Where non-Company evaluations are available, the Company shall summarize the results and actions taken. Where demand-side programs are new, the Company shall summarize the anticipated benefits with respect to load reductions and provide supporting material to justify the new program.

5.8 The Company shall assess the resource options against the set of Plan Objectives and criteria.

6.0 Plan Development

6.1 The Company shall conduct an Integrated Resource Evaluation in formulating its potential plans for supply and demand-side resource scenarios. The Company shall describe the mechanism or process by which the Load Forecast and resource options have been blended into the various IRP scenarios. In integrating its supply and demand-side resources, the Company shall:

6.1.1 The IRP shall provide a discussion of how the Company might alter the recommended plan in the future if the key planning assumptions used to develop the recommended plan in the future if the key planning assumptions used to develop the recommended plan turn out to be different than what was assumed in preparing the recommended plan.

6.1.2 Evaluate the cost-effectiveness of the resource options from the perspectives of the utility and the different classes of ratepayers.

6.1.3 Estimate a range of external costs which may be intangible, in order to show how explicit consideration of them might affect selection of resource options. The utility shall attempt to quantify the magnitude of the externalities, for example, in terms of the amount of emissions released and dollar estimates of the costs of such externalities.

6.1.4 Evaluate the financial, competitive, Reliability, and operational risks associated with the resource options recommended by the IRP and how these risks may be mitigated over the 10 year planning period. Each candidate plan shall include a discussion of the likelihood of the occurrence of such risks.

6.1.5 For the options included in the proposed plan identified in the IRP, the IRP shall include an analysis of the fuel risk associated with the proposed Resource Portfolio and how such fuel risk will be mitigated when the proposed plan is implemented.

6.1.6 Perform sensitivity analyses on each of the candidate plans to include variations in key assumptions and to assess the likelihood of planned outcomes.

In developing candidate plans, special attention shall be given to ensuring consistency between the IRP and typical rate making processes. While the ultimate consumer price associated with the plan is important, the stability of rates and other factors as described in Section 5.2 need to be considered in any candidate plan selection.

7.0 Proposed Plan Selection.

7.1 The Company shall select and file the candidate IRP which it believes is the most consistent with the criteria set forth in 26 Del.C. §1007. The Company shall describe the rationale behind its selection, including

any modeling or methodology used as the basis for selection of the proposed plan.

7.2 In filing the preferred IRP, the Company shall provide at a minimum a five (5) year forecast of supply rates by customer class that would be anticipated based on the IRP planning assumptions and recommended procurement strategy.

8.0 Implementation Plan

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

8.1.1 Actions to be taken in the first two (2) years and outline actions anticipated in the last three (3) years.

8.1.2 For IRP's filed on or after December 1, 2010, a status report of the specific actions contained in the previous action plan, including what risk assumptions were made and what actually occurred.

8.1.3 Schedule of key activities related to the plan implementation.

9.0 Review and Comment

9.1 As part of the process commencing in 2009 and continuing on an annual basis, the Company shall submit a report to the Commission, the Governor and the General Assembly detailing their progress in implementing their IRPs.

9.2 The Commission, interested State Agencies, interested parties and the general public shall be provided an opportunity for review and comment on the Company's IRP filings.

9.3 Subsequent to the IRP filing and public comment, the Commission and interested State Agencies may acknowledge the filing of the Company's IRP and its compliance with these regulations. Acknowledgement that the IRP complies with the statute, these rules and does not appear to be unreasonable, will not guarantee a particular ratemaking treatment of future resource acquisitions. To the extent that the Commission determines that the IRP is not compliant with the statute or is unlikely to meet the goals of the statute, the Company shall revise its IRP to meet these requirements. Rate treatment will be addressed in rate or other proceedings as filed by the utility or as initiated by the Commission.

9.4 The Integrated Resource Plan may be used as a factor in rate cases to evaluate the performance of the utility. Reports provided under this regulation are subject to annual review and audit by the Commission and interested State Agencies. The Company must maintain sufficient records to permit a review and confirmation of material contained in all required reports.

DEPARTMENT OF TRANSPORTATION DIVISION OF MOTOR VEHICLES

Statutory Authority: 21 Delaware Code Section 302, 2715(a), 3103(a), and Chapters 27 and 31
2 DE Admin. Code 2220

PUBLIC NOTICE

2220 Determining Non-U.S. Citizen Driver License and Identification Card Expiration Dates

As authorized under 21 **Delaware Code** Sections 302, 2715(a), 3103(a), and Chapters 27 and 31, the Division of Motor Vehicles of the Delaware Department of Transportation (DelDOT), is seeking to adopt regulations for determining the expiration dates of non-U.S. citizen drivers' licenses and identification cards, as detailed in this publication.

The Department will take written comments on the draft regulations from January 1, 2008 through January 31, 2008.

Questions or comments regarding this document should be directed to:

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2220 Determining Non-U.S. Citizen Driver License and Identification Card Expiration Dates

1.0 Authority

The authority to promulgate this regulation is 21 Del.C. Section 302, 21 Del.C. Section 2715(a), 21 Del.C. Section 3103(a) and Chapters 27 and 31 of Title 21.

2.0 Purpose

This regulation establishes procedures used to implement 21 Del.C. Section 2715(a) and Section 3103(a) that mandate the expiration date on driver license and identification cards issued to temporary foreign nationals be limited to the period of time they are authorized to be in the United States. This will ensure that State identification documents will not be valid if persons have overstayed their authorized visit to this country. Permanent resident foreign nationals may be issued a full 5-year driver license or 4-year identification card. Furthermore, this regulation designates, by immigration status, those non-immigrants who are eligible for a Delaware-issued driver license or identification document.

3.0 Applicability

This regulation establishes and clarifies procedures used to determine driver license and identification card expiration dates for immigrant and non-immigrant applicants and specifies, by immigrant status codes, those non-immigrants who are eligible for these State-issued documents.

4.0 Substance of Regulation

4.1 Definitions

4.1.1 Permanent resident foreign national: A lawful immigrant having permanent resident status and Department of Homeland Security (DHS) or Immigration Naturalization Service issued immigration documents confirming his/her permanent immigration status.

4.1.2 Temporary foreign national: A lawful non-immigrant alien possessing unexpired passport with visa (if required) or Department of Homeland Security or Immigration and Naturalization Service (INS) document whose non-immigrant status, date of arrival in the United States and authorized length of stay in this country can be verified through a DHS database.

4.1.3 Lawful status: A person in lawful status is a citizen or national of the United States; is an alien lawfully admitted for permanent or temporary residence in the United States; has conditional permanent resident status in the United States; has an approved application for asylum in the United States or has entered into the United States in a refugee status; has a valid non-immigrant status in the United States; has a pending application for asylum in the United States; has a pending or approved application for temporary protected status (TPS) in the United States; has approved deferred action status; or has a pending application for lawful permanent resident or conditional permanent resident status.

4.1.4 SAVE: SAVE refers to the Department of Homeland Security's Systematic Alien Verification for Entitlements system or any such successor or alternative verification system authorized by the Secretary of the DHS.

4.1.5 United States Citizen: A person who has the following documents will be considered a U.S. citizen: a valid unexpired United States passport; certified copy of a birth certificate issued by a U.S. State or local office of Public Health, Vital Records, Vital Statistics or equivalent office; Consular Report of Birth Abroad issued by the DOS, Form FS-240, DS-1350 or FS-5454; Certificate of naturalization issued by DHS, Form N-550 or Form N-570; or Certificate of Citizenship, Form N-560 or Form N-561 or other documents designated by the DHS to confirm citizenship status.

4.2 Basic Immigration Terms and Concepts

4.2.1 Visa

4.2.1.1 Citizens of foreign countries (aliens) generally need visas to enter the United States. A visa is permission to apply to enter the United States. It is a document which is affixed to a page in the passport. The Department of State embassies and consulates abroad issue visas to foreign nationals. A visa does not permit entry to the United States. It simply indicates the application has been reviewed by a United States consular officer and that the officer determined this person is eligible to travel to a United States port-of-entry for a specific purpose. The immigration officer at the port-of-entry decides whether to allow aliens to enter and how long they may stay in this country.

4.2.1.2 Most Canadian citizens and many citizens from Visa Waiver Program countries may come to the United States without a visa if they meet certain requirements. As of October 26, 2004, visa waiver travelers from all 27 Visa Waiver Program countries must present either a machine-readable passport issued by their home country or have a visa.

4.2.1.3 There are two categories of United States visas: immigrant and non-immigrant.

4.2.1.3.1 *Immigrant visas* are for people who intend to live permanently in the United States

4.2.1.3.2 *Non-immigrant visas* are for people with permanent residence outside the United States but who wish to be in the United States on a temporary basis, for tourism, medical treatment, business, temporary work, study, etc.

4.2.2 Visa Issue and Visa Expiration Dates

4.2.2.1 The visa issue date and expiration date are shown on the visa. Depending on the alien's nationality, visas may be issued for any number of entries, from as little as one entry to multiple (unlimited) entries, for the same purpose of travel. The visa remains valid from the date it is issued until the date it expires, or travel for the same purpose, when the visa is issued for multiple entries. For example, tourists with a multiple entry visa can travel to the United States many times without having to apply for a visa before each entry.

4.2.2.2 If an alien overstays the end date of his/her authorized stay, then this action will automatically void or cancel his/her visa. However, if the alien has filed an application in a timely manner for extension of stay or a change in status and that application is pending and not frivolous, and if he/she did not engage in unauthorized employment, then this normally does not automatically cancel his/her visa.

4.2.3 Visa Expiration Date as Opposed to the Authorized Length of Stay

The expiration date for the visa should not be confused with the authorized length of stay in the United States. The United States immigration inspector at port-of-entry determines the length of stay and records this information on the Arrival-Departure Record, Form I-94 or I-94W for the Visa Waiver Program. The visa expiration date has nothing to do with the authorized length of stay in the United States for any given visit.

4.2.4 Authorized Length of Stay

The United States immigration inspector may enter a date or "D/S" (duration of status) on the alien's I-94. In most cases, a specific date will be shown on the I-94 which means the alien must leave this country by that date. Some students, exchange program participants, and certain temporary workers (e.g., foreign diplomats) will be admitted for "duration of status." They may remain in the United States as long as they continue their courses of study or remain in the exchange program or qualifying employment.

4.3 Delaware Driver License and Identification Card Expiration Dates

4.3.1 Permanent resident foreign nationals may be issued a Delaware driver license that expires five (5) years after issuance or a Delaware identification card that expires four (4) years after issuance as long as the applicant has lawful status in the United States throughout the period the driver license or identification card is valid. A Permanent Resident Card, Form I-551, must be renewed every 10 years and those with conditional resident status must apply for renewal every two (2) years. The Division will limit the expiration date on driver license and identification cards to ensure the State-issued documents expire on or before the date the permanent resident card or conditional resident status card expires to ensure the applicant retains his/her legal status in this country.

4.3.2 A temporary foreign national's driver license or identification card will expire on the last day the immigrant is authorized to stay in the United States or the date determined by Delaware statute (21 Del.C. Section 2715 or Section 3103), whichever date is more restrictive. If the supporting immigration documents and/or USCIS databases do not designate an authorized length of stay in the United States or the authorized length of stay is annotated "duration of status," the Delaware driver license or identification card expiration date will be one year from the date of document issuance.

4.3.3 The Delaware driver license or identification card expiration date may not exceed the date the applicant's legal status in this country expires.

4.4 Fees

4.4.1 All driver license and identification card applicants will pay the standard fees in effect at the time of application (in accordance with 21 Del.C. Sections 2715 and Section 3103) which are currently \$25 for a 5-year license and \$20 for a 4-year identification card) even though the expiration dates may be limited based upon immigration status.

4.4.2 Should a non-citizen's lawful status or immigration document expiration date be extended, the driver license or identification card will be reissued, for no additional fee, to reflect the new authorized length of stay in this country. Adjust the State-issued document's expiration date to match the authorized length of stay in this country, not to exceed the expiration date established by statute in accordance with 21 Del.C. Section 2715 or Section 3103.

4.4.3 A non-citizen applicant may opt to renew his/her driver license for a full five (5) years or identification card for a full four (4) years in lieu of extending the expiration dates of his/her originally issued documents provided he/she pays the appropriate document fee. The new expiration date will be based upon current statute provided the immigrant's authorized length of stay in the country is not exceeded.

4.5 DHS and INS Immigration documents

4.5.1 Since every alien over the age of 18 is required to carry his/her immigration documents at all times, Division staff will confirm the immigration status of all non-United States citizens upon initial issuance, renewal and re-issuance of all driver licenses and identification cards. All non-United States citizen driver license and identification card applicants must present the appropriate Immigration and Naturalization Service (INS), United States Citizenship and Immigration Services (USCIS), or other U.S. governmental documents which indicate their current immigration status or application status. The document presented must be valid and not expired. Non-United States citizens must prove his/her legal presence in this country before Delaware will issue a driver license, learner's permit, transfer an out-of-state driver license, or issue an identification card.

4.5.2 The following list of commonly used immigration documents may be used to determine an alien's immigration status and authorized length of stay in the United States. A complete list of immigration documents will be updated and circulated to the staff under separate memorandums.

4.5.2.1 Non-immigrant visa. Arrival-Departure Record, Form I-94 (white card) with unexpired passport and visa or I-94W (green card) for the Visa Waiver Program and unexpired foreign passport. The I-94 functions vary to authorize travel, residency, employment or education opportunities within the United States. This document must be accompanied by supporting documentation in accordance with the status descriptions established by the Department of Homeland Security. If the non-immigrant's authorized length of stay is not annotated on the I-94, verify document with a USCIS office or its database.

4.5.2.2 Students. Foreign students having non-immigrant F-1/F-2, or M-1 visa classification should have an I-20 Certificate of Eligibility for Non-immigrant Student Status form along with their unexpired foreign passport and I-94 card. J-1/J-2- visa holders must present a valid DS-201 or IAP-66.

4.5.2.3 Refugee, asylee and parolee classifications must be accompanied by additional documentation and I-94 stating their immigration status.

4.5.2.4 Permanent Residents. Permanent resident foreign nationals have a Permanent Resident Card (I-551) with a machine-readable immigrant visa with the unexpired foreign passport.

4.5.2.5 I-94 stamped with "processed for I-551."

4.5.2.6 Attached unexpired temporary I-551 visa.

4.5.2.7 Valid I-551 Resident Alien or Permanent Resident card. Border Crosser cards and USA B-1/B-2 visa BCC cards are not acceptable.

4.5.2.8 Valid I-766, I-688A, I-688B photo Employment Authorization card or I-688 photo Temporary Resident card.

4.5.3 United States citizens must present one of the following documents to prove citizenship: a valid unexpired United States passport; certified copy of a birth certificate issued by a United States, State or local office of Public Health, Vital Records, Vital Statistics or equivalent office; Consular Report of Birth Abroad issued by Department of State, Form FS-240, DS-1350 or FS-5454; Certificate of naturalization issued by DHS, Form N-550 or Form N-570; or Certificate of Citizenship, Form N-560 or Form N-561, or other documents designated by DHS to confirm citizenship status. Once verified, citizens do not have to reconfirm their citizenship status when renewing or being re-issued a driver's license or identification card document. Except for birth certificates issued by the State.

all other documents can be electronically verified through SAVE.

4.6 Electronically Verify Immigration Document Data

4.6.1 The Department of Homeland Security Systematic Alien Verification or Entitlements System (SAVE), if available, or any such successor or alternative verification system will be used by Division staff to verify an immigrant or non-immigrant legal status, name, date of birth, arrival date and authorized length of stay in this country. Federal government documents used to establish citizenship can also be verified using SAVE

4.6.2 Should a discrepancy exist between the data in SAVE and immigration documents provided by the driver license or identification card applicant, the applicant will be denied a State-issued document and referred to the United States Citizenship and Immigration Service (USCIS) office to rectify the discrepancy.

4.7 Duration of Status (D/S) Procedures

Students, exchange program participants, and certain temporary workers (e.g., foreign diplomats) may be admitted for "duration of status." The State-issued identification document will expire on the date the education, exchange, or worker program terminates or on the date established by 21 Del.C. Section 2715 or Section 3103, whichever is more stringent. If the applicant is unable to provide a firm date when the program ends, the driver license's or identification card's expiration date will be one (1) year from the date of the application and renewable as long as the applicant provides documentation showing he/she is still enrolled in the program. Note: Foreign diplomat driver licenses are issued by the U.S. Department of State and not by the State of Delaware.

4.8 Ineligible Immigration Statuses. Those applicants who are legally in the United States under the following immigration status or holding invalid or expired documents are not eligible for a Delaware-issued driver license or identification card, even if they have established residency in this State:

4.8.1 Those with invalid or expired immigration or passport documents.

4.8.2 Those I-94 holders without a valid INS or USCIS stamp.

4.8.3 Immigration status A-1. Ambassador, public minister, career diplomatic or consular officer and dependents are ineligible, because an "A" status may only be issued a driver's license from the United States State Department.

4.8.4 Immigration status A-2 for other foreign government officials or employees and dependents unless they are foreign military official and/or their dependents. Foreign military members and their dependents must provide a valid passport, I-94, visa, or assignment orders to be eligible.

4.8.5 Immigration status B-1. Visitor for business.

4.8.6 Immigration status B-2. Visitor for pleasure (tourist.)

4.8.7 Immigration status C-1. Alien in transit through the United States.

4.8.8 Immigration status C-2. Alien in transit to United Nations Headquarters district. Travel limited to 25 miles radius of Columbus Circle in New York.

4.8.9 Immigration status C-3. Foreign government official coming to the United Nations, dependents, attendants, servants, or other personal employees of official in transit through United States.

4.8.10 Immigration status D-1. Alien crew members.

4.8.11 Immigration status G-1. Resident representative of a foreign government to an international organization, plus staff and dependents.

4.8.12 Immigration status WB. Visitor for business (visa waiver program.)

4.8.13 Immigration status WT. Visitor for pleasure (tourist in visa waiver (program.)

4.9 Amending this Regulation. The Division of Motor Vehicles is authorized to publish memorandums to the staff identifying specific immigration documents and forms currently being used by the United States Citizenship and Immigration Services (USICS) regulate immigration procedures and to establish procedures for managing new USCIS programs without revising this regulation. Changes to the ineligibility status list in Section 4.8 must be made by amending this regulation.

5.0 Severability

If any part of this rule is held to be unconstitutional or otherwise contrary to law by a court of competent jurisdiction, said portions shall be severed and the remaining portions of this rule shall remain in full force and effect under Delaware law.

6.0 Effective Date

The following regulation shall be effective 10 days from the date the order is signed, and it is published in final form in the Register of Regulations in accordance with 29 Del.C. Section 10118(e).

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(b)(11) (14 Del.C. §122(b)(11))
14 DE Admin. Code 735

REGULATORY IMPLEMENTING ORDER

735 Standardized Financial Reporting

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 **DE Admin. Code** by adding a new regulation 735 Standardized Financial Reporting. This regulation is required because of the passage of House Bill 21 from the 144th General Assembly. This regulation requires all school districts and charter schools to post the summary of their financial documentation on their respective website. The format of the documentation is prescribed by the Department.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on Thursday, November 8, 2007, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Children and the State Council for Persons with Disabilities. The State Council of Persons with Disabilities suggested an amendment to include a provision the financial reports be made available in writing upon request. Because these documents are public and subject to FOIA, the Department respectfully did not make the suggested amendment.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** by adding a new regulation 735 Standardized Financial Reporting because of the change to 14 **Del.C.** §122(11) resulting from House Bill 21 from the 144th General Assembly.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 735 Standardized Financial Reporting. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 735 Standardized Financial Reporting attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 735 Standardized Financial Reporting 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** 735 Standardized Financial Reporting amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 735 Standardized Financial Reporting 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 December 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 the 14th day of December 2007.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

735 Standardized Financial Reporting**1.0 Purpose**

The purpose of this regulation is to outline the criteria and process for the required standardized financial reporting pursuant to 14 **Del.C.** §122 (b)(11).

2.0 Definitions

"**Charter School**" shall mean a charter school board established pursuant to Chapter 5 of Title 14 of the **Delaware Code**.

"**District**" shall mean a reorganized school district or vocational technical school district established pursuant to Chapter 10 of Title 14 of the **Delaware Code**.

3.0 Standardized Financial Report

3.1 Standardized Financial Report shall mean the summary of the District's or Charter School's financial documentation provided in a format approved by the Department of Education that includes, but is not limited to, the District's or Charter School's most current expenditure and revenue budgets. This documentation shall include encumbrances, expenditures, and remaining balances by category as prescribed in the approved format. Districts and Charter Schools shall indicate on the Standardized Financial Report whether the most current expenditure and revenue budgets are preliminary, amended or have been finalized by its approving entity.

4.0 Reporting Requirements and Timelines

4.1 Effective February 1, 2008, each District and Charter school, no later than five (5) working days after the most recent District or Charter School board meeting, shall post the current Standardized Financial Report on its website. Provided further, the District or Charter School shall provide the preliminary or final Standardized Financial Report for the current school year, no later than January 1st of each year.

FINAL REGULATIONS

DEPARTMENT OF LABOR DIVISION OF INDUSTRIAL AFFAIRS

Statutory Authority: 19 Delaware Code, Section 2322 B, E (19 Del.C. §2322 B, E)

ORDER

A public hearing was held on November 5, 2007 to receive public comments relating to the proposed Delaware Workers' Compensation Employer's Modified Duty Availability Report and the Delaware Workers' Compensation Physician's Report of Workers' Compensation Injury (collectively the "Forms") and the proposed Delaware Workers' Compensation Health Care Payment System Payment Rates for Physicians and Hospitals (the "Fee Schedule") for adoption by the Delaware Department of Labor. The members of the Health Care Advisory Panel ("Panel") present recommend that the Secretary of Labor adopt this proposal as it was published in the Register of Regulations, Vol. 11, Issue 4 (October 1, 2007).

Summary of the Evidence and Information Submitted

Exhibits Admitted:

Exhibit 1 – News Journal Affidavit of publication of notice of public hearing.

Exhibit 2 – Delaware State News Affidavit of publication of notice of public hearing.

Exhibit 3 – Letter from Richard Stokes, Esquire, Property Casualty Insurers Association of America.

Dr. Jeffrey Meyers and Richard Stokes, Esquire, Property Casualty Insurers Association of America addressed the Panel. First, Dr. Meyers stated a concern that the Forms did not adequately address those employees that work more than eight (8) hours per day. Further, Dr. Meyers suggested that an instruction sheet detailing how to complete the Forms should accompany the Forms. Lastly, with regard to the Fee Schedule, Dr. Meyers voiced a concern over the acupuncture codes and the impact on reimbursements when multiple treatment codes are referenced.

Mr. Stokes addressed the Panel and provided a written submission which is incorporated here as Exhibit 3. Several concerns were raised by Mr. Stokes. The first concern was the lack of information that his client received from the Panel. Second, Mr. Stokes raised a concern regarding the number of CPT Codes that will be paid at 85% of charge and their potential fiscal impact. Lastly, Mr. Stokes addressed a concern over the billing and review processes in general.

The Panel discussed the public concerns raised and reviewed their applicability to the proposed Forms and Fee Schedule. The Panel voted unanimously to recommend approval of the Forms and voted ten (10) in favor and one (1) opposed to recommend approval of the proposed Fee Schedule.

Recommended Findings of Fact with respect to the Evidence and Information

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

Recommendation

The proposals are respectfully submitted to the Secretary of Labor for consideration with a recommendation for adoption this 14th day of November, 2007.

HEALTH CARE ADVISORY PANEL

George B. Heckler, Esquire	Barry Baskt, D.O. Vice-Chair
James Downing, M.D.	Wayne Smith
Linda Cho	Douglas R. Briggs, D.C.
Matthew Eppley, M.D.	Walter Powell, M.D.
Marcia DeWit, J.D.	Glenn Brown
Joseph Rhoades, Esquire	

Decision and Effective Date

Having reviewed and considered the record and recommendations of members of the Health Care Advisory Panel, the proposals (1) Forms and (2) Fee Schedule are hereby adopted and made effective **May 23, 2008**.

Text and Citation

The Forms and the Fee Schedule Notice appear in the Register of Regulations, Vol. 11, Issue 4 (October 1, 2007). The Forms and Fee Schedule are available from the Department of Labor, Division of Industrial Affairs, Office of Workers' Compensation.

DEPARTMENT OF LABOR

Thomas B. Sharp
Secretary of Labor

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").

FINAL REGULATIONS

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

Statutory Authority: 7 Delaware Code, Chapter 60 (7 **Del.C.**, Ch. 60)
7 **DE Admin. Code** 1351

Secretary's Order No.: 2007-A-0056

1351 Underground Storage Tank Systems

Date of Issuance: December 17, 2007

Effective Date of the Amendment: January 11, 2008

I. Background:

A public hearing was held on Tuesday, October 30, 2007, at 6:00 p.m. at the DNREC offices located at 391 Lukens Drive in New Castle, Delaware to receive comment on proposed amendments to the *Delaware Regulations Governing Underground Storage Tank Systems* (hereinafter referred to as the "UST Regulations"). Delaware is proposing these amendments to reflect advances in underground storage tank system technology that have occurred since the most recent version of these regulations in 1995. The proposed UST Regulation amendments will impact owners and operators of underground storage tanks greater than 110 gallons containing a regulated substance, with the exception of certain classes of heating fuel USTs. Adoption of these proposed revisions will keep Delaware's UST Regulations current with existing technology, so that compliance with the same will ensure continued protection of our State's natural resources, and will keep Delaware's regulations consistent with the federal requirements as set forth in the Energy Policy Act of 2005.

These proposed amendments to Delaware's UST Regulations were initially presented to the general public by the Department in a series of three public workshops held in September of 2006. Based upon comments received from the regulated community as a result of these workshops, the Department made revisions to their draft amendments, and an additional public workshop was held in May of 2007 to receive public comment on those changes. Subsequently, minor revisions were made to the Department's draft amendments based upon the public comment received in May 2007. In July 2007, the third draft of these proposed regulation amendments was presented to the Delaware Leaking Underground Storage Tank Committee (hereinafter referred to as the "LUST" Committee), which is an advisory committee required by the Delaware UST Act as set forth in 7 **Del.C.**, Chapter 74. No comments were received at that time from the LUST committee.

Some members of the regulated community offered their comments for the record at the time of the public hearing on October 30, 2007, and those concerns were fully and thoroughly addressed by the Department during the post-hearing phase of this matter. Proper notice of the hearing was provided as required by law.

II. Findings:

The Department has provided a balanced and reasoned analysis with regard to the responses given to public comment, as reflected in the Hearing Officer's Report of December 12, 2007, which is attached hereto and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. The Department has jurisdiction under its statutory authority, 7 **Del.C.** Chapters 60 and 74, to make a determination in this proceeding;
2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
3. The Department held a public hearing in a manner required by the law and regulations;
4. The Department considered all timely and relevant public comments in making its determination;
5. 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;

6. Promulgation of these proposed amendments will keep Delaware's UST Regulations current with existing technology, so that compliance with the same will ensure continued protection of our State's natural

resources, and will keep Delaware's regulations consistent with the federal requirements as set forth in the Energy Policy Act of 2005;

7. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;

8. The Department's proposed regulation, as published in the October 1, 2007 *Delaware Register of Regulations*, is adequately supported, is 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*;

9. The Department shall submit the proposed regulation as a final regulation to the *Delaware Register of Regulation* for publication in its next available issue, and shall provide written notice to the persons affected by the Order.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Report dated December 12, 2007 and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Regulations Governing Underground Storage Tank Systems be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of the amendments to the State of Delaware Regulations Governing Underground Storage Tank Systems will keep Delaware's UST Regulations current with existing technology, and will keep Delaware's regulations consistent with the federal requirements as set forth in the Energy Policy Act of 2005.

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.**, Chapters 60 and 74.

John A. Hughes, Secretary

The following table represents a final list of changes made to Regulation 1351, Underground Storage Tank Systems after the regulation was published as proposed:

Part A, §1.2.1. The requirements of these Regulations shall apply **[to any Person,]** including **[without limitation]** to all Owners and Operators of an UST System as defined in Title 7 **Del.C.** §7402 (20) unless specifically exempted. The following UST Systems shall only be subject to the requirements of Part A §4.10., and Part B §4.6., and Part C §4.5., and Part D §3.6., and Part E of these Regulations:

Part A, §3.2.1. In these Regulations, all referenced standards mean the most recent edition or version **[The referenced standards apply to all UST Systems without regard to or limitation by the application or usage of the referenced standard as expected or specified by the publishers of the referenced standards. in effect at the time of the effective date of these Regulations.]** Where there is an irreconcilable conflict between a standard or recommendation published by an industry or professional organization and referenced by these Regulations, and a requirement in these Regulations, the most stringent shall apply and control. Where there is an irreconcilable conflict between standards or recommendations published by industry or professional organizations and referenced by these Regulations, the most stringent shall apply and control.

- Part B,§1.5.2.5. The jacket shall be ~~designed to contain an inert gas or liquid at a pressure greater than the maximum internal pressure or be able to contain a vacuum for a period of one (1) month or more~~ able to contain a liquid or be able to contain a vacuum from the time of manufacture completion until the time of installation];
- Part B,§1.9.4.4.6. Inspection of all cables [that are visible during normal operating conditions] for any cracking or swelling;
- Part B,§1.9.5.3.6. Inspection of all cables [that are visible during normal operating conditions] for any cracking or swelling;
- Part B,§1.25.5. **[All dispenser Containment sumps shall be installed and maintained as to be capable of being visually inspected at all times for evidence of a Release and shall not be filled with any material such as pea gravel or native soil, or the dispenser Containment sump shall be continuously monitored for Releases.]**
- Part B,§2.5.2.5. The jacket shall be ~~designed to contain an inert gas or liquid at a pressure greater than the maximum internal pressure or be able to contain a vacuum for a period of one (1) month or more~~ able to contain a liquid or be able to contain a vacuum from the time of manufacture completion until the time of installation];
- Part B,§2.9.4.4.6. Inspection of all cables [that are visible during normal operating conditions] for any cracking or swelling;
- Part B,§2.9.5.1.5.6. Inspection of all cables [that are visible during normal operating conditions] for any cracking or swelling;
- Part B,§2.9.7.6. If the UST System fails NFPA 329, *Recommended Practice for Handling Releases of Flammable and Combustible Liquids and Gases*, criteria Owners and Operators and the UST System test contractor shall **[report the tank test failure to the Department within twenty-four (24) hours and shall]** submit a [paper] copy of the test results to the Department within ~~twenty four (24) hours~~ **seven (7) days of the test failure**. The test results shall include at a minimum the following information
- Part C,§1.5.2.5. The jacket shall be ~~designed to contain an inert gas or liquid at a pressure greater than the maximum internal pressure or be able to contain a vacuum for a period of one (1) month or more~~ able to contain a liquid or be able to contain a vacuum from the time of manufacture completion until the time of installation];
- Part C,§1.9.3.4.6. Inspection of all cables [that are visible during normal operating conditions] for any cracking or swelling;
- Part C,§1.9.4.3.6. Inspection of all cables [that are visible during normal operating conditions] for any cracking or swelling;
- Part C,§1.25.5. **[All dispenser Containment sumps shall be installed and maintained as to be capable of being visually inspected at all times for evidence of a Release and shall not be filled with any material such as pea gravel or native soil, or the dispenser Containment sump shall be continuously monitored for Releases.]**

- Part C,§2.5.2.5. The jacket shall be ~~[designed to contain an inert gas or liquid at a pressure greater than the maximum internal pressure or be able to contain a vacuum for a period of one (1) month or more able to contain a liquid or be able to contain a vacuum from the time of manufacture completion until the time of installation];~~
- Part C,§2.9.3.4.6. Inspection of all cables [that are visible during normal operating conditions] for any cracking or swelling;
- Part C,§2.9.4.1.4.6. Inspection of all cables [that are visible during normal operating conditions] for any cracking or swelling;
- Part C,§2.9.6.6. If the UST System fails NFPA 329, *Recommended Practice for Handling Releases of Flammable and Combustible Liquids and Gases*, criteria Owners and Operators and the UST System test contractor shall **[report the tank test failure to the Department within twenty-four (24) hours and shall]** submit a **[paper]** copy of the test results to the Department within ~~[twenty four (24) hours seven (7) days of the test failure]~~. The test results shall include at a minimum the following information
- Part D,§1.5.2.5. The jacket shall be ~~[designed to contain an inert gas or liquid at a pressure greater than the maximum internal pressure or be able to contain a vacuum for a period of one (1) month or more able to contain a liquid or be able to contain a vacuum from the time of manufacture completion until the time of installation];~~
- Part D,§1.9.4.4.6. Inspection of all cables [that are visible during normal operating conditions] for any cracking or swelling;
- Part D,§1.9.5.3.6. Inspection of all cables [that are visible during normal operating conditions] for any cracking or swelling;
- Part D,§1.25.6. **[All dispenser Containment sumps installed after the Effective Date of these Regulations shall be installed and maintained as to be capable of being visually inspected at all times for evidence of a Release and shall not be filled with any material such as pea gravel or native soil, or the dispenser Containment sump shall be continuously monitored for Releases.]**
- Part E,§2.2.1.2. Within twenty-four (24) hours initiate an investigation **[for completion within seven (7) days]** to determine the presence or absence of a Release by

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

[1351 Underground Tank Final](#)

FINAL REGULATIONS

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
2000 Board of Occupational Therapy

Statutory Authority: 24 Delaware Code, Section 2006(a)(1) (24 Del.C. §2006(a)(1))

ORDER

Pursuant to 24 Del.C. §2006(a)(1), the Board of Occupational Therapy Practice (“the Board”) has proposed revisions to Regulations 2.0 and 3.0 of its Rules and Regulations. The proposed revisions change the audit process for license renewal so that continuing education attestations will be audited after the license renewal period is over, rather than before the expiration date. The changes also extend the period of time during each biennial licensure period during which licensees may obtain required CE credits from May 31st of each renewal year to July 31st of each renewal year, in order to correspond with the license renewal period. The proposed regulatory changes were published in the Delaware *Register of Regulations*, Volume 11, Issue 3, on September 1, 2007.

A public hearing to receive comments was held on October 3, 2007 at the Board’s regularly scheduled meeting.

Summary of the Evidence and Information Submitted

No written or verbal comments were received.

Findings of Fact

The Board finds that adoption of the proposed amendments to Regulations 2.0 and 3.0 will clarify the license renewal process and the auditing of continuing education.

Decision and Effective Date

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

Text and Citation

The text of the revised regulations is attached hereto as Exhibit A and is formatted to show the amendments. A clean copy, without the formatting, is attached hereto as Exhibit B.

SO ORDERED this 7th day of November 2007.

BOARD OF OCCUPATIONAL THERAPY PRACTICE

Debra Young, Chairperson
Nancy Broadhurst, Secretary
Virginia Mirro

***Please note that no changes were made to the regulation as originally proposed and published in the September 2007 issue of the *Register* at page 290 (11 DE Reg. 290). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

2000 Board of Occupational Therapy

**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))

ORDER**1104 Administration and Operation of Council on Development Finance****Order Adopting and Promulgating Regulation**

AND NOW, this 26th day of November 2007, Judy Ann Cherry, as Director of the Delaware Economic Development Office and as Chairperson of The Delaware Economic Development Authority and the members of the Council on Development Finance who have executed this order below, which members constitute a quorum of the Council on Development Finance, in accordance with 29 **Delaware Code** §§5005(11) and 5053(k), for the reasons stated below enter this ORDER adopting and promulgating Regulation No. 6 – Administration and Operation of Council on Development Finance (the “Regulation”).

Nature of Proceedings; Synopsis of the Subject and Substance of the Proposed Regulation

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 Director of the Delaware Economic Development Office and as Chairperson of The Delaware Economic Development Authority, and the Council on Development Finance are adopting the final Regulation governing the administration and operation of the Council on Development Finance. These rules of practice and procedure are to memorialize practices that have evolved in the relationship between the Delaware Economic Development Office and The Delaware Economic Development Authority and the Council on Development Finance and as recommended by the Joint Sunset Committee in accordance with 29 **Del.C.** §10214.

Findings of Fact and Conclusions

1. In accordance with the recommendations of the Joint Sunset Committee, the Delaware Economic Development Office, The Delaware Economic Development Authority and the Council on Development Finance have developed procedures for the administration and operation of the Council on Development Finance.
2. The Regulation reflects these procedures.
3. The Director of the Delaware Economic Development Office, in her capacity as Director of the Delaware Economic Development Office and as Chairperson of The Delaware Economic Development Authority, has statutory authority to promulgate regulations pursuant to 29 **Del.C.** §§5005(11) and 5053(k), and the members of the Council on Development Finance are ratifying this action.

Decision and Order Concerning the Regulation

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director of the Delaware Economic Development Office, in her capacity as Director of the Delaware Economic Development Office and as Chairperson of The Delaware Economic Development Authority, and the members of the Council on Development Finance who have subscribed this Order, which members constitute a quorum of the Council on Development Finance do hereby ORDER that the Regulation be, and that it hereby is, adopted and promulgated as set forth below. The effective date of this Order is ten days from the date of its publication in the *Delaware Register of Regulations*, in accordance with 29 **Del.C.** §10118(g).

Judy Ann Cherry, Director, Delaware Economic Development Office and Chairperson,
The Delaware Economic Development Authority
Andrew M. Lubin, Chairperson, Council on Development Finance
Senator Nancy W. Cook, Member, Council on Development Finance
Representative Greg Lavelle, Member, Council on Development Finance
Steven L. Biener, Esquire, Member, Council on Development Finance
Donald J. Lynch, Member, Council on Development Finance
Thomas S. Gilligan, CPA, Member, Council on Development Finance
Hon. James L. Hutchison, Member, Council on Development Finance
Fred C. Sears, II, Member, Council on Development Finance
Richelle A. Vible, Member, Council on Development Finance

***Please note that no changes were made to the regulation as originally proposed and published in the October 2007 issue of the *Register* at page 499 (11 DE Reg. 499). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

[1104 Administration and Operation of Council on Development Finance](#)

STATE OF DELAWARE
EXECUTIVE DEPARTMENT

EXECUTIVE ORDER
NUMBER ONE HUNDRED FOUR

RE: Establishment of the Statewide Interoperability Executive Council

WHEREAS, the safety of all Delawareans is of paramount importance; and

WHEREAS, public safety communications provide a critical role in protecting the lives and property of the citizens of Delaware; and

WHEREAS, the Federal Communications Commission is adopting changes that will affect the ability of public safety communications systems to interoperate with one another, due to new technology and shifts in standards; and

WHEREAS, the effectiveness of public safety communications between jurisdictions to cooperate and coordinate voice, data, and video information is critical to the mission of public safety; and

WHEREAS, state agencies along with federal, local, and private entities with similar communications requirements should work cooperatively and identify approaches to promote and enhance statewide interoperability; and

WHEREAS, opportunities exist to assist in the promotion of coordination and cooperation of a statewide interoperability goal, which is an ongoing and long-term effort; and

WHEREAS, the attainment of interoperable public safety communications requires statewide coordination and leadership,

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 Delaware Statewide Interoperability Executive Council (hereinafter, "the SIEC") is hereby created.
2. The members of the SIEC shall be appointed by the Governor. The SIEC shall consist of the following members:
 - a. The Secretary of the Department of Safety and Homeland Security or his or her designee;
 - b. The Secretary of the Department of Transportation or his or her designee;
 - c. The Chief Information Officer of the State of Delaware or his or her designee;
 - d. The Secretary of the Department of Health and Social Services or his or her designee;
 - e. The Commissioner of the Department of Correction or his or her designee;
 - f. The Adjutant General of the Delaware National Guard or his or her designee;
 - g. A representative of New Castle County Government;
 - h. A representative of Kent County Government;
 - i. A representative of Sussex County Government;
 - j. A representative of the City of Wilmington;
 - k. A representative of the Delaware League of Local Governments;
 - l. A representative of the Delaware Volunteer Firemen's Association;
 - m. A representative of the Delaware Police Chiefs' Council;
 - n. A representative of the Delaware Public Service Commission;
 - o. A representative of the Office of the Governor; and
 - p. Other members as recommended by the SIEC and approved by the Governor.
3. All members of the SIEC shall serve at the pleasure of the Governor. The Secretary of the

GOVERNOR'S EXECUTIVE ORDERS

Department of Safety and Homeland shall be the Chairperson of the SIEC.

4. The Chairperson of the SIEC may form subcommittees consistent with the needs of the SIEC to address public safety interoperability issues including, but not limited to: technical support, operations support, and training support. The subcommittees may include individuals who are not members of the SIEC but who have an interest or expertise in public safety interoperability issues. Each subcommittee shall be chaired by a member of the SIEC.

5. The purpose of the SIEC shall be to provide policy level direction and promote efficient and effective use of resources for matters related to public safety communications interoperability. To that end it shall:

a. Develop a statewide communications interoperability plan;

b. Develop standards for public safety communications to ensure consistent development of existing and future communications infrastructure;

c. Promote cooperation among state, federal, and local public safety agencies in addressing statewide communications interoperability needs in Delaware;

d. Review priorities for statewide communications interoperability needs and assist in the development of projects, plans, policies, standards, priorities and guidelines for communications interoperability;

e. Ensure adequate wireless spectrum to accommodate all public safety communications;

and
f. Provide recommendations to the Governor and the Delaware General Assembly, when appropriate, concerning issues related to statewide communications interoperability for public safety in Delaware.

6 The SIEC shall operate in accordance with bylaws that it adopts. These bylaws may be amended, supplemented or repealed by the SIEC.

Approved: November 21, 2007.

Ruth Ann Minner,
Governor

ATTEST:
Harriet Smith Windsor, Secretary of State

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

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

GENERAL NOTICE

Secretary's Order No. 2007-A-005

Re: Approval of a Revision to Delaware's State Implementation Plan Entitled, "Implementation, Maintenance, And Enforcement of National Ambient Air Quality Standards for Ozone, Fine Particulate Matter and Visibility"

Date of Issuance: December 13, 2007

Effective Date: December 13, 2007

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") under 29 Del.C. §§8001 *et seq.* and 7 Del.C. §6010(c), the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced matter.

The United States Environmental Protection Agency ("EPA") delegated authority to the Department to administer certain responsibilities in Delaware under the federal Clean Air Act, as amended, 42 U.S.C. §§7401 *et seq.* ("CAA"). The delegation included preparing Delaware's State Implementation Plan ("SIP"), which consists of regulations, source specific requirements, plans and emission inventories that together identifies how Delaware will attain and maintain air quality that conforms to primary and secondary National Ambient Air Quality Standards ("NAAQS"). NAAQS are established by EPA regulations, and Delaware's SIP is reflected in EPA's regulations at 40 C.F.R. Part 52, Subpart I. The Delaware SIP is subject to ongoing revisions, which reflects Delaware's progress towards the goal of cleaner air quality. The SIP provides a road map of the regulatory procedures undertaken to control and reduce air pollutants under the Department's authority under federal and state laws and regulations.

EPA's regulations require that the Department submit Delaware's SIP revisions for EPA's review and approval. This Order considers a November 8, 2007 report entitled "Implementation, Maintenance and Enforcement of National Ambient Air Quality Standards, State Implementation Plan Revision For Ozone, Fine Particulate Matter, and Visibility" (hereinafter "Report") that the Department's technical experts within the Division of Air and Waste Management, Air Quality Management Section prepared in order to submit to EPA. The Report was the subject of public notice and public comment during a December 12, 2007 public hearing. At public hearing the Department's expert, Ronald A. Amirikian, presented the proposed report, but no public comments were received within the public comment period. Consequently, the Department's hearing officer, Robert P. Haynes, recommended at the hearing that the Department approve the proposed report and submit to EPA as a SIP revision to show compliance with the federal law and regulations.

I agree that the proposed SIP revision, dated November 8, 2007, should be approved, unchanged excepted dated December 13, 2007, as the Department's final SIP revision. This Order approves the Report and its submittal to EPA in order to comply with the CAA and EPA's CAA regulations, as interpreted by an EPA 2006 guidance document. The SIP revision sets forth the Department's progress in promulgating many regulations that will significantly reduce the emission of air pollutants and allow Delaware to comply with the 8-hour Ozone and fine particulate matter NAAQS by 2009, and will aid Delaware in meeting its visibility related obligations under the CAA and EPA's regulations.

In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary, hereby approves as reasonable the November 8, 2007 Report, which is adopted unchanged except for reflecting its December 13, 2007 date of final approval. The final Report is attached hereto as Appendix A, and together with this Order will be submitted to EPA as the latest Delaware SIP revision; and

2. The Department shall have this Order published in the *Delaware Register of Regulations* and in newspapers in the same manner as the notice of the proposed SIP revision.

John A. Hughes, Secretary

Implementation, Maintenance, And Enforcement of National Ambient Air Quality Standards ,State Implementation Plan Revision For Ozone, Fine Particulate Matter (PM_{2.5}), and Visibility

1.0 Preamble, Introduction and Background

A State Implementation Plan ("SIP") is a state plan that identifies how that state will attain and maintain air quality that conforms to each primary and secondary National Ambient Air Quality Standard ("NAAQS"). The SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and emission inventories.

Delaware's initial SIP was approved by the EPA on May 31, 1972. Since this initial approval, the Delaware SIP has been revised numerous times to address air quality non-attainment and maintenance issues. This was done by updating plans and inventories, and adding new and revised regulatory control requirements. Delaware's SIP is compiled at 40 C.F.R. Part 52 Subpart I.

Section 2.0 of this document is a revision to Delaware's SIP. The purpose of this SIP revision is to detail how Delaware meets all of the necessary implementation, maintenance, and enforcement measures required by the Clean Air Act ("CAA"), specifically, CAA §110(a)(2). Under the heading "Delaware's Plan" in Section 2.0 of this document Delaware provides a revision to its SIP to address those requirements of Section 110(a)(2)(A)-(M) of the CAA which have not been addressed in other SIP revisions. It is a compilation of certain elements that describe how Delaware demonstrates how the eight-hour ozone and in some cases the fine particulate (PM_{2.5}) NAAQS are being implemented, maintained and enforced. The elements of this SIP revision, once approved by EPA, will provide a federally enforceable written confirmation that Delaware will continue to comply with the Section 110(a)(2) requirements of the CAA.

Legislative authority for the Delaware air quality program relating to the responsibilities in the CAA is codified in Title 7 "Conservation" of the **Delaware Code**, Chapter 60 – Delaware's comprehensive water and air resources conservation law, which gives the Delaware DNREC the power and duty to implement the provisions of the CAA in the State of Delaware.

Many of the miscellaneous requirements of Section 110(a)(2)(A)-(M) of the CAA relevant to the eight-hour ozone and fine particulate (PM_{2.5}) NAAQS are already contained in Delaware's SIP or in SIP revisions which have been submitted to but not yet approved by EPA. The following Table identifies those SIP provisions. The attainment and base year inventory plans and the regulations cited in the following Table have gone through public notice and hearing prior to submittal to EPA. The following Table also identifies those infrastructure requirements which are not applicable to Delaware.

Table - 110(a)(2)(A)-(M) Requirements in the Current State of Delaware SIP

Section 110(a) element	Summary of element	Provisions in the Current Delaware SIP or recent SIP revisions Submittals	Where Codified or approved by EPA
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<p>§110(a)(2)(A)</p>	<p>Include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or</p>	<p>For the ozone NAAQS, the pertinent emission limitations and schedules are contained in Delaware's submitted Reasonable Further Progress (RFP) and attainment demonstration SIPs that were submitted on June 13, 2007, in recently submitted regulatory revisions listed below and in the regulations in Delaware's approved SIP that are listed in 40 CFR 52.420(c).</p> <ul style="list-style-type: none"> • Regulation No. 1146 Electric Generating Unit (EGU) Multi-Pollutant Regulation, November 21, 2006 • Regulation No. 1113, Open Burning Regulation, May 2, 2007 • Regulation No. 24, Section 46, Crude Oil Lightering, May 2, 2007 • Regulation No. 1148, Combustion Turbine Generator Emissions, September 11, 2007 • Regulation No. 1144, Stationary Generator Emissions, November 1, 2007 • Regulation No. 43, Not To Exceed California Heavy Duty Diesel Engine Standards, November 29, 2001¹ • Regulation No. 45, Excessive Idling Of Heavy Duty Vehicles, August 12, 2005² 	<p>40 CFR 52.420(c)</p>
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	<p>appropriate to meet the applicable requirements of this Act.</p>	<p>The regulatory revisions listed above and the following regulations listed below that are in Delaware's approved SIP that are listed in 40 CFR 52.420(c) also apply to the fine particulate matter NAAQS.</p> <ul style="list-style-type: none"> • Regulation No. 1, Definitions And Administrative Principles • Regulation No. 4, Particulate Emissions From Fuel Burning Equipment • Regulation No. 5, Particulate Emissions From Industrial Process Operations • Regulation No. 6, Particulate Emissions From Construction And Materials Handling • Regulation No. 7, Emissions From Incineration Of Noninfectious Waste • Regulation No. 8, Sulfur Dioxide Emissions From Fuel Burning Equipment • Regulation No. 9, Emissions Of Sulfur Compounds From Industrial Operations • Regulation No. 10, Control Of Sulfur Dioxide Emissions Kent And Sussex Counties • Regulation No. 12, Control Of Nitrogen Oxides Emissions • Regulation No. 14, Visible Emissions • Regulation No. 18 , Particulate Emissions From Grain Handling Operations • Regulation No. 22, Restriction On Quality Of Fuel In Fuel Burning Equipment • Regulation No. 24, Control Of Volatile Organic Compound Emissions • Regulation No. 26, Motor Vehicle Emissions Inspection Program • Regulation No. 27, Stack Heights • Regulation No. 29, Emissions From Incineration Of Infectious Waste • Regulation No. 31, Low Enhanced Inspection And Maintenance Program • Regulation No. 32, Transportation Conformity Regulation • Regulation No. 34, Emission Banking And Trading Program • Regulation No. 35, Conformity Of General Federal Actions To The State Implementation Plans • Regulation No. 36, Acid Rain Program • Regulation No. 37, NOx Budget Program • Regulation No. 39, Nitrogen Oxides Budget Trading Program • Regulation No. 40, National Low Emission Vehicle Program • Regulation No. 1141, Limiting Emissions Of Volatile Organic Compounds From Consumer And Commercial Products • "Regulation No. 42, Specific Emission Control 	
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		For the fine particulate matter NAAQS, any remaining applicable requirements under §110(a)(2)(A) will be addressed in future SIP revisions.	
§110(a)(2)(B)	Provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to - (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.	Regulation No. 3, Ambient Air Quality Standards, of the State of Delaware Regulations Governing the Control of Air Pollution provides for the establishment and operation of procedures necessary to monitor, compile and analyze data related to ambient air quality.	40 CFR 52.420(c)

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§110(a)(2)(C)	Include a program to provide for the enforcement of the measures described in subparagraph (A) and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D;	<p>Delaware implements its Construction and Operation Permit Program requirements under Regulation Nos. 1102, and 25³ of the State of Delaware Regulations Governing the Control of Air Pollution.</p> <p>Delaware implements its Prevention of Significant Deterioration (PSD) Program requirements under Regulation No. 25 of the State of Delaware Regulations Governing the Control of Air Pollution.</p> <p>Delaware implements its Emission Offset Provision (EOP) requirements under Regulation No. 25 of the State of Delaware Regulations Governing the Control of Air Pollution."</p> <p>Other aspects of Delaware's program for enforcement are found in those provisions of Regulation 25, Regulation 11 and Regulation 17 as well as the source monitoring, source testing and test methods, and, recordkeeping and reporting provisions of Regulations 12, 23, 24, 26, 31, 37, 39, 40, 41, 42, and others in the approved Delaware SIP as well as recently submitted regulatory SIP revisions discussed under section 110(a)(2)(A) above.⁴</p> <p>These recently submitted regulatory revisions and the regulations in Delaware's approved SIP that are listed in 40 CFR 52.420(c) also apply to the fine particulate matter NAAQS.</p> <p>For the fine particulate matter NAAQS, any remaining applicable requirements under §110(a)(2)(C) will be addressed in future SIP revisions.</p>	40 CFR 52.420(c)
§110(a)(2)(E)(ii)	(ii) requirements that the state comply with the requirements respecting state boards under section 128, and	The requirements of §110(a)(2)(E)(ii) are not applicable to Delaware because it does not have any board or body which approves air quality permits or enforcement orders.	

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<p>§110(a)(2)(E)(iii)</p>	<p>(iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision;</p>	<p>The requirements of §110(a)(2)(E)(iii) are not applicable to Delaware because it does not rely on localities for specific SIP implementation.</p>	
<p>§110(a)(2)(F)</p>	<p>Require, as may be prescribed by the Administrator-</p> <p>(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps by owners or operators of stationary sources to monitor emissions from such sources,</p>	<p>§110(a)(2)(F)(i): Specific monitoring requirements are found throughout the State of Delaware Regulations Governing the Control of Air Pollution, to include Regulation No. 17. These requirements are included in Delaware's SIP, as necessary.</p> <p>§110(a)(2)(F)(ii): Specific reporting requirements are found throughout the State of Delaware Regulations Governing the Control of Air Pollution, to include Regulation No. 17. These requirements are included in Delaware's SIP, as necessary.</p> <p>Other aspects of Delaware's program for requiring installation and maintenance of monitoring equipment, periodic emissions reporting, is found in the source monitoring, source testing and test methods, and recordkeeping and reporting provisions of Regulations 12, 23, 24, 26, 31, 37, 39, 40, 41, 42, and others in the approved Delaware SIP, 40 CFR 52.420(c), as well as recently submitted regulatory SIP revisions discussed under section 110(a)(2)(A) above.</p> <p>These recently submitted regulatory revisions and the regulations in Delaware's approved SIP that are listed in 40 CFR 52.420(c) also apply to the fine particulate matter NAAQS.</p> <p>For the fine particulate matter NAAQS, any remaining applicable requirements under §110(a)(2)(F) will be addressed in future SIP revisions.</p>	<p>40 CFR 52.420(c)</p>

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	<p>(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and</p> <p>(iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection;</p>		
§110(a)(2)(G)	<p>Provide authority for comparable to that in section 303 and adequate contingency plans to implement such authority;</p>	<p>State of Delaware Regulations Governing the Control of Air Pollution, Regulation 15, Air Pollution Alert and Emergency Plan, contains emergency episode plan provisions that are currently approved in the SIP, and found at 40 C.F.R. 52.420(c), that fulfill the contingency plan requirement for the ozone NAAQS.</p> <p>For the fine particulate matter NAAQS, the emergency episode plan will be addressed in future SIP revisions.</p>	40 CFR 52.420(c)
§110(a)(2)(I)	<p>In the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D (relating to nonattainment areas);</p>	<p>Part D pertains to general requirements for nonattainment areas. All of Delaware is in the Philadelphia-Wilmington-Atlantic City ozone nonattainment area.</p> <p>On June 13, 2007 Delaware submitted SIP revisions pertaining to the base year inventory, RFP plan and attainment demonstration for the Philadelphia-Wilmington-Atlantic City ozone nonattainment area and submitted the RACT SIP on March 29, 2007 and was updated on May 2, 2007 to cover Crude Oil Lightering operations. Delaware has also submitted those recently submitted regulatory SIP revisions discussed under section 110(a)(2)(A) above.</p> <p>The pertinent emission limitations and schedules are contained in these submitted plans.</p>	

		<p>The regulations in Delaware's approved SIP that are listed in 40 CFR Part 52, Subpart I related to nonattainment areas will continue to comply with Subpart D requirements and which could not have been approved if they had not met Subpart D requirements.</p> <p>For the fine particulate matter NAAQS, the applicable Part D requirements have not yet come due and will be addressed in future SIP revisions.</p>	
<p>§110(a)(2)(J) (PSD)</p>	<p>Meet the applicable requirements of ... part C (relating to prevention of significant deterioration of air quality and visibility protection);</p>	<p>Delaware's PSD requirements are promulgated in Regulation No. 25, Preconstruction Review, of the State of Delaware Regulations Governing the Control of Air Pollution.</p>	
<p>§110(a)(2)(K)</p>	<p>Provide for:</p> <p>(i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and</p> <p>(ii) the submission, upon request, of data related to such air quality modeling to the Administrator;</p>	<p>On June 13, 2007 Delaware submitted SIP revisions pertaining to the base year inventory, RFP plan and attainment demonstration for the Philadelphia-Wilmington-Atlantic City ozone nonattainment area which contained the required modeling.</p> <p>For the fine particulate matter NAAQS, the attainment demonstration is not yet due and will be addressed in future SIP revisions.</p>	

1. Now codified under Regulation 1143 in the Title 7 - Natural Resources and Environmental Control of Delaware's Administrative Code.
2. Now codified under Regulation 1145 in the Title 7 - Natural Resources and Environmental Control of Delaware's Administrative Code.
3. Now codified under Regulation 1125 in the Title 7 - Natural Resources and Environmental Control of Delaware's Administrative Code.
4. Regulation Numbers 41 and 42 and now codified under regulations 1141 and 1142 in the Title 7 - Natural

Resources and Environmental Control of Delaware's Administrative Code.

2.0 SIP Revision

This SIP revision addresses those requirements of Section 110(a)(2)(A)-(M) of the Clean Air Act (CAA) which have not been addressed in other SIP revisions. Each of the requirements of §110(a)(2) of the CAA (Subparagraphs A–M) is presented below, along with a discussion of Delaware's plan revision to meet the requirement.

(A) §110(a)(2)(A) Requirement: Include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Act.

For the ozone NAAQS, Delaware's SIP or recent SIP revisions already contain other elements addressing §110(a)(2)(A) as discussed in the section 1.0 and the table thereto of this document. Many of these also apply to the fine particulate (PM_{2.5}) NAAQS. For the fine particulate (PM_{2.5}) NAAQS, any remaining applicable requirements under §110(a)(2)(A) will be addressed in future SIP revisions.

Delaware's Plan: Delaware has established laws and regulations that include enforceable emissions limitations and other control measures, means or techniques, as well as schedules and timetables for compliance to meet the applicable requirements of the CAA. Delaware may make changes to its laws and regulations that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

At present, Delaware's statutory authority is set out in Title 7 "Conservation" of the **Delaware Code**, Chapter 60 – Delaware's comprehensive water and air resources conservation law. Legislative authority giving the Secretary of the Delaware Department of Natural Resources and Environmental Control the authority to promulgate Regulations is codified at 7 **Del.C.**, Chapter 60. This authority is applicable to the ozone as well as the fine particulate (PM_{2.5}) NAAQS.

(B) §110(a)(2)(B) Requirement: Provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to - (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.

Delaware's SIP already contains other elements, namely, Regulation No. 3, Ambient Air Quality Standards, of the State of Delaware Regulations Governing the Control of Air Pollution addressing §110(a)(A) as discussed in the section 1.0 and the table thereto of this document.

Delaware's Plan: Delaware has established and currently operates appropriate devices, methods, systems and procedures necessary to monitor, compile and analyze data on ambient air quality, and upon request, makes such data available to the Administrator. Delaware will continue to operate devices, methods, systems and procedures and may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. At present, Delaware does this as follows for both the ozone and fine particulate matter NAAQS:

- Delaware maintains and operates a multi-station network of ambient monitors throughout the State to measure ambient air quality levels within Delaware for comparison to each NAAQS as required by 40 CFR Part 58. Seasonal (April – October) ozone monitoring is currently performed at various locations throughout Delaware.
- All data is measured using U.S. EPA approved methods as either Reference or Equivalent monitors; all monitors are subjected to the quality assurance requirements of 40 CFR Part 58; Appendix A; and all samplers are located at sites that have met the minimum siting requirements of Part 58, Appendix E. The data is submitted to the EPA's Air Quality System (AQS) system, in a timely manner in accordance to the schedule prescribed by the U.S. EPA in 40 CFR Part 58.
- In order to keep EPA informed of changes to the sampling network DNREC provides EPA Region III with prior notification of any planned changes to the network. As needed, details of these changes and anticipated approvals of the changes are communicated to EPA. On an annual basis, Delaware sends EPA a summary table of all the changes to the network. This summary also provides for a description of each change, the reason for each change, and any other information relevant to the change.

DNREC submits data to the AQS system, in a timely manner, pursuant to the schedule prescribed by the EPA in 40 CFR Part 58.

- Delaware has and will continue to submit data to EPA's Air Quality System ("AQS") in a timely manner in accordance to the schedule prescribed by the U.S. EPA in 40 CFR Part 58.

(C) §110(a)(2)(C) Requirement: Include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D.

For the ozone NAAQS, Delaware's SIP already contains the other elements addressing §110(a)(C) as discussed in the section 1.0 and the table thereto of this document. These also apply to the fine particulate (PM_{2.5}) NAAQS. For the fine particulate (PM_{2.5}) NAAQS, any remaining applicable requirements under §110(a)(2)(C) will be addressed in future SIP revisions.

Delaware's Plan: Delaware has established and currently operates a program to provide for the enforcement of the enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the CAA and to regulate the modification and construction of any stationary source within areas covered by its SIP as necessary to assure the NAAQS are achieved, including permit programs required in parts C and D. At present, Delaware as part of its Air Quality Management Section function exercises its programmatic authority to utilize the enforcement powers set out in 7 **Del.C.** §6005 entitled "Enforcement; civil and administrative penalties; expenses"; 7 **Del.C.** §6013 entitled "Criminal penalties"; and 7 **Del.C.** §6018 entitled "Cease and desist order." Delaware will continue to operate this program and may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

(D) §110(a)(2)(D) Requirement: Contain adequate provisions – (i) prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will - (I) contribute significantly to non-attainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility, (ii) insuring compliance with the applicable requirements of sections 126⁵ and 115⁶ (relating to interstate and international pollution abatement).

Delaware's Plan: The implementation plan for Delaware and recently submitted SIP revisions presently

5. §126(a) - Each plan shall (1) require each major proposed new or modified source (A) subject to Part C or (D) which may significantly contribute to pollution in excess of the NAAQS in any AQCR outside the State in which such source intends to locate or modify, to provide written notice to all nearby States the pollution levels of which may be affected by such source 60 days prior to the date on which commencement of construction is to be permitted by the State, and (2) identify all major existing stationary sources which may have the impact described in (1) with respect to new or modified sources and provide notice to all nearby States of the identity of such sources. (b) Any State may petition EPA for a finding that any major source or group of stationary sources emits or would emit any pollutant in violation of the prohibition of §110(a)(2)(D)(ii) or this section. (c) Notwithstanding any permit which may have been granted by the State, it shall be a violation of this section and the plan - (1) for any major proposed new or modified source with respect to which a finding has been made under subsection (b) to be constructed or to operate in violation of this section and the prohibition of §110(a)(2)(D)(ii) or this section, or (2) for any major existing source to operate more than 3 months after such finding has been made. EPA may permit the continued operation of a source beyond the expiration of the 3-month period if the source complies with the emission limitations and compliance schedules as may be provided by EPA to bring about compliance with the requirements of §110(a)(2)(D)(ii). Nothing shall be construed to preclude any such source from being eligible for an enforcement order under §113(d) after the expiration of such period during which EPA has permitted continuous operation.

contain adequate provisions prohibiting sources from emitting air pollutants in amounts which will contribute significantly to non-attainment or interfere with maintenance with any NAAQS and to prevent interference with measures related to preventing significant deterioration of air quality or which have to date proved adequate to protect visibility and to address interstate and international pollutant abatement; however, Delaware may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. At present, Delaware's legal authority is contained in the following:

- 110(a)(2)(D)(i)(I): Major stationary sources for 8-hour ozone and PM_{2.5} are currently subject to Nonattainment New Source Review (NNSR) and Prevention of Significant Deterioration (PSD) permitting programs under the PSD and EOP provisions of Regulation No. 25, Preconstruction Review, of the State of Delaware Regulations Governing the Control of Air Pollution.⁷ Delaware sources are subject to the Clean Air Interstate Rule (CAIR) Federal Implementation Plan (FIP) for annual and seasonal ozone, and for sulfur dioxide. In the adoption of CAIR EPA has indicated that compliance with CAIR satisfies a States §110(a)(2)(D)(i) obligations relating to "significant contribution" and "interference with maintenance" requirements, and the State of Delaware currently satisfies the CAIR requirements by relying on the CAIR FIP.⁸ In addition, because Delaware believes that more than CAIR is necessary to mitigate transport, Delaware has promulgated Regulation No. 1146, Electric Generating Unit Multi-Pollutant Regulation, Regulation No. 1142, Section 2, Control of NO_x Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries, and Regulation No. 1148, Control of Stationary Combustion Turbine Electric Generating Unit Emissions; which significantly reduce emissions from Delaware's largest EGUs, industrial boilers, and peaking units (i.e., generally, Delaware's CAIR covered units). These regulations have, or are in the process, of being submitted to the EPA as revisions to Delaware's SIP.
- 110(a)(2)(D)(i)(II): PSD requirements under Section 3 of Regulation No. 25 of the State of Delaware Regulations Governing the Control of Air Pollution. Major sources are subject to NNSR and PSD permitting programs implemented in accordance with EPA's interim guidance calling for use of PM₁₀ as a surrogate for PM_{2.5} related to the non-attainment and PSD NSR program requirements.
 - The State of Delaware confirms that it is meeting this requirement for the use of PM₁₀ as a surrogate for PM_{2.5} in the PSD and NNSR programs.
 - The EPA's guidance⁹ advises that the section 110(a)(2)(D)(i) requirement related to protection of

6. §115(a) - Whenever EPA, upon receipt of reports, surveys or studies from any duly constituted international agency has reason to believe that any pollutants emitted in the US cause or contribute to pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country or whenever the Secretary of State requests it to do so, EPA shall give formal notification to the Governor of the State in which such emissions originate. (b) The EPA notice shall be deemed to be a finding under §110(a)(2)(H)(ii) which requires a plan revision with respect to so much of the applicable plan as is inadequate to prevent or eliminate the endangerment. Any foreign country so affected by such emission of pollutants shall be invited to appear at any public hearing associated with any revision of the appropriate portion of the applicable plan. (c) This section shall apply only to a foreign country which EPA determines has given the US the same rights with respect to the prevention or control of air pollution occurring in that country. (d) Recommendations issued following any abatement conference conducted prior to CAA 1977 shall remain in effect with respect to any pollutant for which no NAAQS has been established under § 109 unless EPA, after consultation with all agencies, which were party to the conference, rescinds any such recommendation.

7. Now codified under regulation 1125 in the Title 7 - Department of Natural Resources and Environmental Control of Delaware's Administrative Code.

8. If Delaware later decides to adopt its own program to replace the CAIR FIP, that program will be submitted to the EPA as a SIP revision.

visibility is deferred until such time as Delaware submits its Visibility SIP. Delaware's Visibility SIP will assess whether there is interference with measures required to be included in the applicable implementation plan for any other State to protect visibility.

- 110(a)(2)(D)(ii): Nothing in Delaware's statutory or regulatory authority prohibits or otherwise interferes with Delaware's ability to exercise sections 126 and 115 of the CAA.

(E) §110(a)(2)(E) Requirement: Provide (i) necessary assurances that the state (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the state or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under state (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of federal or state law from carrying out such implementation plan or portion thereof), (ii) requirements that the State comply with the requirements respecting State boards under section 128,¹⁰ and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision.

The elements of §§110(a)(2)(E)(i) and (ii) are not applicable to Delaware as discussed in section 1.0 and the table thereto of this document.

Delaware's Plan: With respect to the remaining obligations under this section, Delaware assures EPA that it has adequate authority under state law pursuant to 7 **Del.C.** Chapter 60 to carry out its SIP obligations with respect to both the 8-hour ozone and the fine particulate (PM_{2.5}) NAAQS. DNREC does not believe that there is any prohibition in any federal or state law that would prevent it from carrying out its SIP or any portion thereof. Further, DNREC assures EPA that it has, through the State of Delaware General Fund and through the Title V fee program, and will continue to have, funding to carry out its SIP obligations. Further, DNREC believes its funding sources are sufficient to provide adequate personnel for those purposes; however, Delaware may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

At present Delaware fulfills this obligation by virtue of having adequate personnel and funding through the CAA §105 grant process (federal grant funds), the State of Delaware general fund (state tax revenues), and appropriated special funds collected by the State of Delaware from application fees, permit fees, renewal fees, and civil or administrative penalties or fines. Delaware does not anticipate the need for additional resources beyond those to be appropriated in the above manner to carry out its SIP requirements.

(F) §110(a)(2)(F) Requirement: Require, as may be prescribed by the Administrator - (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection.

For the ozone NAAQS, Delaware's SIP already contains the other elements addressing §§110(a)(F)(i) and (ii) as discussed in the section 1.0 and the table thereto of this document. These also apply to the fine particulate (PM_{2.5}) NAAQS. For the fine particulate (PM_{2.5}) NAAQS, any remaining applicable requirements under

9. William T. Harnett Guidance Memorandum, dated August 15, 2006, "Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and PM_{2.5} NAAQS."

10. §128 (a) each plan shall contain requirements that - (1) any board or body which approves permits or enforcement orders shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders, and (2) any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be disclosed. A State may adopt any requirements respecting conflicts of interest for such boards or bodies or heads of executive agencies, or any other entities which are more stringent than the requirements of (1) and (2).

§110(a)(2)(C) will be addressed in future SIP revisions.

Delaware's Plan: Delaware requires that owners or operators of stationary sources monitor and submit periodic reports on the nature and amounts of emissions and emissions related-date emissions from the sources. This may include the installation, maintenance and replacement of equipment, where appropriate. This information submitted to DNREC is available to the public at reasonable times for public inspection pursuant to Delaware law. Delaware will continue to require reporting of emissions but may makes changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

Except as specifically exempted by the Delaware Freedom of Information Act, 29 **Del.C.** Chapter 100, Delaware makes all records, reports or information obtained by the Department or referred to at public hearings available to the public pursuant to the provisions of the Delaware Freedom of Information Act, 29 **Del.C.** Chapter 100.

(G) §110(a)(2)(G) Requirement: Provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority;¹¹

Delaware's SIP contains an emergency episode plan for ozone as discussed in the section 1.0 and the table thereto of this document. For the fine particulate (PM_{2.5}) NAAQS, the emergency episode plan will be addressed in future SIP revisions.

Delaware's Plan: Delaware has authority comparable to that in section 303 and adequate contingency plans to implement such authority but may makes changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

At present, 7 **Del.C.**, Chapter 60 provides authority comparable to section 303 in that Delaware may seek permanent, preliminary injunctions and temporary restraining orders (7 **Del.C.** §6005) and issue cease and desist orders for violations (7 **Del.C.** §6018). Under 7 **Del.C.**, §6003, any unpermitted emission which may cause imminent or substantial danger to public health, safety, welfare or the environment is a violation of 7 **Del.C.**, Chapter 60.

(H) §110(a)(2)(H) Requirement: Provide for revision of such plan - (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this Act.

Delaware's Plan: Delaware will review and revise its SIP from time to time as may be necessary to take account of revisions of such primary or secondary NAAQS or the availability of improved or more expeditious methods of attaining such standard and whenever the Administrator finds on the basis of information available to

11. Sec. 303- Notwithstanding any other provisions of this Act, the Administrator upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to public health or welfare, or the environment, may bring suit on behalf of the United States in the appropriate United States District court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary. If it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect public health or welfare or the environment. Prior to taking any action under this section, the Administrator shall consult with appropriate State and local authorities and attempt to confirm the accuracy of the information on which the action proposed to be taken is based. Any order issued by the Administrator under this section shall be effective upon issuance and shall remain in effect for a period of not more than 60 days, unless the Administrator brings an action pursuant to the first sentence of this section before the expiration of that period. Whenever the Administrator brings such an action within the 60-day period, such order shall remain in effect for an additional 14 days or for such longer period as may be authorized by the court in which such action is brought.

the Administrator that the plan is substantially inadequate to attain the NAAQS which it implements or otherwise comply with any additional requirements established under the CAA.

(I) §110(a)(2)(I) Requirement: In the case of a plan or plan revision for an area designated as a non-attainment area, meet the applicable requirements of part D (relating to non-attainment areas).

For the ozone NAAQS, Delaware's SIP or recent SIP revisions already contain other elements addressing §110(a)(I) as discussed in the section 1.0 and the table thereto of this document. Many of these also apply to the fine particulate (PM_{2.5}) NAAQS. For fine the particulate matter NAAQS, the remaining applicable requirements under Part D will be addressed in future SIP revisions.

(J) §110(a)(2)(J) Requirement: Meet the applicable requirements of section 121 (relating to consultation), section 127 (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection).¹²

Delaware's Plan: Delaware will meet the applicable requirements of section 121 (relating to consultation), section 127 (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection); but may makes changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. At present, Delaware does so utilizing the following:

- Regulation No. 1132, Transportation Conformity, of the State of Delaware Regulations Governing the Control of Air Pollution provides a legal platform for the various consultation procedures that have been developed between DNREC, DELDOT, and the Metropolitan Planning Organizations (MPOs). The MPOs provide the forum for consultation with local governments.¹³ Delaware's MPOs are: (1) WILMAPCO, Kent County MPO, and the Salisbury-Wicomoco MPO. All SIP revisions undergo public notice and hearing which have allowed for comment by the public which includes local political subdivisions. Delaware believes the public notice and hearing processes also fulfills the section 121 consultation process. The submitted attainment plans and regulations in the approved Delaware SIP specify the organizations responsible for implementing and enforcing the plans.
- DNREC makes real-time and historical air quality information available on its Web site. All relevant SIPs and plans to achieve the NAAQS contain public notification provisions related to air monitoring levels such as Ozone Action Days, Air Quality Action Days, and DNREC's website. DNREC provides extended range air quality forecasts, which give the public advanced notice of air quality events. This advance notice allows the public to limit their exposure to unhealthy air and enact a plan to reduce pollution at home and at work. DNREC forecasts daily ozone and particle levels and issues e-mails to the public, businesses and the media via AirAlerts. AirAlert e-mail forecasts and notifications are free to the public.

For the ozone NAAQS, Delaware's SIP already contains the other elements addressing §110(a)(J) as

12. §121. - In carrying out requirements for plans to contain - (1) any transportation controls, air quality maintenance plan requirements or preconstruction review of direct sources of pollution, or (2) any measure referred to - (A) in part D), or (B) in part C, and in carrying out the requirements of §113(d), the State shall provide a satisfactory process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any FLM having authority over Federal land to which the State plan applies. Such process shall be in accordance with regulations promulgated by EPA. Only a general purpose unit of local government, regional agency, or council of governments adversely affected by action of EPA approving any portion of a plan may petition for judicial review.

§127. (a) - Each plan shall contain measures to regularly notify the public of when any NAAQS is exceeded or was exceeded during the preceding year, to advise the public of health hazards associated with such pollution, and to enhance awareness of measures which can be taken to prevent the standards from being exceeded and ways in which the public can participate in regulatory and other efforts to improve air quality.

13. Regulation 1132 was submitted as a revision to the Delaware SIP in a separate submittal.

discussed in the section 1.0 and the table thereto of this document. For the fine particulate (PM_{2.5}) NAAQS, any remaining applicable requirements under §110(a)(2)(J) will be addressed in future SIP revisions.

(K) §110(a)(2)(K) Requirement: Provide for - (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

For the ozone NAAQS, Delaware's SIP or recently submitted SIP revisions contains required modeling as discussed in the section 1.0 and the table thereto of this document. For the fine particulate (PM_{2.5}) NAAQS, the attainment demonstration is not yet due and will be addressed in future SIP revisions.

Delaware's Plan: Delaware will continue to perform modeling as required under the CAA to demonstrate attainment), but may makes changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. Delaware will continue to submit the Air Quality modeling data as part of Delaware's relevant SIP submissions and through federal grant commitments or in other ways that EPA may request.

(L) §110(a)(2)(L) Requirement: Require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover - (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under Title V.

Delaware's Plan: In a manner consistent with Delaware law, Delaware will continue to require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V pursuant to Delaware law. Delaware currently fulfills this under the enabling authority of 7 Del.C. §§ 6095 to 6099 and fee legislation that currently is renewed every three years. Delaware has a fully approved Title V operating permits program. See paragraphs (b) and (c) under "*Delaware*" in Appendix A to 40 CFR Part 70—Approval Status of State and Local Operating Permits Programs. Delaware may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

(M) §110(a)(2)(M) Requirement: Provide for consultation and participation by local political subdivisions affected by the plan.

Delaware's Plan: Delaware will continue to provide for consultation and participation by local political subdivisions affected by the SIP pursuant to the public notice laws found in 7 Del.C. §6006 and 6010 and 29 Del.C. Chapters 10003, 10004 and 10115, as applicable. Furthermore, all SIP revisions undergo public notice and hearing which have allowed for comment by the public which includes local political subdivisions. We believe the public notice and hearing processes fulfill the requirements for consultation with local political subdivisions affected by the SIP.

3.0 Conclusion

Based on the information provided above, Delaware fully complies with the requirements of §110(a)(2)(A) through §110(a)(2)(M).

DEPARTMENT OF TRANSPORTATION DIVISION OF PLANNING AND POLICY

Statutory Authority: 17 Delaware Code Sections 131, 146 and 508; Chapters 1 and 5
(17 Del.C. §§131, 146, 508)

GENERAL NOTICE

INTERPRETIVE GUIDELINE REGARDING IMPLEMENTATION Standards and Regulations for Subdivision Streets and State Highway Access

The December issue of the *Delaware Register* (11 DE Reg. 815) included the Final Order adopting proposed changes to the Delaware Department of Transportation's Standards and Regulations for Subdivision Streets and State Highway Access. As noted therein, these changes were previously advertised in the *State Register of Regulations*, at Vol. 11, page 67 (July 2007). In addition to written public comments on the proposed changes, the Department held a Public Hearing on July 26, 2007 to receive additional input. Legislative briefings were also held in each county, on September 24, 2007 (Kent), September 26, 2007 (Sussex), and October 3, 2007 (New Castle County). A Public Meeting was also held regarding these proposed changes on October 30, 2007.

The public comments received included questions about the required implementation date and the possible mechanism for "grandfathering" existing land use applications. As noted in the Final Order, "the Department committed to working on additional changes regarding "grandfathering," which if sought to be adopted would require a new publication and written comment period before adoption."

To address possible immediate issues about implementation, however, the Department issues this Interpretive Guideline to assist affected parties and the Department in handling the necessary transition between the old regulations and the newly adopted regulations.

Therefore, the Interpretive Guideline is as follows:

Land development applications (including subdivision, entrance, site plan, rezoning, and conditional use) submitted to and accepted for review by local government in accordance with required local procedures prior to and including March 31, 2008 will be subject to DeIDOT's subdivision and entrance standards and regulations in effect prior to December 21, 2007.

Land development applications (including subdivision, entrance, site plan, rezoning, and conditional use) submitted to and accepted for review by local government in accordance with required local procedures after March 31, 2008, will be subject to DeIDOT's Standards and Regulations for Subdivision Streets and State Highway Access in effect on December 21, 2007.

SO ORDERED this 19th day of December, 2007.

Carolann Wicks, P.E., Secretary, Delaware Department of Transportation

**NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE
LAWS****Model State Administrative Procedure Act Revision Process
Invitation to Participate**

The National Conference of Commissioners on Uniform State Laws (NCCUSL) is revising its Model State Administrative Procedure Act (MSAPA). NCCUSL invites organizations and individuals interested in state administrative agency processes to participate in this effort.

NCCUSL is a 117 year old national organization of lawyers, judges and law professors who are appointed to represent their states in drafting and seeking enactment of uniform laws to facilitate commerce and certainty in the law among the states. For more information about NCCUSL, visit <http://www.nccusl.org/>.

The goal of the MSAPA drafting committee is to make the administrative process more efficient, accessible and fair. The most recent draft of MSAPA is available at <http://www.nccusl.org/Update/CommitteeSearchResults.aspx?committee=234> . The drafting process will not be completed until the spring of 2009. The MSAPA drafting committee invites interested parties to attend committee meetings as an observer and make comments and suggestions at the meetings or by submitting them in writing. To become an observer, please contact Ms. Leang Sou at NCCUSL at (312) 915-0488 or at leang.sou@nccusl.org . Submit written comments about the MSAPA to Commissioner Francis J. Pavetti, 18 The Strand, Goshen Point, Waterford, CT 06385.

DEPARTMENT OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, January 17, 2008 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

NOTICE OF PUBLIC COMMENT PERIOD

3006.2 TANF Employment and Training Participation and Participation Rates

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 (DSS) is proposing to amend the Division of Social Services Manual (DSSM) regarding the Temporary Assistance for Needy Families (TANF) Employment and Training Program. 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 and Program Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by January 31, 2008.

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

The purpose of this regulatory action is to amend the Division of Social Services Manual (DSSM) regarding participation and participation rates provisions for the TANF Employment and Training Program.

Statutory Authority

- Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193)
- 45 CFR §261.22, *How will we determine a State's overall work rate?*
- 45 CFR §261.31, *How many hours must an individual participate to count in the numerator of the overall rate?*
- 45 CFR §261.32, *How many hours must an individual participate to count in the numerator of the two-parent rate?*
- 45 CFR §261.35, *Are there any special work provisions for single custodial parents?*

Summary of Proposed Change

DSSM 3006.2, *TANF Employment and Training Participation and Participation Rates*: These rule modifications clarify the calculation of the work participation rate and the required participation of TANF recipients in employment and training activities. Previously implemented in January 2007, this policy was already a federal exemption option but DSS was more restrictive with the thirteen (13) weeks option.

DIVISION OF SOCIAL SERVICES
NOTICE OF PUBLIC COMMENT PERIOD**FOOD STAMP PROGRAM****9076.2 SSN Disqualification, Child Support Sanctions and Ineligible ABAWDs and 9094 Cooperation with the DCSE**

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 the child support provisions.

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 and Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by January 31, 2008.

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 CHANGES**Statutory Authority**

- 7 CFR 273.11(o), *Custodial Parent's Cooperation with the State Child Support Agency*
- 7 CFR 273.11(c), *Treatment of Income and Resources of Certain Non-Household Members*

Summary of Proposed Changes

DSSM 9076.2 (Revision), *SSN Disqualification, Child Support Sanctions and Ineligible ABAWDs*: Currently TANF and Child Care require DSS applicants and recipients to cooperate with DCSE to get benefits. DSS is proposing to require the same cooperation for food stamp clients. The only difference is that only the custodial parent or responsible individual will be sanctioned for non-compliance, not the other household members. The sanctioned individual will have his/her income and deductions prorated like other prorated, sanctioned deemers.

DSSM 9094 (New), *Cooperation with the Division of Child Support Enforcement (DCSE)*: DSS is proposing to take the option to require custodial parents and other individuals responsible for the care of minor dependents to cooperate with the Division of Child Support Enforcement (DCSE) as a condition of eligibility for the Food Stamp Program.

Requiring the cooperation with child support will help facilitate the client towards self-sufficiency by identifying and locating absent parents, establishing paternity, and establishing support payments for the dependent children. Also, requiring cooperation may uncover unreported income. Child support payments may reduce the household's benefit; however, the household will have more money to spend on household expenses and food.

DEPARTMENT OF INSURANCE
NOTICE OF PUBLIC COMMENT PERIOD

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of intent to adopt proposed Department of Insurance **Regulation 906** relating to **THE USE OF CREDIT SCORES IN SETTING INSURANCE PREMIUMS IN AUTOMOBILE, MOTORCYCLE, BOAT AND PERSONAL WATERCRAFT, SNOWMOBILES AND OTHER RECREATIONAL VEHICLES, HOMEOWNERS, MOBILE-HOMEOWNERS, MANUFACTURED HOMES AND NON-COMMERCIAL DWELLING FIRE INSURANCE FOR PERSONAL OR FAMILY PROTECTION**. The docket number for the proposed amendment is 538. This proposed regulation replaces the previous proposed

regulation.

The purpose for proposing amendments to Regulation 906 is to comply with Delaware law and to prohibit insurance companies using consumer credit information in the setting of renewal premiums in insurance policies in areas noted above, except that consumers may request the use of credit information in renewals if such information would result in a reduction of premiums, and to establish procedures for consumers to request a re-rating of their insurance policy. The text of the proposed regulation is reproduced in the January 2008 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 hearing on this proposed regulation. Written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments are being solicited from any interested party. Written comments or other written materials concerning the proposed change to the regulation must be received by the Department of Insurance no later than 4:30 p.m., Monday February 3, 2008, and should be addressed to Regulatory Specialist Mitchell G. Crane, Esquire, c/o 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 NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

NOTICE OF PUBLIC HEARING

TITLE OF THE REGULATION:

Amendment to Regulation No. 1138 Emission Standards for Hazardous Air Pollutants for Source Categories

BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

Delaware adopted by reference the federal Maximum Achievable Control Technology (MACT) standard applicable to perchloroethylene dry cleaning facilities (40 CFR Part 63 Subpart M) into Regulation No. 1138 (formerly 38) on February 1, 1999. Since this initial adoption, the EPA has revised the federal MACT standard several times. The most significant of the revisions were the adoption of the residual risk requirements that will eliminate the use of perchloroethylene in dry cleaning systems located in building with residences and will reduce the emissions of perchloroethylene from existing dry cleaning systems and from all newly installed dry cleaning systems (71 FR 42724, July 27, 2006). These more stringent requirements were incorporated after the EPA determined that despite the full implementation of the MACT requirements, the remaining level of risk of adverse health affects was unacceptable.

The purpose of this amendment to Subpart M of Regulation No. 1138 is to be consistent, where appropriate, with federal requirements and to further reduce the remaining risk of adverse health affects, where reasonably and economically feasible.

The Department will also change from our past adoption by reference format and provide the complete regulatory text. This latter change will eliminate the need for the public and regulated community to interpret the adopted federal standards and the changes made when the Department originally adopted these standards into Regulation No. 1138.

NOTICE OF PUBLIC COMMENT:

Statements and testimony may be presented either orally or in writing at a public hearing to be held on Tuesday, January 22, 2008 beginning at 6:00 PM in the DNREC Conference Rooms A/B located at 391 Lukens Drive, New Castle, DE. Interested parties may submit comments in writing to: Jim Snead, DNREC Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720.

PREPARED BY:

James R. Snead, (302) 323-4542, james.snead@state.de.us, December 11, 2007

DIVISION OF FISH AND WILDLIFE
NOTICE OF PUBLIC HEARING**TITLE OF THE REGULATIONS:**

Tidal Finfish Regulation 3531 Tautog; Size Limits, Creel Limits and Seasons. (Formerly Tidal Finfish Regulation 22).

BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

In order to come into compliance with addendum V of the Atlantic States Marine Fisheries Commission's (ASMFC) Fishery Management Plan (FMP) for Tautog, Delaware Tidal Finfish Regulation 3531 must be changed to incorporate one of twelve management options, approved by the ASMFC Tautog Technical Committee. Each option will reduce tautog exploitation by a minimum of 25.6%, as mandated in addendum V. Both recreational and commercial fishermen will be affected, as commercial size limits, creel limits and seasons are identical to recreational management measures.

NOTICE OF PUBLIC COMMENT:

Individuals may present their opinions on this issue at a Public Hearing in the DNREC auditorium, 89 Kings Highway, Dover, DE 19901 at 7:00p.m. Wednesday, January 23, 2008. The hearing record will remain open for written or e-mail comments until 4:30 January 31, 2008.

PREPARED BY:

Jeff C. Tinsman (302) 739-4782, December 7, 2007

DIVISION OF FISH AND WILDLIFE
NOTICE OF PUBLIC HEARING**TYPE OF ACTION:**

Amend Tidal Finfish Regulation 3553. River Herring Creel Limit

PURPOSE OF ACTION:

The stocks of blueback herring (*Alosa aestivalis*) and alewife (*Alosa pseudoharengus*), both commonly referred to as river herring, are currently in steep decline throughout the Atlantic coast. Concern over the status of these stocks has prompted four states to close their river herring fisheries entirely. A significant harvest by recreational fishermen has recently developed in the spawning areas where river herring concentrate (at the base of spillways and dams) and are easily exploited. Most are captured using nets and transported alive to use as live bait for striped bass. The current regulation is insufficient to protect remaining stocks of river herring from over-exploitation and is difficult to enforce. The existing regulation is a possession limit that allows for multiple trips per day with no daily cap on landings. We are proposing to amend the current regulation from a possession limit to a daily creel (harvest) limit, and to reduce that limit from 25 river herring per person to 10 fish per person per day. This action would be consistent with the intent of the current Fisheries Management Plan for Shad and River Herring, and should protect stocks from overfishing until new requirements are adopted by the Atlantic States Marine Fisheries Commission Management Board for Shad and River Herring. River herring are currently managed under Amendment 1 to the Fisheries Management Plan and Technical Addendum #1 with the goal to protect, enhance, and restore East Coast migratory spawning stocks of shad and river herring to achieve stock restoration and maintain sustainable levels of spawning stock biomass. One of the stated objectives in the Plan is to prevent increases in fishing mortality by maintaining existing or implement more conservative regulations for hickory shad and river herring fisheries.

PROPOSED SCHEDULE OF ACTIVITIES:

Public hearing – January 24, 2008, 7:00 p.m. at the Univ. of DE, CMS, Lewes, DE

RESPONSIBLE STAFF MEMBER:

Craig A. Shirey 739-9914 (work)
739-6157 (fax)
craig.shirey@state.de.us

DEPARTMENT OF STATE
PUBLIC SERVICE COMMISSION
PUBLIC NOTICE

The Creation of a Competitive Market for Retail Electric Supply Service

ORDER NO. 7326

This 4th day of December, 2007, the Commission determines and Orders the following:

1. By PSC Order No. 7252 (Aug. 21, 2007), this Commission re-opened the captioned docket and directed Commission Staff to review the July 2007 statutory amendments to 26 **Del.C.** §1014 regarding an electric utility's "net metering" obligations and report back with proposed revisions to § 8 of the Commission's *Rules for Certification and Regulation of Electric Suppliers* ("*Electric Supplier Rules*") relating to such obligations.

2. By Memorandum dated November 26, 2007, Staff identified several complex provisions from the statutory amendments that require interpretation including the definition of "NEG" (likely "net excess generation"), the treatment of Renewable Energy Credits ("RECs") associated with NEG, and the payment obligations arising from a supplier's transfer of excess RECs to the Green Energy Fund, all under 26 **Del.C.** §1014(e)(1), as amended. With its Memorandum, Staff proposed certain revisions to § 8 of the Commission's *Electric Supplier Rules* to reflect its interpretation of the changes to the statutory "net metering" requirements.

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 1014(d) and 29 **Del.C.** §10115, the Commission proposes to revise the "Net Energy Metering" provisions of its *Rules for Certification and Regulation of Electric Suppliers*, originally adopted by PSC Order No. 5207 (Aug. 31, 1999) and revised by PSC Orders Nos. 7023 (Sept. 5, 2006) and 7078 (Nov. 21, 2006). A copy of the redlined version of the "Net Energy Metering" rules (*i.e.*, § 8) is appended as Exhibit "A" to this Order.

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 redlined version of § 8 of the *Rules for Certification and Regulation of Electric Suppliers* (Exhibit "A"); and the Notice of Proposed Rule-Making, attached hereto as Exhibit "B." 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 January 3, 2008. 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) Delaware Electric Cooperative, Inc.; (e) all certificated electric suppliers; and (f) each person or entity who has made a timely request for advance notice of regulation-making proceedings. The Secretary shall also post an electronic version of this Order on the Commission's website under an appropriate heading.

3. 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 February 6, 2008. Pursuant to 29 **Del.C.** §10117, the Commission will conduct a public hearing on the proposed revisions to § 8 of the *Rules for Certification and Regulation of Electric Suppliers* on March 25, 2008 beginning at 10:00 AM at the Commission's office at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware.

4. That, pursuant to 26 **Del.C.** §502 and 29 **Del.C.** §10116, Senior 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 §8 of the *Rules for Certification and Regulation of*

Electric Suppliers. 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.

5. That William F. O'Brien, Deputy Attorney General, is designated Staff Counsel for this matter.
6. 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.
7. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair
 Joann T. Conaway, Commissioner
 Jaymes B. Lester, Commissioner
 Dallas Winslow, Commissioner
 Jeffrey J. Clark, Commissioner

ATTEST:

Karen J. Nickerson, Secretary

NOTICE OF PROPOSED RULE-MAKING TO AMEND "NET ENERGY METERING" PROVISIONS OF ELECTRIC SUPPLIER RULES

TO: ALL RETAIL ELECTRIC SUPPLIERS IN DELAWARE, ALL DELAWARE RETAIL ELECTRIC CUSTOMERS WHO GENERATE ELECTRICITY AND OTHER INTERESTED PERSONS

Since 1999, Commission-jurisdictional electric utilities and electric suppliers have been obligated to permit residential and smaller commercial customers to use limited capacity generators (powered by renewable resources) to "net meter" their electric production and consumption. *See Rules for Certification and Regulation of Electric Suppliers* ("*Electric Supplier Rules*"), § 8.0 (adopted by PSC Orders Nos. 7023 (Sept. 5, 2006) & 7078 (Nov. 21, 2006)).

In July of 2007, the General Assembly expanded that statutory command: (a) to widen the customer classes eligible for net metering; (b) to increase permissible generator capacities for these additional classes of eligible customers; (c) to more particularly define the types of renewable generation eligible for net metering; and (d) to expand the "net metering" obligation beyond Commission-jurisdictional utilities. *See* 76 Del. Laws ch. 164 §§1-3 (July 24, 2007), *amending* 26 **Del.C.** §1014.

As a result of these statutory changes, the Commission now proposes changes to the "net metering" section of its *Electric Supplier Rules*. You can review the proposed amendments at the Commission's office in Dover at the address below (and obtain copies for \$0.25 per page) or visit the Commission's Internet website located at <http://depsec.delaware.gov>, under PSC Order No. 7326 (Dec. 4, 2007). You can also review PSC Order No. 7326 and the proposed amendments in the January 2008 issue of the *Delaware Register of Regulations*.

The PSC now solicits comments, suggestions, compilations of data, briefs, or other written materials concerning the proposed revisions to its "net metering" rules. If you wish to file any such materials, you should submit an original and ten copies of such written documents on or before **Wednesday, February 6, 2008**. 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. 49

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.

A Commission Hearing Examiner will conduct an Evidentiary Hearing to consider the proposed amendments and to receive comment and evidence concerning it on **Tuesday, March 25, 2008** at 10:00 a.m. at the address for the Commission listed above. The Commission will make its decision to adopt, reject, or adopt with modification, the proposed "net metering" amendments on the basis of the evidence and information presented of record in this docket. The Commission is authorized to promulgate the proposed amendments under 26 *Del.C.* §§362 and 1014(d).

If you have questions about this proceeding, you can contact the Commission at 1-800-282-8574 (in Delaware only) or (302) 736-7500 (text telephone available). You can also send inquiries by Internet e-mail addressed to funmi.jegede@state.de.us. If you are disabled and need assistance to be able to participate, please contact the Commission to make arrangements for such assistance.

PUBLIC SERVICE COMMISSION
PUBLIC NOTICE

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

ORDER NO. 7318

This 4th day of December, 2007, the Commission determines and Orders the following:

1. In Order No. 7263 (Aug. 21, 2007), the Commission opened this docket to consider promulgating rules that will govern Delmarva Power & Light Company's ("DP&L") development of integrated resource plans, or IRPs, for its Standard Offer Service ("SOS") customers, as authorized by the Electric Utility Retail Customer Supply Act of 2006 ("the Act"). Pursuant to that Order, the Commission Staff drafted proposed IRP rules after consulting with the parties in DP&L's ongoing IRP docket (PSC Dckt. No. 07-20) and with the three state agencies involved in DP&L's IRP process. On November 14, 2007, Staff submitted a set of proposed rules entitled "Integrated Resource Planning Regulation."

2. By this Order, the Commission accepts Staff's draft rules and initiates the formal rule-making procedure dictated by the Administrative Procedures Act.

Now, therefore, **IT IS ORDERED:**

1. That, for the reasons set forth in the body of this Order, and pursuant to 26 **Del.C.** §1007(c)(1)c and 29 **Del.C.** §10115, the Commission promulgates a proposed Integrated Resource Planning Regulation, a copy of which is appended as Exhibit "A" to this Order.

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 and a copy of the "Integrated Resource Planning Regulation" now being proposed for adoption (Exhibit "A").

3. That, in addition, the Secretary shall transmit the Notice of Proposed Rule-Making, attached as Exhibit "B," to the Registrar of Regulations for publication in the *Delaware Register of Regulations*. The Secretary also shall cause such Notice of Proposed Rule-Making to be published in *The News Journal* and the *Delaware State News* newspapers on December 19, 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 the service list already established in this docket and 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 February 1, 2008. Pursuant to 29 **Del.C.** §10117, the Commission will conduct a public hearing on the proposed "Integrated Resource Planning Regulation" on Wednesday, March 12, 2008 beginning at 10:00 AM at the Commission's office at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware.

5. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter

as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair
Joann T. Conaway, Commissioner
Jaymes B. Lester, Commissioner
Dallas Winslow, Commissioner
Jeffrey J. Clark, Commissioner

ATTEST:

Karen J. Nickerson, Secretary

NOTICE OF PROPOSED RULE-MAKING TO ADOPT AN "INTEGRATED RESOURCE PLANNING REGULATION"

**TO: ALL STANDARD OFFER SERVICE RETAIL CUSTOMERS OF DELMARVA POWER & LIGHT COMPANY
AND OTHER INTERESTED PERSONS**

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

The Commission now proposes an "Integrated Resource Planning Regulation" to govern DP&L's IRP process pursuant to the Act. You can review the proposed regulation at the Commission's office in Dover at the address below or at the Commission's Internet website located at <http://depssc.delaware.gov>, under PSC Order No. 7318. If you wish to submit comments on the proposed regulation, you must file such comments with the Commission on or before **Tuesday, February 1, 2008**.

A Commission Hearing Examiner will conduct an Evidentiary Hearing to consider the proposed regulation and to receive comment and evidence concerning it on **Wednesday, March 12, 2008** at 10:00 a.m. at the address for the Commission listed below. The Commission will make its decision to adopt, reject, or adopt with modification, the proposed IRP regulation on the basis of the evidence and information presented of record in this docket. The Commission is authorized to make rules to accomplish the development of IRPs by DP&L under 26 **Del.C.** §1007(c)(1)c.

You should file written comments with the Commission at the following address:

Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, Delaware 19904
Attn: PSC Reg. Dckt. No. 60

If you have questions about this proceeding, you can contact the Commission at 1-800-282-8574 (in Delaware only) or (302) 736-7500 (text telephone available). You can also send inquiries by Internet e-mail addressed to pamela.knotts@state.de.us. If you are disabled and need assistance to be able to participate, please contact the Commission to make arrangements for such assistance.

DEPARTMENT OF TRANSPORTATION DIVISION OF MOTOR VEHICLES PUBLIC NOTICE

2220 Determining Non-U.S. Citizen Driver License and Identification Card Expiration Dates

As authorized under 21 **Delaware Code** Sections 302, 2715(a), 3103(a), and Chapters 27 and 31, the Division of Motor Vehicles of the Delaware Department of Transportation (DelDOT), is seeking to adopt regulations for determining the expiration dates of non-U.S. citizen drivers' licenses and identification cards, as detailed in this publication.

The Department will take written comments on the draft regulations from January 1, 2008 through January 31, 2008.

Questions or comments regarding this document should be directed to:

Jack E. Eanes
Chief of Operations
Division of Motor Vehicles
DelDOT
303 Transportation Circle
PO Box 698
Dover, DE 19903
Phone (302) 744-2515
Fax- (302) 739-2042
E-Mail- Jack.Eanes@state.de.us