
Delaware Register of Regulations

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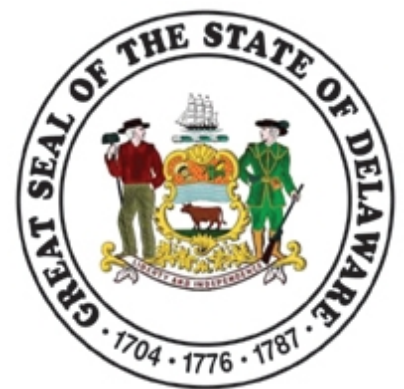
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Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before June 15, 2007.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

- Governor's Executive Orders
- Governor's Appointments
- Agency Hearing and Meeting Notices
- Other documents considered to be in the public interest.

CITATION TO THE DELAWARE REGISTER

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

10 **DE Reg.** 1690 - 1698 (05/01/07)

Refers to Volume 10, pages 1690 - 1698 of the *Delaware Register of Regulations* issued on May 1, 2007.

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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
August 1	July 16	4:30 p.m.
September 1	August 15	4:30 p.m.
October 1	September 15	4:30 p.m.
November 1	October 15	4:30 p.m.
December 1	November 15	4:30 p.m.

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Symbol Key

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

Proposed Regulations

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

DELAWARE COUNCIL ON POLICE TRAINING

Statutory Authority: 11 Delaware Code, Section 8404(a)(5) (11 **Del.C.**, §8404(a)(5))

PUBLIC NOTICE

The Council on Police Training (COPT), in accordance with 11 **Delaware Code** §8404(a)(14) and 29 **Delaware Code** §10115 of the Administrative Procedures Act, hereby gives notice that it shall hold a public hearing on July 24, 2007 at 9:00 a.m., in the first-floor conference room of the Delaware State Police Training Academy, N. DuPont Highway, Dover, Delaware 19903.

The Council on Police Training will receive written comments or oral testimony from interested persons regarding the following regulations to amend current COPT Regulation 8.0 (Re-activation Requirements of Police Officers). The final date for interested persons to submit written comments shall be the date of the public hearing. Written comments should be directed to Captain Ralph H. Davis, III, Director, Delaware State Police Training Academy, P.O. Box 430, Dover, DE 19903-0430.

Any person wishing to make written or oral comments who would like a copy of the proposed regulations may contact the COPT at (302) 739-5903, or write to the above address.

1901 Delaware Council on Police Training

(Break in Continuity of Sections)

8.0 Re-activation Requirements of Police Officers

8.1 Inactive Status

8.1.1 Whenever a police officer required to be certified by the Council on Police Training retires, resigns, or otherwise voluntarily or involuntarily leaves his or her employing law enforcement agency, the chief of the employing agency shall advise the Administrator of the separation in writing within five (5) business days of the separation and identify the circumstances of the separation.

8.1.2 Upon receiving notice of a police officer's separation from law enforcement employment, the Administrator shall place that individual on inactive status in which status he or she is not authorized to exercise the powers of a police officer until such time as he or she meets the requirements for re-activation.

8.1.3 The Administrator may re-activate the individual's certification upon written application

from the individual that he or she has accepted another full-time police position with a law enforcement agency whose training is regulated by the COPT and provided that the individual is not the subject of a de-certification proceeding pursuant to 29 Delaware Code §8404(4) and the individual meets all other criteria for re-activation which the Council has adopted in Regulation 8.2

8.42 Re-activation Requirements

8.42.1 If not employed on a permanent basis for a period of less than 12 months, an individual must complete all in-service requirements mandated by the Council pursuant to 11 Del.C. Section 8404(a)(5) prior to recommencing employment.

8.42.2 If not employed on a permanent basis for a period of greater than 12 months but less than 36 months, an individual must satisfy all minimum standards for initial employment established by the Council. These include, but are not limited to, the following:

8.42.2.1 Medical background including:

8.42.2.1.1 Medical history / physical examination form

8.42.2.1.2 Physicians affidavit

8.42.2.1.3 Weight chart

8.42.2.1.4 Substance abuse screen

8.42.2.2 The results of a validated psychiatric / psychological test and interview, indicating competency to perform law enforcement duties.

8.42.2.3 Current criminal history record check, including fingerprints obtained from the State Bureau of Investigations.

8.42.2.4 Background investigation. Standardized form (IV-14) which consists of a minimum checklist.

8.42.2.5 All training requirements prescribed by the Council, including, but not limited to First Responder and Firearms recertification.

8.42.2.6 Firearms training.

8.42.3 If not employed on a permanent basis for a period of greater than 36 months but less than 60 months, an individual must satisfy all minimum standards for initial employment established by the Council. These include, but are not limited to, the following:

8.42.3.1 Medical background including:

8.42.3.1.1 Medical history / physical examination form

8.42.3.1.2 Physicians affidavit

8.42.3.1.3 Weight chart

8.42.3.1.4 Substance abuse screen

8.42.3.2 The results of a validated psychiatric / psychological test and interview, indicating competency to perform law enforcement duties.

8.42.3.3 Current criminal history record check, including fingerprints obtained from the State Bureau of Investigation.

8.42.3.4 Background investigation. Standardized form (IV-14) which consists of a minimum checklist.

8.42.3.5 First Responder recertification

8.42.3.6 Complete a Firearms basic certification course.

8.42.3.7 Complete an academy basic criminal procedures, criminal law and traffic law course.

8.42.3.8 Complete any other academic requirement imposed by the Delaware State Police, Director of Training, following a review of the individuals training records.

8.42.4 If not employed on a permanent basis for a period of greater than 60 months, an individual must satisfy all requirements imposed by the Director of the Delaware State Police Training Division following a review of the individual's training history and after approval by the Council.

***Please Note: As the rest of the sections were not amended, they are not being published. For a complete set of the rules and regulations for the Council on Police Training, contact the Council on Police Training, or the Office of the Registrar of Regulations. A PDF version of the regulation is available at:**

<http://regulations.delaware.gov/register/july2007/proposed/copt.pdf>

DELAWARE RIVER BASIN COMMISSION**PUBLIC NOTICE****Revised Proposed Amendments to the Comprehensive Plan and Water Code Relating to a Flexible Flow Management Plan for Operation of the New York City Delaware Basin Reservoirs**

The Delaware River Basin Commission ("DRBC" or "Commission") is a federal-interstate compact agency charged with managing the water resources of the basin without regard to political boundaries. Its commissioners are the governors of the four basin states - Delaware, New Jersey, New York, and Pennsylvania - and a federal representative appointed by the President of the United States. The Commission is not subject to the requirements of 29 **Delaware Code** Chapter 101. This notice is published by the Commission for informational purposes.

Summary: The Commission will hold a public hearing and accept written comment on a revised proposal to amend the agency's Comprehensive Plan and Water Code to establish a Flexible Flow Management Program (FFMP) for the New York City Delaware Basin Reservoirs ("City Delaware Reservoirs") for multiple objectives, including, among others, (a) providing safe and reliable supplies of water, (b) managing discharges, (c) assisting in mitigating floods, (d) providing flows in the tailwaters to help sustain cold water fisheries, and (e) providing flows to help protect ecological health, support withdrawal and non-withdrawal uses and repel salinity. The current reservoir releases program, established by Resolution No. 2004-3, and the current spill mitigation program, established by Resolution No. 2006-18, both were due to expire on May 31, 2007. By Resolution No. 2007-7 on May 10, 2007, the Commission extended these programs through September 30, 2007 in light of this ongoing rulemaking process. The Commission will also accept comment on alternative reservoir management strategies that may be adopted in the event that the decree parties do not unanimously consent to the proposed FFMP or the Commission does not promulgate regulations embodying the FFMP. The alternative reservoir releases options to be considered are (1) extending the current reservoir releases program or (2) reinstating a previous reservoir releases program. In evaluating these options, the Commission will also consider a seasonal spill mitigation program or an annual spill mitigation program for the three reservoirs and an amelioration program for the potential effects on the tailwaters fishery of the Lake Wallenpaupack drought operating plan adopted by Resolution No. 2002-33. The releases program adopted in the event that the proposed FFMP is not approved would continue in effect until any expiration date contained in the program adopted or unless and until replaced by another program that has been approved by the Commission. If approved by the Commission, the FFMP will supersede Docket D-77-20 CP (Revised) until the FFMP's expiration on May 31, 2010 or further renewal date, and all other versions of Docket D-77-20 CP shall be rescinded or expire. A comprehensive reassessment of safe yield and operations of selected basin reservoirs will be undertaken during the first three years that the FFMP is in effect.

Any alternative program addressing issues regarding which the public has not been provided notice through the present rulemaking may require a further notice and comment rulemaking process. In accordance with Section 3.3 of the Delaware River Basin Compact, any program affecting the diversions, compensating releases, rights, conditions, and obligations of the 1954 Supreme Court Decree in the matter of *New Jersey v. New York*, 347 U.S. 995, 74 S. Ct. 842 also requires the unanimous consent of the decree parties, which include the states of Delaware, New Jersey and New York, the Commonwealth of Pennsylvania, and the City of New York.

Background: The flow management objectives considered by the Supreme Court Decree of 1954 were narrower than the diverse objectives that have emerged in the decades since. Today, the finite waters of the Delaware and the limited storage available in the basin are being managed for multiple purposes, including among others water supply and drought mitigation, flood mitigation, habitat protection in the tailwaters fishery, the mainstem and the estuary and salinity repulsion. In accordance with the Delaware River Basin Compact, a statute concurrently enacted in 1961 by the United States and the four basin states - Delaware, New Jersey, New York and Pennsylvania - the Delaware River Basin Commission may modify diversions, releases, rights, conditions and obligations established by the decree, provided that the decree parties unanimously consent to such modifications. The Commission and decree parties have made use of this authority to provide flexibility to respond to fluctuating hydrologic conditions and evolving priorities throughout the Commission's history.

Unlike the experimental programs instituted by the Commission in the past, the FFMP is intended to provide a comprehensive framework for addressing multiple flow management objectives, including, in addition to

water supply, drought mitigation and protection of the tailwaters fishery, a diverse array of habitat protection needs in the mainstem, estuary and bay, assistance in mitigating the impacts of flooding, recreational goals and salinity repulsion. Some of the flow needs identified by the parties have not yet been defined sufficiently for the development of detailed plans. These include protection of the dwarf wedgemussel, a federal and state-listed endangered species present in the mainstem, oyster production in Delaware Bay, and protection of warm-water and migratory fisheries in the lower basin. Incremental and periodic adjustments are expected to be made to the FFMP for these purposes, based upon ongoing monitoring, scientific investigation, and periodic re-evaluation of program elements.

A central feature of the reservoir release programs implemented to date for management of the tailwaters fishery has been the use of reservoir storage "banks" employed for narrowly defined purposes under specific hydrologic and temperature conditions and at specified times of the year. These are applied in conjunction with a set of fixed seasonal flow targets. The system requires complex daily flow and temperature modeling as a component of determining the releases, and as a result, the program is difficult and costly to administer. The current approach also lacks the seasonal fluctuations characteristic of a natural flow regime. The FFMP would largely eliminate the use of banks and would base releases instead on reservoir storage levels, resulting in larger releases when water is abundant and smaller releases when storage is at or below normal. The result would more closely approximate a natural flow regime. In addition, the FFMP would provide for more gradual transitions (or "ramping") from higher to lower releases and vice versa than the current regime. The FFMP would include a discharge (spill) mitigation component similar to but enhancing the temporary programs implemented in the past. The storage represented by snowpack water content would continue to be considered.

The decree parties have considered the broad range of public comments that were received on the FFMP that was published in February and have proposed several revisions in response to those comments. The discharge mitigation provisions of the release program would be enhanced by increasing the rate of releases from Cannonsville Reservoir and modifying the release triggering curves by extending the period during which releases are triggered at the 75 percent storage level and expanding the period of time during the year covered by the program. These releases would also serve to provide more water than did the previous FFMP proposal for fisheries protection during the spring and early summer. A Temporary Release Quantity would be established for a 3-year period, supported by the Excess Release Quantity specified in the decree, and making release water available to meet Montague and Trenton flow objectives under certain conditions. The maximum New Jersey diversion authorized in the decree, which was reduced during drought operations by the Good Faith Agreement of the decree parties and the Commission's Water Code would be partially restored by the revised FFMP, resulting in continuation of New Jersey's 100 mgd diversion during normal and drought watch operations; and diversions of 85 mgd during drought warning and drought emergency operations. The Montague flow objective would be detached from the Good Faith Agreement's salt front vernier during drought emergency operations.

Hydrologic modeling and habitat assessments are being undertaken to evaluate the sustainable benefits of the FFMP for the tailwaters fishery and for discharge mitigation. In addition, an evaluation is being made of the potential benefits and costs of increasing storage in one or more of the City Delaware Reservoirs that may improve the capacity of the system to meet the full range of flow objectives.

If a decision of DRBC commissioners on details of the FFMP with the unanimous consent of the decree parties cannot be reached at the Commission meeting on September 26, 2007, the parties intend to continue to work at refining and improving the FFMP. Under such circumstances, for an interim period, the parties will consider extending the current fisheries management program or reinstating a previous regime. In either case, a discharge mitigation plan and an amelioration program for the potential effects of the Lake Wallenpaupack drought operating plan will also be considered.

The revised proposed FFMP in its entirety and the proposed regulations embodying the FFMP will be posted on the website of the Delaware River Basin Commission, www.drbc.net, on or before Monday, July 16, 2007.

Dates: Two public hearings on the revised FFMP proposal will be conducted at 2:30 p.m. and 6:30 p.m. respectively on Tuesday, August 14, 2007 at the office building of the Delaware River Basin Commission in West Trenton, NJ. Written comments will be accepted through Wednesday, August 15, 2007. To allow sufficient time for consideration of written comments, comments must be received, not merely postmarked, by that date. In addition, three informational meetings will be held on the revised proposal. The first informational meeting will take place during a meeting of the Commission's Regulated Flow Advisory Committee (RFAC), which will be held at 10:00

PROPOSED REGULATIONS

a.m., held on June 27, 2007 at the PPL Lake Wallenpaupack Environmental Learning Center in Hawley, PA. The second will take place during the morning conference session of the Commission's regularly scheduled meeting at 10:15 a.m., on Wednesday, July 18, 2007 at the DRBC office building in West Trenton, NJ. The third informational meeting will take place at 1:00 p.m. on Tuesday, August 14, 2007, immediately prior to the first public hearing on the proposal, scheduled for that date at the Delaware River Basin Commission office building in West Trenton, NJ.

Addresses: Directions to the Commission's office building, located at 25 State Police Drive in West Trenton, NJ, are available on the DRBC website at www.drbc.net. Please do not rely upon MapQuest or other Internet mapping services for driving directions, as they may not provide accurate directions to the DRBC. Directions to the Lake Wallenpaupack Environmental Learning Center are available at <http://www.pplweb.com/lake+wallenpaupack/contacts+and+directions/get+directions.htm> and will be posted on the DRBC website, www.drbc.net on or before July 16, 2007. Written comments must include the name, address and affiliation of the commenter. Comments may be submitted by email to paula.schmitt@drbc.state.nj.us; by U.S. Mail to: Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628-0360; and by fax to Attn: Commission Secretary at 609-883-9522. In all cases, the subject line should include the phrase, "FFMP Comment".

Previously Submitted Comments: All written comments submitted to the Commission during the prior comment period, or presented orally or in writing to the Commission at its prior scheduled public hearings, with regard to the form of the FFMP posted on the Commission's website in February, 2007, will be included in the administrative record for this rulemaking and need not be resubmitted.

Further Information, Contact: The text of the proposed FFMP in its entirety and the proposed regulations embodying the FFMP will be posted on the website of the Delaware River Basin Commission, www.drbc.net, on or before July 16, 2007 and will remain posted through September 26, 2007. Please contact Pamela M. Bush, Esquire, Commission Secretary and Asst. General Counsel at 609-883-9500 ext. 203 with questions about the proposed rule change or the rulemaking process.

Pamela M. Bush, Esquire
Commission Secretary and Assistant General Counsel
June 14, 2007

DEPARTMENT OF AGRICULTURE DELAWARE FOREST SERVICE

Statutory Authority: 3 Delaware Code, Sections 1008 and 1011 (3 **Del.C.** §§1008 and 1011)
3 **DE Admin. Code** 402

PUBLIC NOTICE

The Department proposes these amendments to the Forest Service's Regulations pursuant to 3 **Del.C.** Sections 1008 and 1011. The purpose of these proposed amendments is to ensure that these publicly owned lands are conserved, protected, and maintained for the benefit of all. These proposals make the State Forest regulations more consistent with similar regulations for other land-managing Delaware agencies.

Copies of the proposed amendments to the regulations may be obtained from the State Forester's Office. The Department will accept written comments from the public on the proposed amendments for thirty (30) days. Public comments should be submitted to Michael Valenti, Assistant Forestry Administrator, on or before 1:00 p.m., July 31, 2007, at the Delaware Department of Agriculture, 2320 South DuPont Highway, Dover, DE, 19901.

402 State Forest Regulations

1.0 Authority

1.1 These regulations are promulgated pursuant to the delegation of authority to the Department of

Agriculture by the General Assembly found in 3 **Del.C.** Sections 1008 and 1011.

6 DE Reg. 517 (10/1/02)

6 DE Reg. 1201 (3/1/03)

2.0 Purpose

2.1 The State Forests of Delaware are open to members of the public for their enjoyment. Most legal forms of non-motorized recreation are permitted. The following regulations were developed to ensure that these publicly owned lands are conserved, protected, and maintained for the benefit of all.

6 DE Reg. 517 (10/1/02)

6 DE Reg. 1201 (3/1/03)

10 DE Reg. 88 (7/1/06)

3.0 Construction

3.1 No regulation herein shall be interpreted or construed in such a manner as to prevent or delay authorized personnel of the Department or other state, county, or municipal agencies from completing official duties or emergency response.

3.2 In special circumstances, events, or emergencies, the Secretary or Forestry Administrator may, when it is deemed to be in the public interest, waive a specific regulation or fee.

3.3 Failure to enforce a specific regulation at a particular instance or instances shall not affect the validity of any other regulation or affect the validity of such regulation at any other time.

6 DE Reg. 517 (10/1/02)

6 DE Reg. 1201 (3/1/03)

10 DE Reg. 88 (7/1/06)

4.0 Definitions

4.1 “**Department**” is the Delaware Department of Agriculture

4.2 “**DFS**” is the Delaware Forest Service

4.3 “**DNREC**” is the Delaware Department of Natural Resources and Environmental Control

4.4 “**Secretary**” is the Secretary of the Delaware Department of Agriculture

4.5 “**State Business Hours**” are 8:00 a.m. to 4:30 p.m. on Monday through Friday, except for state holidays.

6 DE Reg. 517 (10/1/02)

6 DE Reg. 1201 (3/1/03)

10 DE Reg. 88 (7/1/06)

5.0 General Rules and Regulations

5.1 In order to promote the safety and welfare of State Forest visitors and protect and manage property in the State Forests, the Secretary and Forestry Administrator shall have the authority to develop reasonable policies for State Forests that are not in conflict with 3 **Del.C.** Ch. 10 and these regulations. These policies must be approved by the Secretary and posted in a conspicuous location in the State Forest prior to their becoming effective. Copies of all policies shall also be maintained in the State Forest office.

5.2 Violation of any State Forest policy shall be grounds for eviction from the State Forest and the denial, revocation, or suspension of any permit issued or privilege granted by the Department.

5.3 The Department shall have the authority to enforce safety rules and/or policies developed in accordance with 5.1 of these Regulations for the protection of visitors and property.

5.4 State Forests are open to most forms of lawful non-motorized recreational uses that do not violate any of the rules and regulations contained herein.

5.5 Unless otherwise indicated, State Forest access roads are closed to vehicular travel, unless otherwise indicated, to improve the quality of recreation and to reduce littering. It shall be unlawful for any person to drive or operate a motorized vehicle upon any lands of the DFS except on established roads or as otherwise authorized by the Forest Administrator. Where vehicular traffic is permitted, the speed limit is ten (10) twenty (20) miles per hour unless otherwise posted. Vehicular traffic on tax ditch rights of way is prohibited except for maintenance by authorized personnel and for law enforcement purposes. Non-pedestrian traffic (horseback riding

~~and mountain biking) is restricted to access roads and trails unless otherwise noted. None registered vehicles and all-terrain vehicles are prohibited in all areas except those used by DFS employees or law enforcement in the application of their lawful duties. It shall be unlawful for any person to drive or operate any motorized vehicle upon any lands administered by the DFS, unless said vehicle is licensed for use upon public highways and roadways or the driver or operator of said vehicle has been issued a permit from the DFS. These roads and trails are open to pedestrian and non-vehicular travel only. Non-pedestrian traffic (horseback riding and mountain biking) is restricted to access roads and trails, unless otherwise noted. In addition, vehicle use of tax ditch right of ways is unlawful. Furthermore, no off-highway vehicles or all-terrain vehicles, either registered or non-registered, are permitted except those off-highway vehicles owned, operated, and/or authorized by the Delaware Forest Service (DFS). Violators will be prosecuted for trespassing.~~

~~5.6 All Boundaries of State Forests boundaries are well are clearly marked with metal signs and/or yellow paint on boundary line trees, brushed out paths, or with a combination of all three features. State Forest visitors must not trespass upon adjoining private lands. Visitors crossing onto private property are subject to trespass laws governed by Delaware Code.~~

~~5.7 No living trees, shrubs, or other vegetation may be cut, felled, uprooted, removed, or otherwise injured or destroyed, unless written permission has first been obtained from the forest officer in charge.~~

~~5.8 No living animals shall be harassed, injured, destroyed, or collected and removed from State Forest lands unless written permission has first been obtained from the forest officer in charge. The only exception is lawful hunting as specified in the Division of Fish and Wildlife adopted regulations outlined in the annual **Hunting and Trapping Guide.**~~

~~5.89 Fires are prohibited for any purpose on State Forest lands other than in designated areas unless written permission is obtained in advance from the forest officer in charge. Written permission must be obtained in advance for fires on State Forest lands outside of designated areas. Any such authorized fire must, at all times, be under the direct supervision and care of a competent adult, and must be thoroughly extinguished before the fire site is abandoned. All fires must be under the direct supervision of a competent adult. It shall be unlawful to leave any fires that have not been thoroughly extinguished.~~

~~5.910 The dumping or depositing of rubbish, trash, paint, household items, or other debris, or any other materials and activities that could result in the depositing of such materials, such as paintball and geo-caching, are also prohibited. The placing placement of advertisement signs within State Forests is prohibited.~~

~~5.11 The placement of advertisement signs on State Forest property is prohibited.~~

~~5.1012 Persons using public picnic sites are required to deposit all trash and other refuse in the proper containers, if provided. Where containers are not provided, users must properly dispose of all refuse off State Forest lands. It shall be unlawful to litter on State Forest lands.~~

~~5.413 Writing upon, mutilating, carving, and otherwise defacing trees, buildings, structures, signs, and official notices is prohibited.~~

~~5.4214 With the exception of animals permitted under lawful hunting regulations, all animals must be under the continuous control of the owner(s) unless otherwise authorized in writing by the Forestry Administrator. All dogs must be leashed, unless covered by the exception above. State Forest visitors are responsible for the conduct and any damages, either personal or property, caused by their animals.~~

~~5.1315 Dog training is permitted on State Forest lands; however, the dog owner(s) must notify DFS personnel in the local State Forest office prior to the training. It shall be unlawful to train dogs on DFS property unless prior permission is authorized by the State Forest office.~~

~~5.4416 Entry to State Forest lands is prohibited from sunset to sunrise, except for lawful hunting, permitted camping, permitted Redden Lodge use, or as otherwise permitted in writing by the DFS.~~

~~5.4517 Fishing on State Forest lands is limited to catch and release only. A state fishing license is required to fish on State Forest lands.~~

~~5.4618 Visitors must shall park in designated areas only and within those designated areas, they must not block gates to State Forest access roads. It shall be unlawful for any person to park any vehicle on lands administered by the DFS in such a manner as to obstruct the use of State Forest access roads, gates, or trails. Any vehicle parked in such a manner shall be subject to removal and the owner of said vehicle shall pay for all costs involved in such removal.~~

~~5.4719 Alcoholic beverages are prohibited on State Forest lands except within the Redden Lodge, if and only if, authorized in writing by the DFS.~~

6 DE Reg. 517 (10/1/02)

6 DE Reg. 1201 (3/1/03)

10 DE Reg. 88 (7/1/06)

6.0 Redden State Forest Lodge

~~6.1 Maximum Lodge capacity is 45 persons (overnight use). It shall be unlawful to make use of the Lodge facility in any manner other than outlined in the Redden state Forest Lodge Lease Agreement.~~

~~6.2 The organization or individual renting the Lodge must be at least 21 years of age and provide a minimum of one adult supervisor per ten youths. Youth are defined as persons under 18 years of age and adults as having reached the age of 21.~~

~~6.3 The use or possession of illegal drugs is strictly prohibited. Alcoholic beverages are prohibited (unless approved in writing by the DFS). Smoking and the use of other tobacco products are prohibited inside the Lodge. Users must deposit tobacco products in the outside receptacles provided.~~

~~6.4 Unauthorized heating or cooling equipment is prohibited in the Lodge. The fire alarm system is designed for the protection of all those who use the Lodge and the structure itself. Any misuse or intentional activation of this and other alarms is strictly prohibited and legal action(s) will be taken pursuant to **Delaware Code**.~~

~~6.5 The use or possession of firearms or other weapons (except as permitted for legal hunting outside the safety zone, or as approved in writing by the DFS), is strictly prohibited.~~

~~6.6 No outside fires may be started at any time in the vicinity of the Lodge, except in the permanent grills installed on site and the fire pit area, or as approved in writing by the DFS.~~

~~6.7 Service dogs are permitted; no other pets shall be permitted within or near the Lodge.~~

~~6.8 An adequate supply of firewood will be provided and placed on the back porch. Please do not retrieve additional wood from the shed/storage area. No charcoal, wax logs, or other materials shall be used in the fireplaces.~~

~~6.9 No sleeping facilities are provided at the Lodge. There are cooking facilities and tables and chairs for eating. There are no pots, pans, dishes, or serving articles. Do not move any furniture or fixtures. Folding tables and chairs are not permitted outside the Lodge.~~

~~6.10 The telephone at the Lodge is provided for emergencies, local calls, and credit card or collect long distance calls and are only for use by adults, except in emergencies. You must dial 9 before placing any call. The number for the Lodge phone is (302) 856 5939, and incoming calls can be received. Please remember this telephone is only to be used when necessary and are not for social calls. It is the responsibility of the applicant to honor these restrictions and inform all lodge users of the telephone restrictions. If the telephone restrictions are not honored, the DFS reserves the right to remove the telephone at any time.~~

~~6.11 Any alteration of the Lodge is strictly prohibited, such as but not limited to moving the furniture, using nails, screws, tape, etc., or discharging fire extinguishers except in the case of fire.~~

~~6.12 Lodge Rental Fees, Reservations, Deposits, and Cancellations~~

~~6.12.1 Reservations shall be made on a first come, first served basis. To secure a reservation, a completed application and the full Lodge user fee must be received at least 120 days prior to the desired reservation date.~~

~~6.12.2 A security damage deposit in the amount of \$100.00 must be received at the time of check in. If the security damage deposit is not paid prior to check in, the person/group/organization will not be permitted use of the lodge. The security damage deposit will be returned within 5 days after check out, if the lodge is found in good condition. If the lodge is not found in good condition, an itemized list of charges will be provided to the person/group/organization~~

~~6.12.3 Cancellation policy: Reservations must be canceled at least fifteen (15) working days prior to the arrival date. If this cancellation policy is not followed, the reservation deposit will be forfeited. The security damage deposit will be refunded for all cancellations.~~

~~6.12.4 Types of Use~~

~~6.12.4.1 Daily: 9:00 a.m.—3:00 p.m.~~

~~6.12.4.2 Evening: 4 p.m.—10 p.m.~~

~~6.12.4.3 Weekend: Friday 4 p.m.—Sunday 10 p.m.~~

~~6.12.4.4 Weekday Overnight: 4 p.m.—8 a.m.~~

~~6.12.5 Lodge Rental Fees: Lodge user fees shall be as follows:~~

~~6.12.5.1 May 1 to September 30~~

PROPOSED REGULATIONS

6.12.5.1.1	\$90	Daily, Evening Use, and Weekday Overnight
6.12.5.1.2	\$225	Weekend Use
6.12.5.2	October 1 to April 30	(Increased fees due to heating expenses)
6.12.5.2.1	\$100	Daily, Evening Use, and Weekday Overnight
6.12.5.2.2	\$250	Weekend Use
6.12.5.3	Checks should be made payable to: Department of Agriculture.	
6.12.5.4	Payments and application should be mailed to:	
	Redden State Forest	
	18074 Redden Forest Drive	
	Georgetown, DE 19947	
	(302)856-2893	
	Weekdays 8:00 a.m.—4:30 p.m.	

6 DE Reg. 517 (10/1/02)

6 DE Reg. 1201 (3/1/03)

10 DE Reg. 88 (7/1/06)

7.0 Camping Rules and Regulations

7.1 Camping is free-of-charge, year round, but restricted to map-designated campsites. A forest use permit is required for all camping on State Forest lands. Permits are available at State Forest offices during state business hours or from information boxes located at each State Forest office. Completed permits must be submitted during office hours to ensure campsite availability.

7.2 Campsites are on a first-come, first-served basis and reservations are required.

7.3 Campsites are of a primitive type, and are to be used ONLY for tent, van or pickup campers. Travel trailers and /or self-propelled motor homes are excluded due to access and parking limitations, unless otherwise noted.

7.4 There are a limited number of campsites, each is large enough to accommodate large families. These are equipped with tables, fire pits, charcoal grills and a trash barrel. Campsites are limited to a maximum number of ten (10) people per site, with a maximum stay of three nights per week. Camper(s) must remove their trash upon vacating their campsite.

7.5 Camping is at your own risk. State Forests are a public use area and there is no after-hours, nighttime or weekend security. Law enforcement is provided by the Delaware State Police and DNREC should the need arise.

7.6 State forests are “multiple-use facilities”, which means other activities will continue while you camp. These activities include: hunting, picnicking, hiking, nature study, horseback riding, firewood cutting (by permit only), and timber harvesting. The DFS reserves the right to limit or deny permits during times of conflicting use.

7.7 Firewood for camp use is available at the campsites. If more firewood is needed, it may be gathered locally from dead and downed trees. ~~No standing trees or shrubs are to be cut.~~ Standing trees or shrubs shall not be cut. Using firewood located at the office complex is prohibited. ~~Campfires are to be in~~ shall be contained within established fire rings only.

7.8 Campsites are to be left clean and all fires are to be extinguished before departing from the area.

6 DE Reg. 517 (10/1/02)

6 DE Reg. 1201 (3/1/03)

10 DE Reg. 88 (7/1/06)

8.0 Hunting Rules and Regulations

8.1 State Forests are year-round multiple use areas. Hunters share the use of State Forest lands with other public users such as hikers, campers, horseback riders, firewood cutters, and loggers.

8.2 No special permits are required to hunt on State Forest lands, except as specified in the DNREC, Division of Fish and Wildlife ~~annual hunting manual~~ Hunting and Trapping Guide. Properly licensed hunters may hunt during any open season except on areas otherwise designated, such as those marked with Wildlife Sanctuary, NO HUNTING, or Safety Zone signs.

8.3 No permanent deer stands, platforms, ladders, or blinds may be constructed. No screw-in tree

steps, spikes, screws, or nails are allowed.

8.4 Deer drives by any person or persons are not permitted on any State Forest land at any time.

8.5 Small game hunting is closed on State Forest lands during firearm deer seasons.

8.6 The DFS reserves the right to close specific State Forest tracts to hunting during specific hunting seasons. It shall be unlawful for any person to hunt on lands administered by the DFS, except as permitted by the Forestry Administrator in writing and specified on current State Forest area maps distributed by the DFS.

8.7 Trapping rights may be leased for State Forest lands. No other trapping is permitted on State Forest lands.

8.8 Target shooting is prohibited. Firearms are allowed for legal hunting only and are otherwise prohibited on State Forest lands.

8.9 Waterfowl hunting is not permitted on State Forest land or waters.

8.10 Squirrel hunting is not allowed with a rifle or muzzleloading rifle. Squirrel hunting with a shotgun is permitted.

8.11 The following hunting restrictions apply to those tracts of State Forest lands as specified in the DNREC, Division of Fish and Wildlife ~~annual hunting manual~~ **Hunting and Trapping Guide**. Maps delineating these areas are available at State Forest offices.

8.11.1 All deer hunting is limited to numbered stands.

8.11.2 For shotgun season stands will be chosen in a pre-season lottery. To apply for a stand during the shotgun season fill out the application in the Delaware Hunting and Trapping Guide. For leftover stands there will be a daily lottery held at the local State Forest office, ~~4-2~~ 1 and 1/2 hours before legal hunting time.

8.11.3 For Muzzleloader season there will be a daily lottery held at the local State Forest office, ~~4-2~~ 1 and 1/2 hours before legal hunting time.

8.11.4 All hunters on these tracts, during shotgun and muzzleloader season, must only hunt from their designated stand, as walk around hunting is not permitted.

8.11.5 During Archery season bowhunters must be within 50 yards of their designated stand.

8.11.6 Stands will be available during Archery season on a first-come, first-served basis.

8.11.7 No more than one hunter may hunt from a stand at any one time.

6 DE Reg. 1201 (3/1/03)

10 DE Reg. 88 (7/1/06)

9.0 Forest Use Permits

9.1 Forest use permits on State Forests are issued on a first-come, first-served basis and are required for camping, firewood cutting, lodge rental (Redden State Forest), organized special events, and pavilion reservation. Facility users are required to submit a completed Forest Use Permit during state business hours. Facilities are to be reserved in advance.

9.2 ~~Items to be filled out by all applicants include:~~

~~9.2.1 Date of application~~

~~9.2.2 Date(s) of proposed use~~

~~9.2.3 Applicants' full name~~

~~9.2.4 Applicants' address, city, state, zip code~~

~~9.2.5 Copy of valid driver's license~~

9.2 Firewood permits are required to harvest firewood on State Forest lands and are issued at the discretion of the State Forest staff. When available, these permits are issued on a first-come, first-served basis. There is a fee of \$100 for firewood permits, which allows the holder to cut for three days within areas designated and posted by State Forest staff. No trees are to be felled; only downed wood may be cut. Wood is not for resale.

9.3 ~~Camping:~~

~~9.3.1 Individual or group permit~~

~~9.3.2 Number of persons camping~~

~~9.3.3 The name of organization (if applicable)~~

~~9.3.4 Vehicle make, model, color, and license number~~

~~9.3.5 Permit effective date & termination date~~

~~9.3.6 Applicants' signature and date~~

9.4 ~~Group Users/Special Events:~~

PROPOSED REGULATIONS

- 9.4.1 The name of the person in charge
- 9.4.2 The name of organization
- 9.4.3 Number in the group
- 9.4.4 Permit effective date
- 9.4.5 Permit termination date
- 9.4.6 Facility used:
 - 9.4.6.1 Camping
 - 9.4.6.2 Picnic shelter
 - 9.4.6.3 Nature study area
 - 9.4.6.4 Other
 - 9.4.6.5 Applicants' signature

9.5 Firewood Permits:

9.5.1 Firewood permits are required to harvest firewood on State Forest lands and are issued at the discretion of the DFS staff. When available, these permits are issued on a first come, first served basis. There is a fee of \$100 for firewood permits, which allows the holder to cut firewood for three days within areas designated and posted by DFS staff. No trees are to be felled; only downed wood may be cut. Wood is not for resale.

6 DE Reg. 1201 (3/1/03)

10 DE Reg. 88 (7/1/06)

10.0 Department Enforcement Regulations

10.1 The violation of, or the refusal to obey, any law, these regulations, State Forest policies or the terms or conditions of any permit issued or privilege granted by the Department shall be grounds for the suspension or revocation of any permit issued or privilege granted by the Department, the removal or eviction from State Forest lands and/or the denial of future entry to, or the denial of future permits or privileges within State Forests. Any and all applicable permit fees shall be forfeited to, and retained by, the Department. Any such suspension, revocation, removal, eviction or the denial of entry, permit or privilege shall not preclude the prosecution of any person for violation of any law or these regulations.

10.2 Whoever violates any of the foregoing regulations shall be deemed to have committed an unclassified misdemeanor and shall be fined not less than \$25 nor more than \$250 and be required to pay all applicable court costs. For each subsequent violation, within three years of a previous conviction, the violator shall be fined not less than \$50 nor more than \$500 and be required to pay all applicable court costs. In addition to such fines and court costs, ~~a violator who is convicted of damaging, destroying, or removing property owned and maintained by the State Forest Service, shall be required to make restitution to the Department for the replacement or restoration of such property~~ State Forest Service may request the court to order restitution in an amount determined by it for the destruction or removal of property to those convicted of violating these regulations.

10.3 Justices of the Peace throughout the State shall have jurisdiction over alleged violations of these State Forest Regulations; however, any violator shall, upon arrest, be taken to the nearest available Justice of the Peace in the county where such violation is alleged to have occurred, or in lieu thereof, be provided with an assessment form for the voluntary payment of fines.

10.4 Notwithstanding the immediate preceding subsection, a duly authorized peace officer making an arrest for a violation of these regulations may issue a summons requiring the violator to appear in person at a subsequent date at the Justice of the Peace Court nearest to the place of arrest and during the regularly scheduled hours of the Court.

Delaware Forest Service Forest Use Permit Application

Date(s) of use _____

Permit No. _____

Application For: Firewood Camping Other (explain) _____

Drivers license No. _____ Expiration Date _____ Issuing State _____

Location Blackbird State Forest _____ No. in group _____

PROPOSED REGULATIONS

Redden State Forest
 Taber State Forest

Name _____ First MI _____
Last _____

Address _____

Street/P.O. Box City State Zip Code
Phone No. () _____ Phone No. () _____
Home Work

Vehicle Information

Year/Make/Model Color Tag No.

Effective Date _____ Expiration Date _____ Fee \$ _____

Comments _____

In exercising the above described use, I agree to abide by all of the regulations of the Delaware Forest Service (DFS), including but not limited to, those attached to this application, as well as the instructions of the undersigned DFS personnel. I fully understand that the State has neither commercially procured insurance nor self insurance to cover any injury, risk or loss which occurs in the State Forest and that the State is immune from any and all liability from any such injury, risk or loss.

In consideration of the granting of the permit, I agree to waive any and all claims arising out of the above-described use which may accrue to myself and/or to anyone else in my custody and control, and I further agree to indemnify the State and save it harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damages to property arising out of any occurrence in the State Forest.

APPROVED: SIGNATURE OF DFS PERSONNEL Date

SIGNATURE OF APPLICANT Date

Note: Any violation of the State Forest rules and regulations will result not only cancellation of this permit, but may also result in possible arrest and fines. This permit is to be kept in applicant's vehicle or on his/her person and must be produced at the request of any forest officer. This permit is subject to cancellation by the state forester at any time for just cause. Authority: 3 ~~Del.C.~~ Ch. 10. Sections 1008 and 1011.

6 DE Reg. 517 (10/1/02)

6 DE Reg. 1201 (3/1/03)

10 DE Reg. 88 (7/1/06)

PROPOSED REGULATIONS

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF DEVELOPMENTAL DISABILITIES

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

PUBLIC NOTICE

Disabilities Services Eligibility Criteria

2100 Eligibility Criteria

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Developmental Disabilities Services (DDDS) is proposing to amend the eligibility criteria related to DDDS services.

Any person who wishes to make written suggestions, compilations of data, written testimony, written briefs or other written materials concerning the proposed new regulations must submit same to Joseph B. Keyes, Ph.D., Applicant Services Unit; Division of Developmental Disabilities Services, 1052 S. Governor's Avenue, Suite 101, Dover, Delaware 19904 or by fax to (302) 744-9711 by July 25, 2007.

A Public Hearing on the proposed new regulation will be held July 30, 2007 at 6:30 P.M. at Delaware Technical College, Terry Campus, Dover, Delaware in Room 427 of the Corporate Training Center building.

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

Summary of Proposed Changes

Statutory Authority

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

Summary of Proposed Changes

1) The definition/diagnosis of mental retardation has been modified to correspond with the American Association on Intellectual and Developmental Disabilities Classification Manual definition of 2002. The proposed criteria, therefore, is consistent with the most current diagnostic nomenclature in the field of developmental disabilities.

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

3) Removal of "neurological conditions closely related to mental retardation" and removal of "brain injury (individual meets all criteria of 1992 AAMR definition including age manifestation)" from the current criteria. Individuals with these conditions must meet the diagnostic criteria of mental retardation and so it was redundant with that part of the criteria

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

2100 Eligibility Criteria

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

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

4-DE Reg. 228 (7/1/00)

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

1.1 citizen or a lawful alien of the United States

1.2 a resident of the State of Delaware

1.3 a disability/disorder attributed to one or more of the following:

1.3.1 Mental Retardation; defined as a significant generalized limitation in intellectual functioning. Significant generalized limitation in intellectual functioning is defined as IQ scores approximately two standard deviations below the mean. (American Association on Intellectual and Developmental Disabilities; Classification Manual, 2002); and/or

1.3.2 Autistic Disorder (299.00; American Psychiatric Association; Diagnostic & Statistical Manual - IV, 1994); and/or

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

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

1.4 significant limitations in adaptive behavior functioning

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

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

or

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

practical skills

1.5 the disability originates before age 22

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

PROPOSED REGULATIONS

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Long Term Medicaid Program

20330 Countable Resources Computation

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend existing rules in the Division of Social Services Manual (DSSM) used to determine eligibility to comply with the transfer of assets provisions mandated by the Deficit Reduction Act (DRA) of 2005 (Public Law 109-171) related to promissory notes, loans and property agreements.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning and Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 (new fax number) by July 31, 2007.

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

Summary of Proposal

Statutory Authority

Deficit Reduction Act of 2005 (Public Law 109-171), enacted on February 8, 2006

Background

On February 8, 2006, the Deficit Reduction Act (DRA) of 2005 was signed into law. The DRA made changes to certain Medicaid eligibility provisions in Section 1917(c)(1)(I) of Social Security Act affecting Long Term Care services and supports.

As a result of the DRA, DMMA proposed regulatory changes that appeared in the February 1, 2007 issue of the *Delaware Register of Regulations* related to promissory notes, loans and mortgages. The final order regulations were published as 10 DE Reg. 1596 in the April 1, 2007 issue of the Delaware Register. The State Council for Persons with Disabilities (SCPD) and two estate planning attorneys commented on the proposed version of these regulations in February, 2007. The SCPD has since commented on the final regulations encouraging reconsideration of the regulatory change that deleted Pars. "a" and "b" of Section 20330.3. The deleted subsection allowed a note holder to demonstrate that its true worth is less than its outstanding principal value. The Council objected to deletion of this subsection since a note could lose value based on a promissor's bankruptcy or destruction of mortgaged premises. One of the estate planning attorneys offered the same objection.

After careful reflection and staff analysis, DMMA has reconsidered and revised section 20330.3.

Summary of Proposal

DSSM 20330.3, Promissory Notes, Loans and Property Agreements: This revision clarifies that the value DMMA places on an available resource may be rebutted. A new subsection, 20330.3.1, has been added to show the information the applicant must submit to successfully rebut the value.

DMMA PROPOSED REGULATIONS #07-31

REVISIONS:

20330 Countable Resources Computation

(Break in Continuity of Sections)

20330.3 Promissory Notes, Loans and Property Agreements

A loan is an advance from a lender to a borrower that the borrower must repay, with or without interest. Loan proceeds are not income to the borrower because of the borrower's obligation to repay. Any portion of the borrowed funds that the borrower does not spend is a countable resource if retained into the month following the month of receipt.

If the Medicaid applicant is the owner of a promissory note, loan, or property agreement (mortgage), assume the value of the agreement is its outstanding principal balance.

If the outstanding principal balance plus other countable resources exceeds the resource limit, inform the individual that DMMA will use the outstanding principal balance in determining resources unless the individual ~~submits within 30 days the following information~~ successfully rebuts the value. See 20330.3.1.

As per the Deficit Reduction Act of 2005 (DRA), effective 4/1/06, the promissory note, loan, or mortgage will be considered a transfer for less than fair market value unless-

- The repayment term is actuarially sound;
- Payments are made in equal amounts during the term of the loan with no deferral ~~for~~ of payments and no balloon payments; and
- The promissory note, loan or mortgage prohibits the cancellation of the balance upon the death of the lender.

In determining the amount of the asset transfer, the value of the note, loan or mortgage is the outstanding balance due at the date of the individual's application for Medicaid coverage of services listed in section 1917(c)(1)(C) of the Act.

Payments received against the principal balance are not income. They are conversion of a resource. The portion of the payment which represents interest is unearned income.

The SSA Life Expectancy Table can be found at www.ssa.gov/OACT/STATS/table4c6.html.

10 DE Reg. 1596 (04/01/07)

20330.3.1 Rebutting the Value

The applicant may be given an opportunity to rebut the value placed on the promissory note, loan, mortgage. The rebuttal must include an estimate from a disinterested, knowledgeable source (such as a broker or appraiser) showing that the value is less than our determination or evidence of a legal bar to the sale of the agreement.

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

PUBLIC NOTICE

Chronic Renal Disease Program

50300 Referral Process

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and

Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend a rule in the Division of Social Services Manual (DSSM) used to determine eligibility for the Chronic Renal Disease 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 Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 (new fax number) by July 31, 2007.

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

Summary of Proposed Change

Statutory Authority

Title 29, Chapter 79, Subchapter II, Sections 7932 - 7935, The Chronic Renal Diseases Program

Background

The Delaware Legislature established the Chronic Renal Disease Program (CRDP) effective 1970 by enacting Title 29, Chapter 79, Subchapter 11, Sections 7932-7935. The purpose of this program is to provide assistance to state residents diagnosed with End Stage Renal Disease (ESRD). The CRDP is not federally funded. CRDP is 100% State funded. Since there are limited funds available, the CRDP should only be utilized as a program of last resort. All third party resources (Medicare, Medicaid, Veteran's Benefits, and Private Insurance) must be considered before CRDP funds are utilized.

The mission of the CRDP is to "improve the quality of life for Delawareans with ESRD by promoting health and well-being, fostering self-sufficiency, and protecting a vulnerable population."

Summary of Proposed Change

DSSM 50300, Referral Process: The purpose of the proposed is to facilitate and ease the referral process for the Chronic Renal Disease Program. Referrals may come from many different sources; and, a completed application may also be received as the initial referral.

50300 Referral Process

DMMA PROPOSED REGULATIONS #07-32

REVISIONS:

50300 Referral Process

~~The CRDP can receive referrals~~ A referral for the Chronic Renal Disease Program (CRDP) may be received from many sources. Client, family member, caretaker, physicians and/or other professionals may initiate the referral process by calling contacting the CRDP office and requesting that an application be mailed or faxed. Dieticians and dialysis social workers may begin the referral process by calling or by mailing/faxing a completed referral form to the CRDP office. Completed applications may be returned to the office by mail or fax. Once the referral application has been received, the client or referral source will be contacted to set up an appointment to complete the CRDP assessment eligibility determination.

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

Civil Rights Program

9004 Non-Discrimination Policy

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM). The proposed changes described below amend the Civil Rights Program policies related to the prohibition of retaliatory acts.

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 (new fax number) by July 31, 2007.

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

Summary of Proposed Changes

Statutory Authority

7 CFR Part 15, Subpart A, *Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture - Effectuation of Title VI of the Civil Rights Act of 1964*

Summary of Proposed Changes

DSSM 1006.6, 1006.7, 1007, 1007.1, 1007.3 and 9004: The United States Department of Agriculture (USDA) revised the nondiscrimination statement due to changes in the Department's civil rights regulations. The nondiscrimination statement now includes *retaliation* as a reason an individual cannot be discriminated against. The affected areas of policy in the DSSM are revised to affirm that discrimination is prohibited in all aspects of the delivery of program benefits and to add the word "retaliation" to the list of prohibited actions.

DSS PROPOSED REGULATIONS #07-33

REVISIONS:

9004 Non-Discrimination Policy

[272.6(a)]

Do not discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of food stamp benefits, the conduct of fair hearings, or the conduct of any other program service for reasons of ~~age, race, color, sex, disability, religious creed, national origin, or political beliefs~~ race, color, national origin, sex, religious creed, age, disability, political beliefs, or retaliation. Discrimination in any aspect of program administration is prohibited by these regulations: the Food Stamp Act, the Age Discrimination Act of 1975 (Public Law 94 135), the Rehabilitation Act of 1973 (Public Law 93 112, sec. 504), and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Enforcement action may be brought under any applicable Federal Law. Title VI complaints shall be processed in accord with 7 CFR, Part 15.

(Break in Continuity of Sections)

1006.6 Civil Rights Program and Public Relations

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

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

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

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

1006.7 Staff Development and the Civil Rights Program

The Division of Social Services Staff Development and Training Program will emphasize the role of the Civil Rights Program in all services provided to clients especially as it relates to the rights and privileges of each individual.

Both in its presentation of the legal and technical aspects of agency policy and procedures and in its analysis of case work attitudes and techniques, the Staff Development and Training Program will be administered at all times in such a way that emphasis is placed on the basic fact that all applicants and recipients, and all persons receiving any care or services from or through the Division, shall not be subject to discrimination of any kind on the grounds of ~~race, color, disability, national origin, age, sex, political beliefs, or religion~~ race, color, national origin, sex, religious creed, age, disability, political beliefs, or retaliation.

1007 Complaint Procedures

Any person applying for or receiving any DSS services who believes he/she has been the victim of discrimination on account of ~~race, color, disability, national origin, age, sex, political beliefs, or religion~~ race, color, national origin, sex, religious creed, age, disability, political beliefs, or retaliation may file a complaint directly or with the assistance of an individual, group, or agency representing the complainant, in accordance with the procedure outlined below.

1007.1 Right to File Complaint

The right to file a complaint alleging discrimination on account of ~~race, color, disability, national origin, age, sex, political beliefs, or religion~~ race, color, national origin, sex, religious creed, age, disability, political beliefs, or retaliation applies to the following:

- a) All applicants for and recipients of cash assistance.
- b) All applicants for and recipients of food stamps.
- c) All applicants or recipients who are participating in demonstration projects.
- d) All persons applying for or receiving any service furnished by or through the Division.
- e) Any individual, group, organization, or agency acting on their own account or on behalf of any person receiving any service of the Division.

(Break in Continuity of Sections)

1007.3 Methods of Handling Complaints

The Director will study and evaluate all complaints alleging discrimination on account of ~~race, color, disability, national origin, age, sex, political beliefs or religion~~ race, color, national origin, sex, religious creed, age, disability, political beliefs, or retaliation.

~~He~~ The Director will route them to the State Hearing officer who will then assign them to appropriate administrative or supervisory staff for complete investigation. A written report will be prepared and forwarded to the Director. The Director will study the report and determine whether or not any discriminatory practice has, in fact been carried on. If the Director finds that this has been the case, ~~he will take such action as seems necessary~~ action will be taken to correct the discriminatory practice and to assure that there will be no repetition of such discrimination.

The Director will address a letter to the complainant covering the investigation and findings on the complaint. ~~He~~ The Director will be advised that if ~~he is not satisfied, he may ask to have~~ the complaint may be presented to the Secretary of the Department of Health and Human Services.

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

Food Stamp Program

9013 Household Concept

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 definition of household.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 (new fax number) by July 31, 2007.

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

Summary of Proposed Change

Statutory Authority

7 CFR 273.1(a)(2), *Household Concept - Elderly and Disabled Persons*

Background

On June 12, 2006, the United States Department of Agriculture (USDA) issued policy guidance clarifying that a disabled person may be considered a food stamp household separate from a person who resides with him or her and purchases and prepares food separately on the disabled person's behalf. The issue arose in litigation in Alabama.

Summary of Proposed Change

DSSM 9013.1, Household Definition: This policy clarification informs staff that severely disabled individuals who live with others but have someone prepare and purchase their meals separate and apart from others in the home can be a separate household.

DSS PROPOSED REGULATIONS #07-34

REVISIONS:

PROPOSED REGULATIONS

9013.1 Household Definition

A) General Definition a household is composed of one of the following individuals or groups of individuals, provided they are not residents of an institution (except as otherwise specified in DSSM 9015), or are not boarders (as specified in DSSM 9013.3).

1. An individual living alone

2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from the others;

This includes severely disabled individuals who have someone purchase and prepare their meals for them (regardless of whether or not they are paid for the service). The disabled individuals are considered separate food stamp households, even if they live in the same home as the individual purchasing and preparing the meals for them. This household does not have to meet the 165 percent rule.

3. A group of individuals who live together and customarily purchase food and prepare meals together for home consumption;

9 DE Reg. 1077 (01/01/06)

10 DE Reg. 1003 (12/01/06)

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Section 311 (18 Del.C. §311)

18 DE Admin. Code 1216

PUBLIC NOTICE

1216 Military Sales Practices

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of intent to adopt proposed Department of Insurance Regulation 1216 relating to the sale of life and annuity insurance products to military personnel. The docket number for this proposed amendment is 393. This proposed Regulation replaces the previous proposed Regulation.

The purpose of the proposed regulation is to set forth standards to protect service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive or unfair. The text of the proposed amendment is reproduced in the May 2007 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.state.de.us/inscom/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:30 p.m., Monday August 6, 2007, and should be addressed to Mitchell G. Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or email to mitch.crane@state.de.us.

1216 Military Sales Practices

1.0 Purpose

1.1. The purpose of this regulation is to set forth standards to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive or unfair.

1.2 Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation.

2.0 Scope

2.1 This regulation shall apply only to the solicitation or sale of any life insurance or annuity product by an insurer or insurance producer to an active duty service member of the United States Armed Forces.

3.0 Authority

3.1 This regulation is issued under the authority of 18 Del.C. §§311, 2307, 2312 and 29 Del.C. Chapter 101.

4.0 Exemptions

4.1 This regulation shall not apply to solicitations or sales involving:

4.1.1 Credit insurance;

4.1.2 Group life insurance or group annuities where there is no in-person, face-to-face solicitation of individuals by an insurance producer or where the contract or certificate does not include a side fund;

4.1.3 An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner; or, when a term conversion privilege is exercised among corporate affiliates;

4.1.4 Individual stand-alone health policies, including disability income policies;

4.1.5 Contracts offered by Servicemembers' Group Life Insurance (SGLI) or Veterans' Group Life Insurance (VGLI), as authorized by 38 U.S.C. Section 1965 et seq.;

4.1.6 Life insurance contracts offered through or by a non-profit military association, qualifying under Section 501 (c) (23) of the Internal Revenue Code (IRC), and which are not underwritten by an insurer; or

4.1.7 Contracts used to fund:

4.1.7.1 An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

4.1.7.2 A plan described by Sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the IRC, as amended, if established or maintained by an employer;

4.1.7.3 A government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC;

4.1.7.4 A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

4.1.7.5 Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

4.1.7.6 Prearranged funeral contracts.

4.2 Nothing herein shall be construed to abrogate the ability of nonprofit organizations (and/or other organizations) to educate members of the United States Armed Forces in accordance with Department of Defense DoD Instruction 1344.07 – PERSONAL COMMERCIAL SOLICITATION ON DOD INSTALLATIONS or successor directive.

4.3 For purposes of this regulation, general advertisements, direct mail and internet marketing shall not constitute "solicitation." Telephone marketing shall not constitute "solicitation" provided the caller explicitly and conspicuously discloses that the product concerned is life insurance and makes no statements that avoid a clear and unequivocal statement that life insurance is the subject matter of the solicitation. Provided however, nothing in this subsection shall be construed to exempt an insurer or insurance producer from this regulation in any in-person, face-to-face meeting established as a result of the "solicitation" exemptions identified in this subsection.

5.0 Definitions

5.1 "Active Duty" means full-time duty in the active military service of the United States and includes members of the reserve component (National Guard and Reserve) while serving under published orders for active duty or full-time training. The term does not include members of the reserve component who are performing active duty or active duty for training under military calls or orders specifying periods of less than 31 calendar days.

5.2 "Department of Defense (DoD) Personnel" means all active duty service members and all civilian employees, including nonappropriated fund employees and special government employees, of the Department of Defense.

5.3 "Door to Door" means a solicitation or sales method whereby an insurance producer proceeds randomly or selectively from household to household without prior specific appointment.

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5.4 **“General Advertisement”** means an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance, or the promotion of the insurer or the insurance producer.

5.5 **“Insurer”** means an insurance company required to be licensed under the laws of this state to provide life insurance products, including annuities.

5.6 **“Insurance producer”** means a person required to be licensed under the laws of this state to sell, solicit or negotiate life insurance, including annuities.

5.7 **“Known” or “Knowingly”** means, depending on its use herein, the insurance producer or insurer had actual awareness, or in the exercise of ordinary care should have known, at the time of the act or practice complained of, that the person solicited:

5.7.1 Is a service member; or

5.7.2 Is a service member with a pay grade of E-4 or below.

5.8 **“Life Insurance”** means insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income and unless otherwise specifically excluded, includes individually issued annuities.

5.9 **“Military Installation”** means any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters.

5.10 **“MyPay”** is a Defense Finance and Accounting Service (DFAS) web-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms.

5.11 **“Service Member”** means any active duty officer (commissioned and warrant) or enlisted member of the United States Armed Forces.

5.12 **“Side Fund”** means a fund or reserve that is part of or otherwise attached to a life insurance policy (excluding individually issued annuities) by rider, endorsement or other mechanism which accumulates premium or deposits with interest or by other means. The term does not include:

5.12.1 Accumulated value or cash value or secondary guarantees provided by a universal life policy;

5.12.2 Cash values provided by a whole life policy which are subject to standard nonforfeiture law for life insurance; or

5.12.3 A premium deposit fund which:

5.12.3.1 Contains only premiums paid in advance which accumulate at interest;

5.12.3.2 Imposes no penalty for withdrawal;

5.12.3.3 Does not permit funding beyond future required premiums;

5.12.3.4 Is not marketed or intended as an investment; and

5.12.3.5 Does not carry a commission, either paid or calculated.

5.13 **“Specific Appointment”** means a prearranged appointment agreed upon by both parties and definite as to place and time.

5.14 **“United States Armed Forces”** means all components of the Army, Navy, Air Force, Marine Corps, and Coast Guard.

6.0 Practices Declared False, Misleading, Deceptive or Unfair on a Military Installation

6.1 The following acts or practices when committed on a military installation by an insurer or insurance producer with respect to the in-person, face-to-face solicitation of life insurance are declared to be false, misleading, deceptive or unfair:

6.1.1 Knowingly soliciting the purchase of any life insurance product “door to door” or without first establishing a specific appointment for each meeting with the prospective purchaser.

6.1.2 Soliciting service members in a group or “mass” audience or in a “captive” audience where attendance is not voluntary.

6.1.3 Knowingly making appointments with or soliciting service members during their normally scheduled duty hours.

6.1.4 Making appointments with or soliciting service members in barracks, day rooms, unit areas, or transient personnel housing or other areas where the installation commander has prohibited solicitation.

6.1.5 Soliciting the sale of life insurance without first obtaining permission from the installation

commander or the commander's designee.

6.1.6 Posting unauthorized bulletins, notices or advertisements.

6.1.7 Failing to present DD Form 2885, *Personal Commercial Solicitation Evaluation*, to service members solicited or encouraging service members solicited not to complete or submit a DD Form 2885.

6.1.8 Knowingly accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the United States Armed Forces without first obtaining for the insurer's files a completed copy of any required form which confirms that the applicant has received counseling or fulfilled any other similar requirement for the sale of life insurance established by regulations, directives or rules of the DoD or any branch of the Armed Forces.

6.2 The following acts or practices when committed on a military installation by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive or unfair:

6.2.1 Using DoD personnel, directly or indirectly, as a representative or agent in any official or business capacity with or without compensation with respect to the solicitation or sale of life insurance to service members.

6.2.2 Using an insurance producer to participate in any United States Armed Forces sponsored education or orientation program.

7.0 Practices Declared False, Misleading, Deceptive or Unfair Regardless of Location

7.1. The following acts or practices by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive or unfair:

7.1.1 Submitting, processing or assisting in the submission or processing of any allotment form or similar device used by the United States Armed Forces to direct a service member's pay to a third party for the purchase of life insurance. The foregoing includes, but is not limited to, using or assisting in using a service member's "MyPay" account or other similar internet or electronic medium for such purposes. This subsection does not prohibit assisting a service member by providing insurer or premium information necessary to complete any allotment form.

7.1.2 Knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member has no formal banking relationship. For purposes of this section, a formal banking relationship is established when the depository institution:

7.1.2.1 Provides the service member a deposit agreement and periodic statements and makes the disclosures required by the Truth in Savings Act, 12 U.S.C. § 4301 *et seq.* and the regulations promulgated thereunder; and

7.1.2.2 Permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums.

7.1.3 Employing any device or method or entering into any agreement whereby funds received from a service member by allotment for the payment of insurance premiums are identified on the service member's Leave and Earnings Statement or equivalent or successor form as "Savings" or "Checking" and where the service member has no formal banking relationship as defined in subsection 7 (A)(2).

7.1.4 Entering into any agreement with a depository institution for the purpose of receiving funds from a service member whereby the depository institution, with or without compensation, agrees to accept direct deposits from a service member with whom it has no formal banking relationship.

7.1.5 Using DoD personnel, directly or indirectly, as a representative or agent in any official or unofficial capacity with or without compensation with respect to the solicitation or sale of life insurance to service members who are junior in rank or grade, or to the family members of such personnel.

7.1.6 Offering or giving anything of value, directly or indirectly, to DoD personnel to procure their assistance in encouraging, assisting or facilitating the solicitation or sale of life insurance to another service member.

7.1.7 Knowingly offering or giving anything of value to a service member with a pay grade of E-4 or below for his or her attendance to any event where an application for life insurance is solicited.

7.1.8 Advising a service member with a pay grade of E-4 or below to change his or her income tax withholding or State of legal residence for the sole purpose of increasing disposable income to purchase life insurance.

7.2 The following acts or practices by an insurer or insurance producer lead to confusion regarding

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source, sponsorship, approval or affiliation and are declared to be false, misleading, deceptive or unfair:

7.2.1 Making any representation, or using any device, title, descriptive name or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance producer or product offered is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, the United States Armed Forces, or any state or federal agency or government entity. Examples of prohibited insurance producer titles include, but are not limited to, "Battalion Insurance Counselor," "Unit Insurance Advisor," "Servicemen's Group Life Insurance Conversion Consultant" or "Veteran's Benefits Counselor."

7.2.1.1 Nothing herein shall be construed to prohibit a person from using a professional designation awarded after the successful completion of a course of instruction in the business of insurance by an accredited institution of higher learning. Such designations include, but are not limited to, Chartered Life Underwriter (CLU), Chartered Financial Consultant (ChFC), Certified Financial Planner (CFP), Master of Science In Financial Services (MSFS), or Masters of Science Financial Planning (MS).

7.2.2 Soliciting the purchase of any life insurance product through the use of or in conjunction with any third party organization that promotes the welfare of or assists members of the United States Armed Forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that either the insurer, insurance producer or insurance product is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, or the United States Armed Forces.

7.3 The following acts or practices by an insurer or insurance producer lead to confusion regarding premiums, costs or investment returns and are declared to be false, misleading, deceptive or unfair:

7.3.1 Using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid.

7.3.2 Excluding individually issued annuities, misrepresenting the mortality costs of a life insurance product, including stating or implying that the product "costs nothing" or is "free."

7.4 The following acts or practices by an insurer or insurance producer regarding SGLI or VGLI are declared to be false, misleading, deceptive or unfair:

7.4.1 Making any representation regarding the availability, suitability, amount, cost, exclusions or limitations to coverage provided to a service member or dependents by SGLI or VGLI, which is false, misleading or deceptive.

7.4.2 Making any representation regarding conversion requirements, including the costs of coverage, or exclusions or limitations to coverage of SGLI or VGLI to private insurers which is false, misleading or deceptive.

7.4.3 Suggesting, recommending or encouraging a service member to cancel or terminate his or her SGLI policy or issuing a life insurance policy which replaces an existing SGLI policy unless the replacement shall take effect upon or after the service member's separation from the United States Armed Forces.

7.5 The following acts or practices by an insurer and or insurance producer regarding disclosure are declared to be false, misleading, deceptive or unfair:

7.5.1 Deploying, using or contracting for any lead generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the recipient will be contacted by an insurance producer, if that is the case, for the purpose of soliciting the purchase of life insurance.

7.5.2 Failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser.

7.5.3 Excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance.

7.5.4 Failing to make, at the time of sale or offer to an individual known to be a service member, the written disclosures required by Section 10 of the "Military Personnel Financial Services Protection Act," Pub. L. No. 109-290, p.16.

7.5.5 Excluding individually issued annuities, when the sale is conducted in-person face-to-face with an individual known to be a service member, failing to provide the applicant at the time the application is taken:

7.5.5.1 An explanation of any free look period with instructions on how to cancel if a policy is issued; and

7.5.5.2 Either a copy of the application or a written disclosure. The copy of the application or the written disclosure shall clearly and concisely set out the type of life insurance, the death benefit applied for and its expected first year cost. A basic illustration that meets the requirements of [insert reference to state's

illustration or disclosure regulation] shall be deemed sufficient to meet this requirement for a written disclosure.

7.6 The following acts or practices by an insurer or insurance producer with respect to the sale of certain life insurance products are declared to be false, misleading, deceptive or unfair:

7.6.1 Excluding individually issued annuities, recommending the purchase of any life insurance product which includes a side fund to a service member in pay grades E-4 and below unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable.

7.6.2 Offering for sale or selling a life insurance product which includes a side fund to a service member in pay grades E-4 and below who is currently enrolled in SGLI, is presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance.

7.6.2.1 "Insurable needs" are the risks associated with premature death taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate and/or survivors or dependents.

7.6.2.2 "Other military survivor benefits" include, but are not limited to: the Death Gratuity, Funeral Reimbursement, Transition Assistance, Survivor and Dependents' Educational Assistance, Dependency and Indemnity Compensation, TRICARE Healthcare benefits, Survivor Housing Benefits and Allowances, Federal Income Tax Forgiveness, and Social Security Survivor Benefits.

7.6.3 Excluding individually issued annuities, offering for sale or selling any life insurance contract which includes a side fund:

7.6.3.1 Unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty:

7.6.3.2 Unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined product. For this disclosure, the effective rate of return will consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage. This schedule will be provided for at least each policy year from one (1) to ten (10) and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration; and

7.6.3.3 Which by default diverts or transfers funds accumulated in the side fund to pay, reduce or offset any premiums due.

7.6.4 Excluding individually issued annuities, offering for sale or selling any life insurance contract which after considering all policy benefits, including but not limited to endowment, return of premium or persistency, does not comply with standard nonforfeiture law for life insurance.

7.6.5 Selling any life insurance product to an individual known to be a service member that excludes coverage if the insured's death is related to war, declared or undeclared, or any act related to military service except for an accidental death coverage, e.g., double indemnity, which may be excluded.

8.0 Severability

If any provision of these sections or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of these sections which can be given effect without the invalid provisions or application. To this end all provisions of these sections are declared to be severable.

9.0 Effective Date

This regulation shall become effective September 11, 2007.

PROPOSED REGULATIONS

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Section 311 (18 Del.C. §311)
18 DE Admin. Code 1217

PUBLIC NOTICE

1217 Unfair Discrimination in Life Insurance, Annuities and Health Insurance on the Basis of Physical or Mental Impairment

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of intent to adopt proposed Department of Insurance Regulation 1217 relating to the Unfair Discrimination in Life Insurance, Annuities and Health Insurance on the Basis of Physical or Mental Impairment. The docket number for this proposed amendment is 396.

The purpose of the proposed regulation is to identify specific acts or practices in life and health insurance which are prohibited by 18 Del.C. §2304(13). The text of the proposed amendment is reproduced in the May 2007 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.state.de.us/inscom/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:30 p.m., Monday June 4, 2007, and should be addressed to Mitchell Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.6278 or email to mitch.crane@state.de.us.

1217 Unfair Discrimination in Life Insurance, Annuities and Health Insurance on the Basis of Physical or Mental Impairment

1.0 Authority

1.1 This regulation is promulgated pursuant to the authority granted by 18 Del.C. §§311, 2312 and 29 Del.C. Chapter 101.

2.0 Purpose

2.1 The purpose of this regulation is to identify specific acts or practices in life insurance, annuities, and health insurance which are prohibited by 18 Del.C. §2304(13).

3.0 Unfairly Discriminatory Acts or Practices

3.1 The following are hereby identified as acts or practices in life and health insurance and annuities which constitute unfair discrimination between individuals of the same class: Refusing to insure, or refusing to continue to insure, or limiting the amount, extent or kind of coverage available to an individual, or charging a different rate for the same coverage solely because of a physical or mental impairment, except where the refusal, limitation or rate differential is based on actual or reasonably anticipated experience.

4.0 Effective Date

4.1 This regulation shall become effective October 1, 2007.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Chapter 1, (7 Del.C., Ch. 1)
7 DE Admin. Code 3901

PUBLIC NOTICE

SAN #2007-05

1. **Title of the Regulation:**
3900 Wildlife Regulations

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

1.0 Definitions (Formerly WR-1)

This action is needed to define the term black powder as it pertains to muzzle-loading rifles. The types of powder available for muzzleloaders have increased since muzzleloader hunting began in Delaware. This regulatory change will clarify what the Division views as an acceptable propellant for muzzleloaders in Delaware and provide options for hunters. Furthermore, this action is needed to create a definition for term "deer". Until recently the only deer species found in Delaware was the white-tailed deer (*Odocoileus virginianus*) so defining the term "deer" was not needed. Recently, sika deer (*Cervus nippon*) populations in Maryland are expanding and animals are dispersing into Delaware. Sika deer are an exotic nonnative animal that were introduced to James Island, Maryland in 1916. Since these animals are not native to Delaware, the Department does not want to promote their existence in the State. Potential human/sika deer conflicts and the potential for disease transmission and competition with native white-tailed deer and other native wildlife, are all reasons why sika deer populations should not be promoted in Delaware. By defining the term "deer", hunters will be allowed to legally harvest sika deer and white-tailed deer during any/all of the established deer hunting seasons.

2.0 Method of Take (Formerly WR-2)

There are 4 actions being taken in the amending of this regulation.

1. This action is needed to clarify that hunters can use a muzzle-loading rifle for hunting deer during deer shotgun seasons.

2. This action is needed to clarify existing terminology in the current regulation. Due to technological advances, many archers use handheld "mechanical release aids" to shoot longbows. Under the current regulation these devices would be illegal in Delaware. The intention of the original regulation was to prohibit the use of mechanical devices that hold a longbow at full draw without the aid of the hunter. A hunter that utilizes a mechanical release aid to shoot a longbow would still have to support/hold the bow's entire draw weight. Accuracy is generally improved with the use of a mechanical release aid.

3. This action was requested by hunters through our public review process; the Advisory Council on Wildlife and Freshwater Fish. Current regulations allow for the use of a .22 caliber rimfire or muzzleloading rifle to harvest gray squirrels, south of the C&D Canal, during any part of the gray squirrel season not concurrent with rabbit, quail or pheasant season. This is an antiquated regulation unsupported by biological or safety rationale. The proposed amendment would allow the use of a rimfire rifle not larger than .22 caliber or muzzleloading rifle to harvest gray squirrels south of the C&D Canal, for the entire gray squirrel season. The proposed change would provide more flexibility to squirrel hunters and is a more effective method to harvest expanding gray squirrel populations.

4. This action is needed due to safety and enforcement concerns regarding sportsman carrying multiple hunting implements in the field at the same time. There is concern that if a hunter possesses multiple hunting implements they would be more likely cause a hunting related accident (either self inflicted, or to another individual or property). Furthermore, allowing multiple weapons can at times make it difficult for a Fish and Wildlife Enforcement Agent to determine if an animal was harvested by legal means. To eliminate this problem, hunters shouldn't be allowed to carry multiple hunting implements while pursuing game in the field.

4.0 Seasons (Formerly WR-4)

There are 3 actions being taken in the amending of this regulation.

1. This action was requested by hunters through our public review process, the Advisory Council on Wildlife and Freshwater Fish. In recent years' expanded deer hunting seasons have caused a subsequent decrease in the number of days available for small game hunting. The current gray squirrel and pheasant seasons end on the Friday preceeding the January shotgun season. This closure is about 2-3 weeks earlier than other small game seasons which end in early February. The proposed amendment would expand the gray squirrel and pheasant seasons to close the same time as other small game seasons (ending on the first Saturday in February). The new proposed amendment would also allow gray squirrel and pheasant hunting during any firearm deer season (except the November deer firearms deer season) provided the hunter is wearing 400 square inches of hunter orange.

2. This action was requested by hunters through our public review process, the Advisory Council on Wildlife and Freshwater Fish. The current daily harvest limit for gray squirrel is 4. In recent years we have experienced a rise in the number of complaints regarding squirrel damage to residences and public picnic areas. This rise in complaints suggests a possible corresponding rise in gray squirrel numbers. The proposed amendment would increase the daily limit from 4 to 6, compatible with the harvest limits of states adjacent to Delaware and should help control increasing squirrel numbers.

3. This action is needed to help "clean-up" the language in the existing regulations so that the terminology is similar among all of the small game species' regulations. The current regulations state that quail and rabbit may be hunted during each of the firearms deer seasons provided that hunter orange requirements are met. Rather than listing each firearm deer season, the regulations should be changed to cover "any firearms deer season". This change will help to alleviate the need to change many multiple secondary regulations if a firearms deer season is added, changed, or removed.

5.0 Wild Turkeys (Formerly WR-5)

This action will prohibit the use of electronic calls for wild turkey hunting. Electronic calling gives the hunter an unfair advantage and is viewed by many as an un-sportsman like hunting method. This part of the regulation was mistakenly omitted in the original version of the regulation. Turkey hunting has been legal in Delaware since 1991 and no hunter has ever been found using an electronic call. This regulatory change will have no impact on current Delaware hunters but will avoid potential confusion among future hunters regarding electronic calls.

The Division no longer requires private land turkey hunters to apply for a special permit through a lottery system but does require all hunters to attend a turkey hunting safety class prior to their first time hunting turkeys in the state. The class certification card has been viewed as the private land hunters permit but this is not clear in the original regulation. The action will make it clear that a safety class is mandatory for all first time Delaware turkey hunters.

7.0 Deer (Formerly WR-7)

There are 3 actions being taken in the amending of this regulation.

1. A review of the current regulation revealed that the Delaware Non Resident Quality Buck Deer Tag is not included in the list of approved tags for registering this deer. This was an obvious oversight when the regulation was created as these tags are currently being sold to non residents for \$25.00.

2. This action was requested by Fish and Wildlife Agents in response to some hunters "reusing" their tags on additional deer they harvest. It will be a requirement to deface a tag once it is attached to the deer. Hunters will record (in ink) the date their deer was harvested on their tag. Once a tag has been defaced it will be rendered as "used" and will not be reusable.

3. This action is in response to preventing the spread of chronic wasting disease (CWD) into Delaware. CWD is a transmissible spongiform encephalopathy affecting elk and deer (cervids) in North America. This degenerative neurological illness has affected both farmed and wild cervids in the US, thus impacting the hunting and wildlife industries as well as domestic and international markets for farmed cervids and cervid products. Currently there is no cure for the disease and if contracted by a cervid the disease is always fatal. This action should help prevent the spread of the disease into this state.

8.0 General Rules and Regulations Governing Land and Waters Administered by the Division (Formerly WR-8)

There are 3 actions being taken in the amending of this regulation.

1. This action will allow rifled shotgun barrels to be used for deer hunting along the C&D Canal. When the original regulation was promulgated, the intent was to prohibit the use of center fire rifles along the C&D Canal for safety reasons. Subsequently, rifled barrels became available for shotguns which improved

accuracy but did not increase range. These barrels should be allowed as they improve hunting efficiency with no adverse safety concerns. They actually add to safety due to their greater accuracy.

2. With increasing deer damage problems and the need for aggressive deer control, more hunting opportunities are needed on public lands. Adding deer stands on coastal wildlife areas often results in placement locations where the only way to access the site is to walk along a dike. Making this change to allow access along dikes will facilitate deer control which will benefit other species and help reduce deer damage on surrounding private lands.

3. Geocaching and Letterboxing are relatively new outdoor recreational activities where a person hides an item outdoors then provides GPS or written information to the public in order for another person to search for the item. This activity is occurring on State Wildlife Areas resulting in conflicts with hunting activities, habitat management work and bird nesting activities. This action will allow the Division to control this activity on its lands for the good of the resource and the persons participating in the activity.

13.0 Wildlife Rehabilitation Permits (Formerly WR-13)

This action will strengthen permitting requirements, improve the care and well being of animals in captivity and reduce the risk of rabies exposure to rehabilitators and others. In recent years, there have been problems with rehabilitators not caring for animals as they should and exposing themselves and others to rabies vector species without the proper immunization. This regulatory change will make it more clear as to what is expected of rehabilitators regarding these issues. There will be an additional cost to some rehabilitators that will have to upgrade their facilities and obtain the rabies pre-exposure shots in order to maintain their permit.

18.0 Wanton Waste

This action is needed to create a regulation to ensure that any game animal harvested is utilized and not left in the field as wanton waste. This regulation will ensure that game is not harvested and needlessly left in the field. Any game animal harvested must be utilized for either it's nutritional, taxidermy, scientific or fur value.

3. Possible Terms of the Agency Action:

N/A

4. Statutory Basis or Legal Authority to Act:

7 **Delaware Code**, Chapter 1, Sections 102 & 103

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

None

6. Notice of Public Comment

These regulatory changes will be presented in a series of public hearings on July 31, 2007, beginning at 6:00 p.m., DNREC Auditorium, 89 Kings Highway, Dover, Delaware. The hearing record for these proposed Regulations will remain open until 4:30 PM, Wednesday August 1, 2007. The order of hearings is as follows:

Regulation 3900.13 – Wildlife Rehabilitation Permits

Regulation 3900.1 – Definitions

Regulation 3900.8 – General Rules and Regulations Governing Land and Water Administered by the Division.

Regulation 3900.2 – Method of Take

Regulation 3900.4 – Seasons

Regulation 3900.5 – Wild Turkeys

Regulation 3900.7 – Deer

Regulation 3900.18 – Wanton Waste

Written comments for the hearing record should be addressed to Kenneth Reynolds, 4876 Hay Point Landing Road, Smyrna, DE 19977 or to Kenneth.Reynolds@state.de.us. The record will remain open for written public comment until 4:30 p.m. August 1, 2007.

7. Prepared By:

Kenneth M. Reynolds, 4876 Hay Point Landing Road, Smyrna, DE 19977

Kenneth.Reynolds@state.de.us

302) 653-2883

3900 Wildlife Regulations

1.0 Definitions (Formerly WR-1)

1.1 For purposes of Regulations 1.0 through 16.0, the following words and phrases shall have the meaning ascribed to them, unless the context clearly indicates otherwise:

“**Administered by the Division**” shall mean owned, leased or licensed by the Division.

“**Antlered Deer**” shall mean any deer with one or more antlers three inches long or longer, measured from the base of the antler where it joins the skull to the tip of the antler following any curve of the antler.

“**Antlerless Deer**” shall mean any deer that has no antlers or antlers less than three inches in length.

“**Bait**” shall mean any nontoxic food material, compound or mixture of ingredients which wildlife is able to consume.

“**Baited Field**” shall include any farm field, woodland, marsh, water body or other tract of land where minerals, grain, fruit, crop or other nontoxic compounds have been placed to attract wildlife to be hunted.

“**Black Powder**” shall mean a manufacturer’s approved muzzleloading propellant.

“**Deer**” shall mean white-tailed deer (*Odocoileus virginianus*) and/or Sika deer (*Cervus nippon*).

“**Director**” shall mean the Director or Acting Director of the Division.

“**Division**” shall mean the Division of Fish and Wildlife of the Department.

“**Established Blind**” shall mean a structure or pit constructed for the purpose of hunting migratory waterfowl by a landowner on his or her property or by another person with the permission of the landowner or the landowner’s duly authorized agent.

“**Established Road**” shall mean a road maintained for vehicular use by the Division and designated for such use by the Division on current wildlife area maps.

“**Liberated Game**” shall mean cottontail rabbits and game birds, including bobwhite quail, mallard duck, chukar and pheasant released pursuant to § 568 of Title 7.

“**Loaded Muzzle-Loading Rifle**” shall mean the powder and ball, bullet or shot is loaded in the bore. A muzzle-loading rifle shall not be considered loaded if the cap, primer, or priming powder (in a flintlock) is removed and:

The striking mechanism used to ignite the cap, primer or priming powder is removed or rendered inoperable; or

The rifle is enclosed in a case.

“**Lure**” shall mean any mixture of ingredients, element or compound that attract wildlife, but the wildlife is unlikely to consume.

“**Longbow**” shall mean a straight limb, reflex, recurve or compound bow. All crossbows or variations thereof and mechanical holding and releasing devices are expressly excluded from the definition.

“**Nongame Wildlife**” shall mean any native wildlife, including rare and endangered species, which are not commonly trapped, killed, captured or consumed, either for sport or profit.

“**Possession**” shall mean either actual or constructive possession of or any control over the object referred to.

“**Refuge**” shall mean an area of land, whether in public or private ownership, designated by the Department as a refuge. Land shall only be designated with the permission of the landowner and if such designation is thought to be in the best interest of the conservation of wildlife. Refuges shall normally be closed at all times to all forms of hunting, except as permitted by the Director in writing for wildlife management purposes.

“**Roadway**” shall mean any road, lane or street, including associated right-of-ways, maintained by this State or any political subdivision of this State.

“**Season**” shall mean that period of time during which a designated species of wildlife may be lawfully hunted or a designated species of fish may be lawfully fished.

“**Vehicle**” shall include any means in or by which someone travels or something is carried or conveyed or a means of conveyance or transport, whether or not propelled by its own power.

“**Wildlife**” shall mean any member of the animal kingdom, including without limitation, any amphibian, arthropod, bird, mammal or reptile.

3 DE Reg. 289 (8/1/99)

3 DE Reg. 1738 (6/1/00)

2.0 Method of Take (Formerly WR-2)

(Penalty Section 7 Del.C. §103(d))

2.1 General.

Unless otherwise provided by law or regulation of the Department, it shall be unlawful to hunt any protected wildlife with any weapon or firearm other than a longbow or shotgun (10 gauge or smaller), except that:

2.1.1 A crossbow may be used in lieu of a shotgun to hunt deer during that part of the November shotgun season that runs from Monday through Saturday of each year and in any shotgun or muzzleloader deer season open in December or January;

2.1.2 A muzzle-loading rifle with a barrel length of at least twenty inches and loaded with black powder may be used to hunt deer during ~~the primitive firearms season~~ muzzleloader and shotgun deer seasons;

2.1.3 A .22 caliber rimfire pistol may be used to hunt raccoons and opossums and to take wildlife lawfully confined in a trap;

2.1.4 A hook, spear or gig may be used to take frogs; and

2.1.5 A spear, gig, trap or fyke net may be used to take snapping turtles.

2.1.6 A single shot an antique or authentic reproduction black powder Sharps rifle of 45 to 60 caliber shall be lawful for use during shotgun deer seasons using paper patched bullets.

2.2 Bow and Arrow.

2.2.1 General. No person shall use or have in his or her possession, while hunting, any: poison arrow, arrow with explosive tip, or any bow drawn and held or released by mechanical means (draw locking device), except the Director may issue permits to hunters who are permanently disabled to use crossbows, provided:

2.2.1.1 The applicant has a physician's certification that he or she is unable to use conventional archery equipment;

2.2.1.2 The applicant has a disability that requires the use of a wheelchair;

2.2.1.3 The applicant is a single or double amputee above the elbow, or a double amputee below the elbow;

2.2.1.4 The applicant has a permanent physical disorder which cannot be surgically corrected and prevents the use of an arm or hand;

2.2.1.5 The applicant has lung disease to the extent that forced (respiratory) expiratory volume for one (1) second when measured by spirometer is less than one (1) liter or arterial oxygen tension (po) is less than 60 mm/Hg on room air at rest; or

2.2.1.6 The applicant has cardiovascular disease to the extent that functional limitations are classified in severity as class III or class IV according to standards accepted by the American Heart Association.

2.2.2 Crossbows. Crossbows used for deer hunting must be between 125 and 200 pounds of pull weight, manufactured after 1980, and have a mechanical safety.

2.3 Hunting from Boats.

2.3.1 Distance from Blinds. During the season for the hunting of migratory waterfowl, it shall be unlawful for any person to hunt from a boat of any kind that is within 1500 feet of an established blind, except that:

2.3.1.1 Any person may use a boat to tend lawfully set traps for fur-bearing wildlife;

2.3.1.2 Any person may retrieve crippled waterfowl by the use of a boat in accordance with federal regulations;

2.3.1.3 Any person may use a boat for transportation to and from an established blind lawfully used by such person;

2.3.1.4 Any person may hunt from a boat that is firmly secured and enclosed in an established blind.

2.3.2 Notwithstanding the provisions of subsection 2.2.1 of this section, any person may hunt migratory waterfowl within 1500 feet of an established blind, from a boat, with permission of the blind owner.

2.3.3 Gunning Rigs.

2.3.3.1 During the season for hunting migratory waterfowl, it shall be unlawful for any person to hunt within 900 feet of the shoreline (high tide line) of the Delaware River and Bay, between the Appoquinimink River and the Smyrna River, without written permission of the closest adjoining landowner(s).

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2.3.3.2 During the season for hunting migratory waterfowl, it shall be unlawful for any person to hunt within 1500 feet of the shoreline (high tide line) of the Delaware River and Bay, between the Smyrna River and the Murderkill River, without written permission of the closest adjoining landowner(s).

2.3.4 Tender Boats. It shall be unlawful for tender boats servicing gunning (layout) rigs to be further than 1500 feet from the rig or to conduct any activity, except to pick up downed birds or service the rig.

2.3.5 During the season for hunting migratory waterfowl, it shall be unlawful for any person to hunt from a boat, or a floating or fixed blind in the Little River in areas bounded on both sides by land administered by the Division, except as permitted in writing by the Director.

2.4 Leghold Traps.

2.4.1 It shall be unlawful for any person to set a leghold trap at any time in this State, except from December 1 through March 10 (March 20 on embanked meadows) in New Castle County and December 15 through March 15 in Kent and Sussex counties.

2.4.2 Notwithstanding subsection 2.4.1 of this section, it shall be lawful to trap raccoons with leghold traps in New Castle County or Kent County from the southerly boundary of New Castle County Route 380 and east and southeast of the center line of U.S. Route No. 13, thence following said center line of U.S. Route No. 13 to the point where U.S. Route No. 13 forms a junction with U.S. Route No. 113 and thence along the center line of U.S. Route No. 113 to a line dividing Kent County from Sussex County during any time of the year, except on Sundays. Notwithstanding the foregoing, this subsection shall not apply to lands in Kent County lying east of the center line of Route 113, north of the Sussex County line and south of the St. Jones River.

2.4.3 It shall be unlawful for any person to set long-spring traps, "Stop-Loss" traps or jump traps larger than No. 1½ or coil-spring traps larger than No. 1 in any location, except:

2.4.3.1 In any marsh ordinarily subject to the rise and fall of the tide;

2.4.3.2 In a diked marsh that was formerly tidal;

2.4.3.3 Below the mean high tide line in a river ordinarily subject to the rise and fall of the tide;

2.4.3.4 On an island surrounded by tidal marsh or diked marsh that was formerly tidal; or

2.3.4.5 In the areas described in subsection 2.4.2 of this section.

The term "diked marsh" shall not include millponds or any stream running into a millpond.

2.4.4 In addition to the areas listed in subsection 2.4.3 of this section, traps described in said subsection may be set for river otter and/or beavers in tax ditches, millponds and streams leading into such ponds only by underwater sets.

2.4.5 It shall be unlawful for any person to set or make use of long-spring traps, "Stop-Loss" traps or jump traps larger than No. 1½ or coil-spring traps larger than No. 1 without first permanently attaching a metallic tag on each trap, bearing:

2.4.5.1 The words "Trapping License, Delaware", the number of the trapping license issued to the owner of the traps and the year of issuance; or

2.4.5.2 The owner's name and address.

2.4.6 It shall be unlawful for any person to set a long-spring trap, "Stop-Loss" trap, jump trap No. 1½ or smaller or a coil-spring trap No. 1 or smaller in any location in this State, except in the areas described in subsections 2.4.3 and 2.4.4 of this section and in the following locations:

2.4.6.1 A ditch;

2.4.6.2 A stream; or

2.4.6.3 On land not subject to cultivation of crops due to a normally marshy condition.

2.4.7 For the purposes of subsection 2.4.6 of this section, the term "ditch" shall mean a long, narrow channel dug into the earth as a trough for drainage or irrigation of the soil that normally contains flowing water.

2.4.8 For the purposes of subsection 2.4.6 of this section, the term "normally marshy condition" shall mean land with one or more of the following associated plant groupings growing upon it: cordgrass, sedges, rushes, cattails, threesquare or phragmites.

2.4.9 When information is furnished to a Fish and Wildlife Agent from the owner, tenant or sharecropper of any land that any species of wildlife is detrimental to crops, property or other interests on land on which he or she resides or controls, upon investigation, that Fish and Wildlife Agent may issue a permit to such

person or his or her agent for the use of leghold traps to control said species of wildlife. Said permit may be issued at any time of the year.

2.4.10 The setting of each trap in violation of this section shall be a separate offense.

2.5 Gray Squirrel.

Hunting gray squirrels with a ~~.22-caliber~~ rimfire rifle not larger than .22 caliber or muzzle-loading rifle not larger than .36 caliber ~~firing a round projectile~~ is permitted south of the Chesapeake and Delaware Canal. ~~during that part of the gray squirrel season which is not concurrent with the rabbit, quail or pheasant seasons as they are described in Section 4.0~~

2.6 Muskrats.

It shall be unlawful for any person to shoot muskrats at any time, except with written permission of the Director.

2.7 Otters.

Each otter trapped in Delaware must be tagged by an authorized representative of the Division. Each otter sold in Delaware or shipped out of the State must be tagged in accordance with the requirements of the Convention on International Trade in Endangered Species.

2.8 Red Fox.

Red foxes may be killed in accordance with § 788 of Title 7 with the following: bow and arrow; shotgun with shot up to size 2 lead or T steel; rimfire rifle or centerfire rifle up to .25 caliber using hollow point bullets with a maximum bullet weight of 75 grains; or a muzzle-loading rifle.

2.9 Multiple Hunting Implements

Notwithstanding subsections 7.3.3 of regulation 7.0 it shall be unlawful for any person to carry multiple hunting implements while pursuing game in the field.

3 DE Reg. 289 (8/1/99)

6 DE Reg. 536 (10/1/02)

3.0 Federal Laws and Regulations Adopted (Formerly WR-3)

(Penalty Section 7 **Del.C.** §103(d))

3.1 Federal Laws.

It shall be unlawful for any person to hunt, buy, sell or possess any protected wildlife or part thereof, except in such manner and numbers as may be prescribed by the following federal laws and regulations promulgated thereunder: Airborne Hunting Act (16 USC § 742j-1 et seq.), Eagle Act (16 USC § 668 et seq.), Endangered Species Act (16 USC 1531 et seq.), Lacey Act (16 USC § 3371 et seq.), Marine Mammal Protection Act (16 USC § 1361 et seq.), and the Migratory Bird Treaty Act (16 USC § 703 et seq.). Notwithstanding the foregoing, the federal laws and regulations shall be superseded by more stringent restrictions prescribed by State law or regulation of the Department.

3.2 Sea Ducks.

Scoters, eiders and old squaw ducks may be taken during their special season not less than 800 yards seaward from the Delaware Bay shore beginning at an east/west line between Port Mahon and the Elbow Cross Navigation Light south to the Atlantic Ocean or in the Atlantic Ocean.

3.3 Non-toxic Shot.

3.3.1 Required Usage. Non-toxic shot, as defined by federal regulations, shall be required for waterfowl hunting in Delaware. It shall be unlawful for any person to possess shells loaded with lead shot while waterfowl hunting.

3.3.2 Maximum Shot Size. It shall be unlawful for any person to hunt, except for deer, in Delaware with any size non-toxic shot (as defined by federal regulations) pellet(s) larger than size T (.20 inches in diameter).

3.4 Special Mallard Release Areas.

The Division may issue permits to allow the taking of captive-reared mallards during the established waterfowl season under applicable federal regulations. Permits shall only be issued to persons who: control at least 100 acres of land on which there is suitable waterfowl habitat; agree to follow a management plan and federal regulations; and maintain a log of guests and birds harvested. Failure to follow the management plan or a violation of State or federal laws may result in the revocation of a Special Mallard Release Area Permit. Waterfowl may only be hunted on Special Mallard Release Areas from one-half hour after sunrise to one hour before sunset.

3.5 Mute Swans

Mute swans shall be considered an exotic, invasive species that is not subject to state protection.

3 DE Reg. 289 (8/1/99)

6 DE Reg. 536 (10/1/02)

4.0 Seasons (Formerly WR-4)

(Penalty Section 7 **Del.C.** §103(d))

4.1 Season Dates.

Hunting and trapping season dates will be published each year in an annual publication entitled "Delaware Hunting and Trapping Guide."

4.2 General.

It shall be unlawful for any person to hunt those species of wildlife for which a season is designated at any time other than during that season.

4.3 Protected Wildlife.

4.3.1 Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to hunt any species of protected wildlife.

4.3.2 It shall be unlawful for any person to sell, transport or possess any species of protected wildlife, except when:

4.3.2.1 Otherwise provided by law or regulation of the Department; or

4.3.2.2 The wildlife was lawfully taken outside of this State in accordance with the laws or regulations of the state or nation where the wildlife was taken.

4.4 Beaver.

4.4.1 Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to hunt or trap beaver during any period of the year, however, from December 1 through March 20, landowners (or their agents) may take up to eight beavers from their property without a permit, provided the beavers are causing crop or property damage.

4.4.2 Beaver hides and the meat of lawfully taken beaver harvested anywhere within or outside of Delaware may be sold.

4.5 Bullfrogs.

4.5.1 Season. Bullfrogs may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of bullfrogs: from May 1 through September 30.

4.5.2 Limit. It shall be unlawful for any person to take more than twenty-four (24) bullfrogs in any one day.

4.5.3 License. A hunting or fishing license is required to take bullfrogs.

4.6 Crows.

It shall be unlawful for any person to hunt common crows during any period of the year, except Thursdays, Fridays and Saturdays between and including the fourth Thursday of June and the last Saturday of March, unless said person holds a valid depredation permit. The hunting of common crows is restricted only by the provisions of federal regulations pertaining to the taking of common crows. Crows may be taken without a permit when committing damage or about to commit damage.

4.7 Gray Squirrel.

4.7.1 Season. Gray squirrel may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of gray squirrel: from September 15 (September 14, if September 15 is a Sunday) through the first Saturday in ~~November; and from the Monday that immediately precedes Thanksgiving through the day that precedes the January shotgun deer season~~ February. Squirrel hunting shall be unlawful during any period and in any area when it is lawful to hunt deer with a firearm the November deer firearms season. ~~Notwithstanding the foregoing, w~~When squirrel season overlaps with a an October firearms deer season, squirrel may be hunted when hunter orange is displayed in accordance with § 718 of Title 7.

4.7.2 Limit. It shall be unlawful for any person to take more than ~~four~~ six gray squirrels in any one day.

4.8 Opossum.

The opossum may only be hunted or trapped during the lawful season to hunt or trap raccoons.

4.9 Pheasant.

4.9.1 Season. Male pheasant may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of pheasant: from the Monday that immediately precedes Thanksgiving through the day that precedes the January shotgun deer season, ~~except that no pheasant hunting shall be lawful during any period when it is lawful to hunt deer with a firearm. Notwithstanding the foregoing, pheasant may be hunted during the December firearm deer season when first Saturday in February, provided that during a deer firearms season~~ hunter orange is displayed in accordance with § 718 of Title 7.

4.9.2 Female Pheasant. It shall be unlawful for any person to hunt or possess any female pheasant at any time, except as permitted on game preserves, by licensed game breeders or as otherwise permitted by law.

4.9.3 Male Pheasant Limit. It shall be unlawful for any person to hunt or possess more than two (2) male pheasants in any one day during the pheasant season, except as permitted by law.

4.9.4 Scientific or Propagating Purposes. It shall be unlawful for any person to possess pheasants for scientific and propagating purposes without a valid permit from the Director.

4.9.5 Game Preserves. Nothing in this regulation shall be construed so as to limit the number or sex of pheasants that may be harvested by any one person on licensed game preserves.

4.10 Quail.

4.10.1 Season. Bobwhite quail may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of bobwhite quail: from the Monday that immediately precedes Thanksgiving through the first Saturday of February, ~~except that no quail hunting shall be lawful during any period when it is lawful to hunt deer with a firearm. Notwithstanding the foregoing, quail may be hunted during the December or January firearm deer seasons when provided that during a deer firearms season~~ hunter orange is displayed in accordance with § 718 of Title 7.

4.10.2 Limit. It shall be unlawful for any person to take more than six (6) quail in any one day.

4.11 Rabbit.

4.11.1 Season. Rabbits may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of rabbits: from the Monday that immediately precedes Thanksgiving through the first Saturday in February, ~~except that no rabbit hunting shall be lawful during any period when it is lawful to hunt deer with a firearm. Notwithstanding the foregoing, rabbit may be hunted during the December or January firearm deer seasons when provided that during a deer firearms season~~ hunter orange is displayed in accordance with § 718 of Title 7.

4.11.2 Limit. It shall be unlawful for any person to take more than four (4) rabbits in any one day.

4.12 Raccoon.

4.12.1 Trapping Season. Raccoon may be trapped in accordance with the statutes and regulations of the State of Delaware governing the trapping of raccoon: from December 1 through March 10 (March 20 on embanked meadows) in New Castle County; and from December 15 through March 15 in Kent and Sussex counties. The season is open throughout the year on private land, except on Sundays, in eastern New Castle and Kent counties pursuant to § 786 of Title 7 and Section 4(b) of WR-2.

4.12.2 Hunting Season. Raccoon may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of raccoon: from September 1 (September 2, if September 1 is a Sunday) through October 31 for chase only whereby it shall be unlawful to kill raccoon and opossum; from November 1 through the last day of February; and from March 1 through March 31 for chase only whereby it shall be unlawful to kill raccoon and opossum. The season is open throughout the year on private land in eastern New Castle and Kent counties, except on Sundays, pursuant to § 786 of Title 7.

4.12.3 Notwithstanding subsection 4.3.2 of this section, it shall be unlawful for any person to hunt raccoon or opossum during any period when it is lawful to hunt deer with a firearm, except that it shall be lawful to hunt raccoon from 7:00 p.m. until midnight during the December and January firearm deer seasons.

4.13 Red Fox.

Red fox may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of red fox: from October 1 through April 30 for chase only whereby it shall be unlawful to kill red fox, except no red fox hunting shall be lawful during any period when it is lawful to hunt deer with a firearm. Notwithstanding the foregoing, red foxes may be killed in accordance with Section 8 of WR-2 and § 788 of Title 7.

4.14 Ruffed Grouse.

It shall be unlawful for any person to hunt for ruffed grouse during any period of the year.

4.15 Snapping Turtles.

4.15.1 Season. It shall be unlawful for any person to hunt for snapping turtles during any period of the year, except between and including June 15 and May 15.

4.15.2 Size. It shall be unlawful for any person to sell, offer for sale or kill any snapping turtle with a carapace length of less than eight inches, measured on the curvature.

4.16 Terrapin.

4.16.1 Season. It shall be unlawful for any person to hunt for diamondback terrapin during any period of the year, except between and including September 1 and November 15.

4.16.2 Limit. It shall be unlawful for any person to take more than four (4) diamondback terrapin in any one day.

3 DE Reg. 289 (8/1/99)

3 DE Reg. 1738 (6/1/00)

6 DE Reg. 536 (10/1/02)

8 DE Reg. 352 (8/1/04)

5.0 Wild Turkeys (Formerly WR-5)

(Penalty Section 7 Del.C. §103(d))

5.1 Possession of Wild Turkey Prohibited; Exceptions.

It shall be unlawful for any person, other than authorized representatives of the Division, to release or possess *Meleagris gallopavo* (wild turkey) in Delaware without a permit from the Division. The prohibition to possess and/or release *Meleagris gallopavo* shall include both birds taken from the wild and birds bred in captivity.

5.2 Instruction Requirement.

It shall be unlawful for any person to ~~obtain a turkey hunting permit from the Division~~ hunt wild turkeys in Delaware before a that same person attends and passes a Division approved course of instruction in turkey hunting.

5.3 Method of Take.

5.3.1 It shall be unlawful for any person to use any firearm to hunt wild turkeys, except a 10, 12, 16, or 20 gauge shotgun loaded with size 4, 5, or 6 shot or a longbow with a broadhead arrow, 7/8 inches in minimum width.

5.3.2 It shall be unlawful for any person to use bait or dogs to hunt wild turkeys.

5.3.3 It shall be unlawful for any person to "drive" wild turkeys.

5.3.4 It shall be unlawful for any person to shoot any wild turkey that is in a roost tree.

5.3.5 It shall be unlawful for any person to hunt wild turkeys unless said person is wearing camouflage clothing.

5.3.6 It shall be unlawful for any person to hunt wild turkeys if said person is wearing any garment with the colors white, red, or blue.

5.3.7 It shall be unlawful for any person to hunt wild turkeys and use artificial turkey decoys of either sex that are wholly or partially made from any part of a turkey that was formerly alive.

5.3.8 It shall be unlawful for any person to hunt wild turkeys using an electronic calling device.

5.4 Season and Limit.

5.4.1 The Division may establish a season for hunting bearded wild turkeys by permit. The Division will determine the terms and conditions of the issuance of permits. It shall be unlawful for any person to hunt wild turkey, except as permitted by the written authorization of the Division.

5.4.2 It shall be unlawful for any person to hunt wild turkeys, except from one-half hour before sunrise to 1:00 p.m.

5.4.3 It shall be unlawful for any person to not check a wild turkey at an authorized checking station by 2:30 p.m. on the day of kill.

5.4.4 It shall be unlawful for any person to take or attempt to take more than one bearded wild turkey per season.

3 DE Reg. 289 (8/1/99)

6.0 Game Preserves (Formerly WR-6)

(Penalty Section 7 Del.C. §103(d))

6.1 It shall be unlawful for any person to hunt liberated game on licensed game preserves from April 1 through October 14.

3 DE Reg. 289 (8/1/99)

3 DE Reg. 1738 (6/1/00)

7.0 Deer (Formerly WR-7)

(Penalty Section 7 Del.C. §103(d))

7.1 Limit.

7.1.1 Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to:

license year;

7.1.1.1 Kill or take or attempt to kill or take more than four antlerless deer in any

the four deer being female deer; or

7.1.1.2 Kill or take four antlerless deer in any license year without at least two of

7.1.1.3 Possess or transport any deer that was unlawfully killed.

7.1.1.4 Kill any antlered deer without first purchasing a Delaware Resident Hunter's Choice Deer tag or a Delaware Non Resident Antlered Deer Tag, except that persons exempt from purchasing a hunting license shall be entitled to take one Hunter's Choice deer at no cost.

7.1.2 For the purposes of this section, a person "driving deer" and not in possession of any weapon or firearm shall not be treated as if they are hunting deer, provided they are assisting lawful hunters.

7.1.3 It shall be unlawful for any person to purchase, sell, expose for sale, transport or possess with the intent to sell, any deer or any part of such deer at any time, except that hides from deer lawfully killed and checked may be sold when tagged with a non-transferable tag issued by the Division. Said tag must remain attached to the hide until it leaves the State or is commercially processed into leather. This subsection shall not apply to venison approved for sale by the United States Department of Agriculture and imported into Delaware.

7.1.4 Notwithstanding subsection 7.1.1 of this section, a person may purchase Antlerless Deer Tags for \$10 each to kill or take additional antlerless deer during the open season. Hunters may take additional antlerless deer on Antlerless Deer Damage Tags at no cost.

7.1.5 Notwithstanding subsection 7.1.1 of this section, a person may use one Quality Buck tag to take an antlered deer with a minimum outside antler spread of fifteen inches, provided the tag is valid for the season in which it is used. Hunters exempt from the requirement to purchase a hunting license must purchase a Quality Buck tag in order to take a second antlered deer in any one license year.

7.2 Tagging and Designated Checking Stations.

7.2.1 Attaching Tags. Each licensed person who hunts and kills a deer shall, immediately after the killing and before removing the deer from the location of the killing, attach an approved tag to the deer and record in ink the date of harvest on the tag. An approved tag shall mean an Antlerless Deer Tag or Doe Tag received with the hunting license, a Delaware Resident Quality Buck Deer Tag, a Delaware Resident Hunter's Choice Deer Tag, a Delaware Non Resident Quality Buck Deer Tag, a Delaware Non Resident Antlered Deer Tag, an Antlerless Deer Damage Tag, or an Antlerless Tag purchased in addition to the hunting license tags. Any unlicensed person not required to secure a license shall make and attach a tag to the deer that contains the person's name, address and reason for not having a valid Delaware hunting license.

7.2.2 Retention of Tag. The tag required by subsection 7.1.1 of this section shall remain attached to the deer until the deer is presented to an official checking station for examination and tagging or registered by phone or over the internet, as prescribed by subsection 7.1.3 of this section.

7.2.3 Checking Stations. Each person who hunts and kills a deer shall, within 24 hours of killing said deer, present the deer to a checking station designated by the Division or to an authorized employee of the Division. Hunters may also check deer by phone or over the internet through systems authorized by the Division.

7.2.4 Dressing. It shall be unlawful for any person to remove from any deer any part thereof, except those internal organs known as the viscera, or cut the meat thereof into parts, until such deer has been examined by an authorized employee of the Division or a checking station, as prescribed by subsection 7.1.3 of this section or registered using the phone or internet system.

7.2.5 Receipt Tag. The Division shall issue, at a checking station or otherwise, an official receipt tag proving the deer was examined by an authorized employee of the Division or a checking station, as prescribed by subsection 7.1.3 of this section. The receipt tag shall remain with the deer until such time as the deer is

processed for consumption or prepared for mounting. Deer checked over the phone or internet will be given a registration number. These deer shall be tagged by the hunter, butcher or taxidermist with the registration number, hunter's first and last name, hunter's date of birth, and date of kill. This tag may be homemade or be one provided by the Division and must remain with the head and/or carcass until the mount is picked up from the taxidermist or the meat is processed and stored as food.

7.3 Method of Take.

7.3.1 Shotgun. It shall be unlawful for any person to hunt deer during the shotgun season using a shotgun of a caliber smaller than 20 gauge, or have in his or her possession any shell loaded with shot smaller than what is commonly known as "buckshot."

7.3.2 Bow and Arrow. It shall be unlawful for any person to hunt deer during the longbow season and have in his or her possession any weapon or firearm other than a knife, a bow and sharpened broadhead arrows having minimum arrowhead width of 7/8 of an inch.

7.3.3 Muzzle-loading Pistols. A single shot muzzle-loading pistol of .42 caliber or larger using a minimum powder charge of 40 grains may be used to provide the coupe-de-grace on deer during the primitive firearm season.

7.3.4 Refuge in Water. It shall be unlawful for any person to shoot, kill or wound or attempt to shoot, kill or wound any deer that is taking refuge in or swimming through the waters of any stream, pond, lake or tidal waters.

7.3.5 Dogs. It shall be unlawful for any person to make use of a dog for hunting during the shotgun or muzzleloader seasons for deer (in each county), except as permitted in the hunting of migratory waterfowl from an established blind or for hunting dove, quail, raccoon or rabbit on properties closed to deer hunting with firearms during December and January.

7.4 Illegal Hunting Methods; Baiting.

It shall be unlawful for any person to set, lay or use any trap, snare, net, or pitfall or make use of any artificial light, or other contrivance or device, for the purpose of hunting deer. This subsection does not preclude the use of bait for the purpose of attracting deer in order to hunt them on private land.

7.5 Seasons.

7.5.1 Shotgun Seasons. Deer may be hunted with shotgun in accordance with the statutes and regulations of the State of Delaware governing the hunting of deer: from the Friday in November that precedes Thanksgiving by thirteen (13) days through the second Saturday succeeding said Friday; and from the Saturday that precedes the third Monday in January through the following Saturday in January.

7.5.2 Archery Seasons. Deer may be hunted with longbow in accordance with statutes and regulations of the State of Delaware governing the hunting of deer: from September 1 (September 2, if September 1 is a Sunday) through the last day of January, provided hunter orange is displayed in accordance with § 718 of Title 7 when it also lawful to hunt deer with a firearm.

7.5.3 Muzzleloader Seasons. Deer may be hunted with muzzle-loading rifles in accordance with the statutes and regulations of the State of Delaware governing the hunting of deer: from the Friday that precedes the second Monday in October through the second Saturday that succeeds the Friday opening day; and from the Monday that follows the close of the January shotgun season through the next Saturday.

7.5.4 Special Antlerless Season. Antlerless deer may be hunted with a shotgun in accordance with the statutes and regulations of the State of Delaware governing the hunting of deer during all Fridays, Saturdays and Mondays in October except for during the October Muzzleloader season and the last Monday prior to the opening Friday of the October Muzzleloader season. Notwithstanding the foregoing, antlered deer may be taken with archery equipment that is legal during this October shotgun season. Antlerless deer may be hunted with shotgun in accordance with the statutes and regulations of the State of Delaware governing the hunting of deer: from the second Saturday in December through the third Saturday in December.

7.5.5 Crossbow Seasons. Crossbows may be used in lieu of shotguns during that part of the November shotgun season that runs from Monday through Saturday of each year and in any shotgun or muzzleloader deer season open in December or January.

7.5.6 Special Shotgun Season for Young and Disabled Hunters. Deer may be hunted on the first Saturday of November by disabled (non-ambulatory) hunters using a wheelchair for mobility, and hunters 12 years of age or older but less than 16 years of age (12 to 15 inclusive) who have completed an approved course in hunter training. Young hunters must be accompanied by a licensed non-hunting adult who is 21 years of age or older. Young hunters must be of sufficient size, physical strength and emotional maturity to safely handle a shotgun.

7.6 Carcass Importation Ban.

7.6.1 Importation. It shall be unlawful to import or possess any carcass or part of a carcass of any member of the family Cervidae (deer) originating from a state or Canadian province in which Chronic Wasting Disease has been found in free-ranging or captive deer. Notwithstanding the foregoing, the following parts may be imported into the state:

- Boned-out meat that is cut and wrapped;
- Quarters or other portions of meat with no part of the spinal column or skull attached;
- Hides or capes with no skull attached;
- Clean (no meat or tissue attached) skull plates with antlers attached;
- Antlers (with no meat or tissue attached);
- Upper canine teeth (buglers, whistlers, or ivories); and
- Finished taxidermy products.

7.6.2 Carcass Notification. Any person who imports into Delaware any deer carcass or parts described in subsection 7.6.1 of this section and is notified that the animal has tested positive for Chronic Wasting Disease must report the test results to the department within 72 hours of receiving the notification. In order to facilitate the proper disposal of any infected material, the department may take into possession any imported carcass or carcass part of an animal if the animal has tested positive for Chronic Wasting Disease.

3 DE Reg. 289 (8/1/99)

6 DE Reg. 536 (10/1/02)

8 DE Reg. 352 (8/1/04)

8.0 General Rules and Regulations Governing Land and Waters Administered by the Division (Formerly WR-8)

(Penalty Section 7 **Del.C.** §103(d))

8.1 Motorized Vehicles.

8.1.1 General. It shall be unlawful for any person to drive or operate a motorized vehicle upon any lands administered by the Division, except on established roads or as otherwise authorized by the Director.

8.1.2 Noise. It shall be unlawful for any person to drive or operate a motorized vehicle upon any lands administered by the Division, unless such vehicle is equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise.

8.1.3 Speed Limit. It shall be unlawful for any person to drive or operate a vehicle in excess of twenty (20) miles per hour when on lands administered by the Division, unless otherwise authorized by the Director.

8.1.4 Unlicensed Vehicles. It shall be unlawful for any person to drive or operate any motorized vehicle upon any lands administered by the Division, unless said vehicle is licensed for use upon public highways and roadways or the driver or operator of said vehicle has been issued a permit from the Division.

8.1.5 Parking.

8.1.5.1 It shall be unlawful for any person to park any vehicle on lands administered by the Division in such a manner as to obstruct the use of a boat ramp, roadway or trail. Any vehicle parked in such manner shall be subject to removal, and the owner of said vehicle shall bear all costs involved with such removal.

8.1.5.2 Unless otherwise authorized by the Director, it shall be unlawful for any person to park and leave unattended any vehicle or trailer in any Division parking lot, unless said lot is lawfully being used for direct access to lands or waters administered by the Division.

8.1.5.3 Unless otherwise authorized by the Director, it shall be unlawful for any person to leave any vehicle on lands administered by the Division for a period exceeding 24 hours.

8.2 Conditions of Use.

8.2.1 Trespass. It shall be unlawful for any person to enter upon lands or waters administered by the Division when those lands or waters have been closed by the Division to: protect public safety; protect Department property; or manage wildlife.

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8.2.2 Hours of Entry. It shall be unlawful for any person to be present upon lands or waters administered by the Division between sunset and sunrise, unless such person is lawfully hunting or fishing or has been authorized by written permission of the Director.

8.2.3 Camping. It shall be unlawful for any person to camp on lands administered by the Division, except conservation oriented groups may, with written permission of the Director, camp in areas specified in such permit.

8.2.4 Swimming. It shall be unlawful for any person to swim in waters administered by the Division, except by written permission of the Director.

8.2.5 Dumping.
8.2.5.1 It shall be unlawful for any person to place, dump, deposit, throw or leave any garbage, refuse or similar debris within or upon any lands or waters administered by the Division, except in receptacles provided for such purpose;

8.2.5.2 It shall be unlawful for any person to bring any trash, refuse or similar material onto lands administered by the Division for the purpose of disposing such in Division receptacles.

8.2.5.3 Unless otherwise authorized by the Director, it shall be unlawful for any person to deposit any material, structure, debris or other objects on lands or waters administered by the Division.

8.2.6 Destruction of State Property.

8.2.6.1 It shall be unlawful for any person to deface, damage, remove or alter any structures, buildings, natural-land features, or other property or equipment belonging to the Division.

8.2.6.2 Unless authorized by the Division for management, research or educational purposes, it shall be unlawful for any person to cut, injure or remove trees, shrubs, wildflowers, ferns, mosses or other plants from lands administered by the Division.

8.2.6.3 It shall be unlawful for any person to erect or use any portable or permanent deer stand that involves the use of nails or screws placed in a tree.

8.2.6.4 Unless otherwise authorized by the Director, it shall be unlawful for any person to kindle, build, maintain or use a fire on lands administered by the Division.

8.3 Hunting and Firearms.

8.3.1 Hunting.

8.3.1.1 It shall be unlawful for any person to hunt on lands administered by the Division, except as permitted by the Director in writing and specified on current wildlife area maps distributed by the Division.

8.3.1.2 A daily permit must be obtained before hunting waterfowl at Augustine, Cedar Swamp, Little Creek, Woodland Beach, Ted Harvey, Prime Hook and Assawoman wildlife areas. Permits may be obtained on-site from an authorized agent of the Division and must be returned upon leaving the area. The Director may specify the hours of a permit's effectiveness and determine the conditions of its issuance.

8.3.2 Waterfowl.

8.3.2.1 It shall be unlawful for any person to hunt waterfowl on areas administered by the Division, except from State built blinds, or other blinds authorized by the Division, or by written permission of the Director.

8.3.2.2 It shall be unlawful for any person to enter tidal and/or impounded areas administered by the Division during the waterfowl season, except for access as authorized by paragraph (1) of this subsection.

8.3.3 Trapping. It shall be unlawful for any person to trap or attempt to trap on areas administered by the Division, except for: persons holding a valid contract with the Division to do so; authorized agents of the Division who are conducting authorized wildlife management practices; or scientific purposes as specifically authorized in writing by the Director.

8.3.4 Firearms on Division Areas.

8.3.4.1 It shall be unlawful for any person to possess a firearm on lands or waters administered by the Division from March 1 through August 31, except as authorized by the Director in writing.

8.3.4.2 It shall be unlawful for any person to possess a rifled firearm of any description at any time on those lands bordering the Chesapeake and Delaware Canal and licensed to the Department by the Government of the United States for wildlife management purposes, except that muzzleloaders

and shotguns with rifle barrels may be used during the primitive firearm season deer seasons when it is lawful to use those firearms.

8.3.4.3 It shall be unlawful for any person to discharge any firearm on lands or waters administered by the Division on Sunday, except in areas designated by the Director or with a permit from the Director.

8.3.4.4 It shall be unlawful for any person to discharge any firearm on lands or waters administered by the Division for any purpose, including target shooting, other than to hunt during an open season, under conditions approved by the Director and specified on the current wildlife area map.

8.3.5 Dikes. It shall be unlawful for any person to be in possession of any firearm on any dike administered by the Division, unless such person is temporarily crossing a dike at a ninety degree angle or traversing a dike to reach a Division authorized deer stand location during a deer firearms hunting season.

8.3.6 Deer Hunting By Driving. It shall be unlawful for residents to participate in deer drives, except where authorized on current wildlife area maps between the hours of 9:00 a.m. and 3:00 p.m. No more than six (6) resident hunters may participate in driving deer at any one time. Nonresidents may not participate in deer drives at any time. Nonresidents are restricted to hunting deer from stationary locations. Nonresidents may not possess a loaded firearm during the deer season, except to hunt from a stationary location or to retrieve a deer that they wound.

8.4 Horses and Bicycles. It shall be unlawful to ride horses or bicycles on, or allow horses to use, any lands or waters administered by the Division, except on established roads or trails that have been designated by the Division for such purposes on current wildlife area maps.

8.5 Concessions, Posters and Solicitations.

8.5.1 It shall be unlawful for any person to erect, post or distribute any placard, sign, notice, poster, billboard or handbill on lands or waters administered by the Division without written authorization of the Director.

8.5.2 It shall be unlawful for any person to engage in the vending of merchandise, food or services on lands or waters administered by the Division without written authorization of the Director.

8.5.3 It shall be unlawful for any person to do any form of solicitation for money or goods on any lands or waters administered by the Division without written authorization of the Director.

8.6 Firewood. It shall be unlawful for any person to remove firewood from lands administered by the Division without a permit from the Division, except when special firewood areas are designated by the Director in writing.

8.7 Dog Training.

8.7.1 General. It shall be unlawful for any person to train a dog on lands or waters administered by the Division, except:

8.7.1.1 During open hunting seasons for the game that the dog is being trained to hunt;

8.7.1.2 Within a dog training area established by the Division; and

8.7.1.3 As permitted by the Director in writing on current wildlife area maps.

8.7.2 C&D Canal Summit Area. – It shall be unlawful for any person to enter the dog training area west of the Summit Bridge (Route 896), designated on the current wildlife area map of the C&D Canal Wildlife Area, for any purpose other than to train dogs or hunt for deer during the shotgun deer seasons. It shall be unlawful for any person to fish, operate a model or full size boat, ride horses or bicycles, or conduct any other activity on the area.

8.8 Geocaching

8.8.1 It shall be unlawful to place caches or letterboxes on Division of Fish and Wildlife property without a permit from the Division. Permits may be obtained by submitting a completed permit application to the appropriate Fish and Wildlife Regional Office. The proposed caching location will be specified in the application. The Regional Fish and Wildlife Manager will review and approve or deny the permit request. A permit will be valid for a maximum of one year from the date of issue at which time the geocache or letterbox must be removed or re-permitted. The permitted time frame will be determined by the area manager and be based on the local wildlife species present and the management activities planned for the area. The area manager will be provided the location of the cache or letterbox and may remove it at his or her discretion, with notice to the permit holder, should circumstances warrant. Online geocache and letterbox descriptions, such as those on geocaching.com or letterboxing.org must include information about access during hunting seasons and provide a link to Delaware

Division of Fish and Wildlife Hunting Information. Geocache and letterbox contents must be suitable for all ages. Food, alcohol, tobacco, weapons or other dangerous items, prescription or illegal drugs and adult items are prohibited.

3 DE Reg. 289 (8/1/99)

9.0 Wildlife Theft Prevention Fund. (Formerly WR-9)

(Penalty Section 7 Del.C. §103(d))

9.1 Schedule of Rewards.

9.1.1 The Division shall pay up to \$1000 for information leading to the arrest and conviction of any person found guilty of:

9.1.1.1 Commercialization of wildlife; or

9.1.1.2 Killing an endangered species or a species classified as a threatened species in accordance with the Endangered Species Act of 1973, as amended.

9.1.2 The Division shall pay up to \$500 for information leading to the arrest and conviction of any person found guilty of:

9.1.2.1 Illegally hunting black ducks, canvasbacks, Canada geese or turkeys;

9.1.2.2 Poisoning wildlife;

9.1.2.3 Gross over-limits of wildlife;

9.1.2.4 Illegally hunting waterfowl or deer on State game refuges;

9.1.2.5 Hunting or trapping out of season;

9.1.2.6 Illegally hunting at night;

9.1.2.7 Hunting during license revocation; or

9.1.2.8 Possessing, tending or setting killer traps with a jaw spread in excess of 5 inches.

9.1.3 The Division shall pay up to \$100 for information leading to the arrest and conviction of any person found guilty of illegally taking or wounding wildlife with a rifle.

9.1.4 The confidentiality of informants and their payments shall be maintained by administrative procedures. Peace officers, Department employees or members of their immediate families are not eligible for rewards.

3 DE Reg. 289 (8/1/99)

10.0 Nuisance Game Animals (Formerly WR-10)

(Penalty Section 7 Del.C. §103(d))

10.1 Incorporated Cities or Towns. Within the limits of residential or commercial areas of incorporated cities or towns, or within residential or commercial structures, the following game animals may be controlled (killed) without a permit when they are causing damage: gray squirrel, raccoon and opossum. Methods used to control said animals must be consistent with the laws of this State and the regulations of the Department and only live traps may be used (without a depredation permit) outside of established trapping seasons.

10.2 Pest Control Operators. The Division may designate licensed pest control operators as cooperators to control nuisance wild animals. Said cooperators must agree to follow guidelines for control as determined by the Division and notify potential clients of their fees.

3 DE Reg. 289 (8/1/99)

11.0 Shoreline Refuges of the Delaware River and Bay (Formerly WR-11)

(Penalty Section 7 Del.C. §103(d))

11.1 State Wildlife Area Protection for Intertidal Areas.

Any land located between the high tide line and the low tide line, between the Smyrna River and the St. Jones River and adjoining the Delaware River and Bay is hereby designated a State wildlife area and subject to the rules and regulations pertaining thereto, provided the adjoining landowners to said lands agree to their designation and agree to co-sign complaints concerning violations.

11.2 Exemptions.

Woodland Beach, Pickering Beach, and Kitts Hummock shall be exempt from this regulation. This regulation shall not affect surf fishing vehicles in areas where such vehicles are permitted or other uses of intertidal areas authorized by permit from the Division.

3 DE Reg. 289 (8/1/99)**12.0 Waterfowl Refuge (Formerly WR-12)**(Penalty Section 7 **Del.C.** §103(d))

12.1 It shall be unlawful for any person to hunt waterfowl in that part of Drawer Creek west of U.S. Route 13 to where the tributaries of the creek meet routes 428 and 429.

3 DE Reg. 289 (8/1/99)**13.0 Wildlife Rehabilitation Permits (Formerly WR-13)**(Penalty Section 7 **Del.C.** §103(d))

13.1 Permit from Division; Exemption.

13.1.1 It shall be unlawful for any person to hold native wildlife in captivity for the purpose of rehabilitation without a permit from the Division and any other permits required by the U.S. Fish and Wildlife Service.

13.1.2 Licensed veterinarians are exempt from the permitting requirements of this regulation when rendering ~~temporary~~ treatment to injured wildlife and provisions are made to return any ~~injured~~ recovered animals to the wild or transfer them to a permitted rehabilitator for further care.

13.2 Training, Housing and Veterinary Care; Inspections.

13.2.1 Permit holders must conform to the training, housing, release and veterinary care standards as written in the document "Minimum Standards for Wildlife Rehabilitation" published by the of the National Wildlife Rehabilitators Association and the International Wildlife Rehabilitation Council. Permit holders must also abide by the rules and policies set forth in the "State of Delaware Wildlife Rehabilitation Rules and Policies" document. Failure to abide by both of these documents may result in revocation of the rehabilitation permit. Animals held under rehabilitation permits must be released to the wild within 180 days or euthanized, if release is not feasible, unless the Division under § 555 of Title 7 authorizes possession for scientific ~~or propagating~~ propagation or educational purposes or unless an extension is granted by the migratory bird permit office of the United State Fish and Wildlife Service, and the Division for each individual case. Rehabilitators must not release sick animals into the wild.

13.2.2 Rehabilitation facilities must be available for inspection by Division employees during normal business hours. Normal business hours shall mean Monday through Friday, except those days designated as holidays, during the hours in which the staff of the Division is scheduled to work. Violations of compliance with the Minimum Standards or the Rules and Policies noted in 13. 2.1 will result in a written warning or immediate revocation of the rehabilitation permit depending on the violation. Persons receiving a warning will have their facility re-inspected. Failure to address the problem(s) in a timely manner will result in permit revocation. Upon permit revocation, all animals will be removed from the facility and either placed with another rehabilitator, released into the wild, placed with an educational facility, or humanly euthanized.

13.3 Rabies Vector Species

13.3.1 It shall be unlawful for any person to attempt rehabilitation of a rabies vector species without having proof of current pre-exposure immunization against the rabies virus. No permitted rehabilitator shall knowingly expose other non-immunized persons to a rabies vector species. For the purpose of the Delaware Wildlife Rehabilitator Permit, rabies vector species are defined as bats, raccoons, skunks, foxes, coyotes and woodchucks.

13.3.2 All rehabilitated rabies vector species must be released in the county of origin and the Division must be notified and approve of the release location prior to release. It shall be unlawful for rehabilitated rabies vector species to be released on State Wildlife Management Areas without the consent of the Division Director.

3 DE Reg. 289 (8/1/99)**14.0 Falconry (Formerly WR-14)**(Penalty Section 7 **Del.C.** §103(d))

14.1 Federal Regulations Adopted.

It shall be unlawful for any person to practice the sport of falconry, except in such a manner as prescribed by regulations promulgated under provisions of 50 CFR (Code of Federal Regulations) §§ 21.28, 21.29

and 21.30. Such regulations are hereby made part of the regulations of the Department as prescribed in § 725 of Title 7. Notwithstanding the foregoing, the federal regulations governing falconry shall be superseded by more stringent restrictions prescribed by law or regulation of the Department.

14.2 Permits.

14.2.1 Residents wishing to practice falconry shall apply to the Division for a falconry permit. To be issued a falconry permit, the person shall successfully pass a written test and have their facilities and equipment inspected as prescribed by the federal regulations.

14.2.2 Nonresidents must purchase a nonresident hunting license and be properly permitted to practice falconry in the state in which he or she resides.

14.2.3 Falconry permits shall be effective, unless revoked, for a period of up to three years and coincide with the license period for the hunting license. The Division shall participate in any joint state/federal permit system available.

14.2.4 The issuance of Apprentice Class permits shall be limited to persons 15 years of age or older.

14.3 Taking of Raptors.

14.3.1 It shall be unlawful for any person to take any birds of prey from the wild without a permit from the Division. The Director shall establish a limit on the number of raptors which may be taken each year and appear before the Council on Game and Fish to receive input on such limit before its adoption.

14.3.2 In 2000, and each year thereafter until changed, the Division may issue up to twelve (12) permits for the taking of twelve (12) birds of prey from the wild in Delaware, except that no more than three (3) permits shall be issued for the taking of three (3) nestling red-tailed hawks or three (3) nestling great horned owls, or any combination thereof. Nonresident falconers may apply for available permits to take nestling raptors, provided the state in which the nonresident resides allows Delaware residents the reciprocal opportunity to remove nestling raptors.

14.3.3 The taking of nestling (eyas) birds shall be limited to red-tailed hawks and great horned owls on Thursdays, Fridays and Saturdays from March 18 through June 30.

14.3.4 The season for the taking of passage birds shall be from September 1 through January 12. Nonresident falconers may apply to obtain any available permits to take passage raptors in Delaware, provided the state in which the nonresident resides has a reciprocal arrangement that permits Delaware residents to take passage raptors.

14.3.5 It shall be unlawful to remove raptors from private property without the express consent of the landowner. It shall also be unlawful for any person to remove raptors from State parks, State forests, State wildlife areas, State owned wetland mitigation sites, national wildlife refuges, nature preserves, natural areas, and county or local parks without the advance approval of the agency administering the property. The permit to remove a raptor from the wild must be in possession of the falconer when attempting to capture a raptor. Apprentice falconers must be under the direct supervision of their sponsor or a Master or General class falconer when removing raptors from the wild.

14.3.6 Raptors taken from the wild in Delaware may not be sold or bartered.

14.4 Hunting. Falconry shall be a legal method of take for all game birds and game animals in Delaware. The hunting season for resident game shall be from September 1 through February 28. A permit holder whose raptor accidentally kills wildlife during a closed season for such wildlife shall leave the dead wildlife where it lies, except the raptor may feed upon the wildlife before leaving the site of the kill, provided that the wildlife shall not be reduced to possession by the falconer and the falconer shall cease hunting with the raptor that makes the accidental kill for the remainder of the day.

14.5 Marking. Any raptor possessed under a Delaware falconry permit must be banded with a permanent, non-reusable numbered band issued by the U.S. Fish and Wildlife Service or the Division. Captive reared raptors may be marked with either a permanent, non-reusable numbered band or, if sold, a numbered seamless band. Markers shall be removed from birds that die or are intentionally released into the wild and must be forwarded to the Division within ten days along with a report that documents the fate of the bird.

14.6 Release. Raptors, including hybrid raptors, which are not indigenous to Delaware shall not be permanently released into the wild. Raptors released in Delaware must be released within the appropriate season in which that species naturally occurs within the State.

3 DE Reg. 289 (8/1/99)

3 DE Reg. 1738 (6/1/00)

6 DE Reg. 536 (10/1/02)**15.0 Collection or Sale of Native Wildlife (Formerly WR-15)**

(Penalty Section 7 Del.C. §103(d))

15.1 Commercial Collection.

15.1.1 Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to collect, possess, import, cause to be imported, export, cause to be exported, buy, sell or offer for sale any native wildlife species or any part thereof for commercial purposes without a permit from the Director. The permit shall limit the terms and conditions for collecting or possessing said wildlife within the State.

15.1.2 Notwithstanding subsection 15.1.1 of this section, native wildlife species may be possessed, imported, sold or offered for sale for commercial purposes without a permit from the Director if there is written documentation to confirm that said wildlife was legally taken in and transported from another state.

15.2 Collection and Possession of Reptiles and Amphibians.

15.2.1 Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to remove from the wild or possess any native reptile or amphibian species, their eggs or parts without a permit from the Director.

15.2.2 Notwithstanding subsection 15.1.1 of this section, one individual of each of the following species or subspecies of reptiles and amphibians, may be collected and possessed without a permit.

Reptiles

- Lizard, Northern Fence (*Sceloporus undulatus hyacinthinus*)
- Racer, Northern Black (*Coluber constrictor constrictor*)
- Skink, Five-lined (*Eumeces fasciatus*)
- Snake, Black Rat (*Elaphe obsoleta obsoleta*)
- Snake, Eastern Garter (*Thamnophis sirtalis sirtalis*)
- Snake, Eastern Hognose (*Heterodon platirhinos*)
- Snake, Eastern Worm (*Carphophis amoenus amoenus*)
- Snake, Northern Water (*Nerodia sipedon sipedon*)
- Snake, Ringneck (*Diadophis punctatus*)
- Terrapin, Diamondback (*Malaclemys terrapin*)
- Turtle, Common Musk (*Sternotherus odoratus*)
- Turtle, Eastern Box (*Terrapene carolina carolina*)
- Turtle, Eastern Mud (*Kinosternon subrubrum subrubrum*)
- Turtle, Painted (*Chrysemys picta*)
- Turtle, Redbelly (*Pseudemys rubriventris*)
- Turtle, Snapping (*Chelydra serpentina*)

Amphibians

- Bullfrog (*Rana catesbeiana*)
- Frog, Green (*Rana clamitans melanota*)
- Frog, New Jersey Chorus (*Pseudacris triseriata kalmi*)
- Frog, Northern Cricket (*Acris crepitans crepitans*)
- Frog, Pickerel (*Rana palustris*)
- Frog, Southern Leopard (*Rana utricularia*)

Frog, Wood (*Rana sylvatica*)
 Newt, Red-spotted (*Notophthalmus viridescens viridescens*)
 Peeper, Northern Spring (*Pseudacris crucifer crucifer*)
 Salamander, Northern Dusky (*Desmognathus fuscus fuscus*)
 Salamander, Northern Two-lined (*Eurycea bislineata*)
 Salamander, Redback (*Plethodon cinereus*)
 Spadefoot, Eastern (*Scaphiopus holbrookii holbrookii*)
 Toad, American (*Bufo americanus*)
 Treefrog, Gray (*Hyla versicolor* and *Hyla chrysoscelis*)

15.2.3 It shall be unlawful to remove any reptile or amphibian from the wild and later release said reptile or amphibian back to the wild if it has been held in captivity for more than thirty (30) days.

15.2.4 Notwithstanding subsection 15.1.1 of this section, native reptiles and amphibians taken from the wild and lawfully possessed prior to August 15, 1999, may continue to be held in captivity, provided that written notification of the numbers and species being held is given to the Division prior to December 15, 1999.

15.3 Captive Breeding.

15.3.1 It shall be unlawful for any person to breed in captivity any native wildlife species without a permit from the Director. Said permit shall limit the terms and conditions for captive breeding of said wildlife.

15.3.2 It shall be unlawful for any person to release captive-bred species into the wild. A signed bill of sale shall accompany any captive-bred species that are sold.

15.3.3 This section shall not apply to accredited zoos or to raptors regulated by federal and State falconry or raptor propagation regulations.

15.4 Sale or Possession of CITES Listed Species.

It shall be unlawful for any person to sell or possess bear gall bladder, or other viscera from any species of bear, or any part of other species listed as prohibited by the Convention on International Trade in Endangered Species (CITES). The possession of any part of a bear must be in conformance with CITES.

15.5 Take of Turtles

15.5.1 Turtles can only be taken by hand, turtle trap or dowel-and-line. Turtle traps can have only one throat or funneling device. Turtle traps must have an escape hole provided below the water surface and the hole must measure a minimum of seven and one-half inches in all directions. Hoop-type turtle traps must have the area from the last hoop to the tail-line covered by nylon web having a mesh size of three and one half inches square measure or greater. All turtle traps must be lifted and emptied of catch at least once every 48 hours.

3 DE Reg. 289 (8/1/99)

3 DE Reg. 1738 (6/1/00)

6 DE Reg. 536 (10/1/02)

16.0 Endangered Species. (Formerly WR-16)

(Penalty Section 7 Del.C. §103(d))

16.1 Importation, Transportation and Possession.

16.1.1 Pursuant to § 601 of Title 7, the importation, transportation, possession or sale of any endangered species of fish or wildlife, or hides or other parts thereof, or the sale or possession with intent to sell any article made in whole or in part from the skin, hide or other parts of endangered species of fish or wildlife is prohibited, except under license or permit from the Division.

16.2 Designation of Species by Division.

16.2.1 Pursuant to §601 of Title 7, the Division may designate species of fish and wildlife that are seriously threatened with extinction as endangered species. The Division will review the state list of endangered species and add species suggested by the public that have sufficient documentation for listing.

16.2.2 For the purposes of this section, the phrase "seriously threatened with extinction" shall mean that the species satisfies one or more of the following criteria:

16.2.2.1 Appears on the federal list of endangered species;
 16.2.2.2 Ranked as "globally rare" (G1, G2, or G3), which means 100 or fewer populations worldwide; or

16.2.2.3 Is rare within the mid-Atlantic coastal plain.

16.2.3 Based upon the criteria prescribed by subsection 16.2.2 of this section, the following species are declared endangered in this State and are afforded the protection provided by §601 of Title 7:

Amphibians

- Salamander, Eastern Tiger (*Ambystoma tigrinumtigrinum*)
- Treefrog, Barking (*Hyla gratiosa*)

Birds

- Creeper, Brown^{BR} (*Certhia americana*)
- Eagle, Bald (*Haliaeetus leucocephalus*)
- Grebe, Pied-billed^{BR} (*Podilymbus podiceps*)
- Harrier, Northern^{BR} (*Circus cyaneus*)
- Hawk, Cooper's^{BR} (*Accipiter cooperii*)
- Heron, Black-Crowned Night- (*Nycticorax nycticorax*)
- Heron, Yellow-Crowned Night- (*Nyctanassa violacea*)
- Parula, Northern^{BR} (*Parula americana*)
- Plover, Piping (*Charadrius melodus*)
- Owl, Short-eared^{BR} (*Asio flammeus*)
- Oystercatcher, American (*Haematopus palliatus*)
- Rail, Black (*Laterallus jamaicensis*)
- Sandpiper, Upland (*Bartramia longicauda*)
- Shrike, Loggerhead (*Lanius ludovicianus*)
- Skimmer, Black (*Rynchops niger*)
- Sparrow, Henslow's (*Ammodramus henslowii*)
- Tern, Common^{BR} (*Sterna hirundo*)
- Tern, Forster's^{BR} (*Sterna forsteri*)
- Tern, Least (*Sterna antillarum*)
- Warbler, Cerulean (*Dendroica cerulea*)
- Warbler, Hooded^{BR} (*Wilsonia citrina*)
- Warbler, Swainson's (*Limnothlypis swainsonii*)
- Woodpecker, Red-headed (*Melanerpes erythrocephalus*)
- Wren, Sedge (*Cistothorus platensis*)

^{BR} Breeding population only

Fish

- Sturgeon, Atlantic (*Acipenser oxyrhynchus*)

Insects

- Beetle, Little White Tiger (*Cicindela lepida*)
- Beetle, White Tiger (*Cicindela dorsalis*)
- Beetle, Seth Forest Scavenger (*Hydrochus sp.*)
- Elfin, Frosted (*Incisalia irus*)
- Firefly, Bethany (*Photuris bethaniensis*)
- Hairstreak, Hessel's (*Mitoura hesseli*)
- Hairstreak, King's (*Satyrium kingi*)
- Skipper, Rare (*Problema bulenta*)
- Wing, Mulberry (*Poanes massasoit chermocki*)

Mammals

- Squirrel, Delmarva Fox (*Sciurus niger cinereus*)

Mollusks

- Lampmussel, Yellow (*Lampsilis cariosa*)

Lampmussel, Eastern (*Lampsilis radiata*)
 Wedgemussel, Dwarf (*Alasmidonta heterodon*)
 Pondmussel, Eastern (*Ligumia nasuta*)
 Floater, Brook (*Alasmidonta varicosa*)
 Mucket, Tidewater (*Leptodea ochracea*)

Reptiles

Sea Turtle, Leatherback (*Dermochelys coriacea*)
 Sea Turtle, Atlantic Ridley (*Lepidochelys kempii*)
 Sea Turtle, Green (*Chelonia mydas*)
 Sea Turtle, Loggerhead (*Caretta caretta*)
 Turtle, Bog (*Clemmys muhlenbergii*)
 Snake, Corn (*Elaphe guttata guttata*)

16.3 Federally Listed Species.

16.3.1 Pursuant to the Endangered Species Act of 1973 (16 USC §§ 1531-1543), as amended, the Secretary of the Interior must publish in the Federal Register a list of all fish and wildlife species determined by him or her or the Secretary of Commerce to be endangered species. The federal list of endangered species is hereby adopted and all species listed thereon are hereby declared to be endangered species in the State as prescribed in § 601 of Title 7.

16.3.2 It shall be unlawful for any person to collect, possess or sell any species of fish or wildlife listed as endangered or threatened pursuant to the Endangered Species Act of 1973, as amended, without the appropriate federal permits.

3 DE Reg. 1738 (6/1/00)

6 DE Reg. 536 (10/01/02)

17.0 Species Of Special Concern (Formerly WR-17)

(Penalty Section 7 Del.C. §103(d))

17.1 List of Species

The following species or groups of species shall be considered Species of Special Concern for the purpose of qualifying for federal funds for wildlife restoration: Endangered species as designated by state or federal regulations; species designated by WR-16, Section 2, colonial nesting birds; shorebirds; wading birds; neotropical migrant birds; beach nesting birds; bald and golden eagles; peregrine falcons; other raptors, grassland nesting birds; birds of early successional habitat; bobwhite quail; wild turkey; freshwater mussels; bats; nutria; and overly abundant species such as deer, beavers, southern nesting Canada geese, and red fox.

6 DE Reg. 536 (10/1/02)

18.0 Wanton Waste

Penalty Section 7 Del.C. §103(d)

18.1 Retrieval and Possession of Game Animals. A person wounding or killing a game animal shall make a reasonable effort to retrieve the wounded or dead game animal. The retrieved game animal shall be retained in the individual's possession until any of the following occurs:

18.1.1 The game animal is processed for consumption, consumed or utilized for its fur value.

18.1.2 The game animal is transported to the individual's residence, to a taxidermist, or to a place of commercial processing.

18.1.3 The game animal is utilized for scientific, educational or research purposes.

18.2 Any use of a game animal as not described in items 18.1.1- 18.1.3 above will be deemed wanton waste.

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

3600 Board of Registration of Geologists

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

PUBLIC NOTICE

The Delaware Board of Geologists in accordance with 24 Del.C. §3606 has proposed a number of amendments its rules and regulations. The proposed amendments move current Rule 2.0 Code of Ethics and renumber it as new Rule 10.0. A new Rule 2.0 Procedures for Licensure clarifies the application process and requirements for initial licensure and licensure by reciprocity. Rule 6.0 Continuing Education has been amended to further delineate the maximum allowable continuing education credit that may be claimed in the specific categories set forth in Rule 6.8. The amendments also specify the documentation required in order to receive continuing education credit. Existing Rule 8.0 Reciprocity has been deleted and incorporated into the new Rule 2.0 Procedures for Licensure. A new Rule 8.0 Voluntary Treatment Option for Chemically Dependent of Impaired Professionals has been added.

A public hearing will be held on August 3, 2007 at 10:15 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Geologists, 861 Silver Lake Blvd., Cannon Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

3600 Board of Registration of Geologists

1.0 Definitions

Board shall mean the State Board of Geologists established in 24 Del.C., Ch. 36, §3603.

Continuing Education Unit shall mean one contact hour (60 minutes), subject to the Board's review.

Five Years of Experience shall mean:

Experience acquired in geological work as described in the 24 Del.C., Ch. 36, §3602 (5) and (6) and after completion of academic requirements as stated in §3608(a)(1). The Board may discount experience obtained more than ten (10) years prior to the submission of an application. Part-time experience will be granted proportional to full-time credit. Three of the five years of experience must be in a position of responsible charge as defined below.

Experience references must be provided by a person knowledgeable and having a background of geological work.

The Board will only consider years of experience documented by references.

Geologist shall mean a person who is qualified to practice professional geology including specialists in its various subdisciplines.

Practice of Geology shall mean any service or creative work, the adequate performance of which requires geologic education, training and experience in the application of the principles, theories, laws and body of knowledge encompassed in the science of geology. This may take the form of, but is not limited to, consultation, research, investigation, evaluation, mapping, sampling, planning of geologic projects and embracing such geological services or work in connection with any public or private utilities, structures, roads, buildings, processes, works or projects. A person shall be construed to practice geology, who by verbal claim, sign, advertisement or in any other way represents himself or herself to be a geologist, or who holds himself or herself out able to perform or who does perform geologic services or work.

Responsible Charge shall mean the individual control and direction, by the use of initiative, skill and individual judgment, of the practice of geology.

PROPOSED REGULATIONS

2.0 Code of Ethics

2.1 General Provisions:

2.1.1 A geologist shall be guided by the highest standards of ethics, honesty, integrity, fairness, personal honor, and professional conduct.

2.1.2 A geologist shall not knowingly permit the publication or use of his/her work or name in association with any unsound or illegitimate venture.

2.1.3 A geologist shall not give a professional opinion or make a report without being as completely informed as might be reasonably expected considering the purpose for which the opinion or report is desired. All assumptions on which the results of the report or opinion are based shall be set forth in the report or opinion.

2.1.4 A geologist shall be as objective as possible in any opinion, report or other communication he/ she makes which will be used to induce participation in a venture. He/she shall not make sensational, exaggerated, or unwarranted statements. He/she shall not misrepresent data, omit relevant data, or fail to mention the lack of data that might affect the results or conclusions of such opinion, report or communication.

2.1.5 A geologist shall not falsely or maliciously attempt to injure the reputation or business of another geologist.

2.1.6 A geologist shall freely give credit for work done by others. A geologist shall not knowingly accept credit rightfully due to others or otherwise indulge in plagiarism in oral and written communications.

2.1.7 A geologist, having knowledge of the unethical or incompetent practice of another geologist, shall avoid association with that geologist in professional work. If a geologist acquires tangible evidence of the unethical or incompetent practice of another geologist, he/she shall submit the evidence to the Board.

2.1.8 A geologist shall not use the provisions of 24 ~~Del.C.~~, Ch. 36 or the Board's regulations to maliciously prosecute, harass or otherwise burden another geologist with unfounded or false charges.

2.1.9 A geologist shall endeavor to cooperate with others in the profession in encouraging the ethical dissemination of geological knowledge especially when it is in the public interest.

2.1.10 A geologist shall not engage in conduct that involves fraud, dishonesty, deceit or misrepresentation either directly or through the action of others.

2.1.11 A geologist shall not discriminate against any person on the basis of race, creed, sex or national origin.

2.1.12 A geologist shall not aid any person in the unauthorized practice of geology.

2.1.13 A geologist shall not practice geology in a jurisdiction where that practice would violate the standards applicable to geologists in the jurisdiction.

2.2 Provisions Concerning Monetary Matters

2.2.1 A geologist having, or expecting to have, any interest in a project or property on which he/ she performs work, must make full disclosure of the interest to all parties concerned with the project or property.

2.2.2 A geologist's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

2.2.2.1 the time and labor required, the novelty and difficulty of the work involved, and the skill requisite to perform the service properly;

2.2.2.2 the likelihood, if apparent to the client or employer, that the acceptance of the particular employment will preclude other employment of the geologist;

2.2.2.3 the fee customarily charged in the area for similar geological services;

2.2.2.4 the total value of the project and the results obtained;

2.2.2.5 the time limitations imposed by the client or by the circumstances;

2.2.2.6 the nature and length of the professional relationship with the client;

2.2.2.7 the experience, reputation, and ability of the geologist or geologists performing the service; and

2.2.2.8 whether the fee is fixed or contingent.

2.2.3 When the geologist has not regularly performed services for the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing services.

2.2.4 A fee may be contingent on the outcome of a project for which geological services are rendered, except for a project where a contingent fee is prohibited by law or professional ethics. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined.

~~2.2.5 A division of fee between geologist and other professionals who are not associated may be made only if:~~

~~2.2.5.1 the division is in proportion to the services performed by each geologist or professional or, by written agreement with the client. Each geologist or professional assumes joint responsibility for the services performed;~~

~~2.2.5.2 the client is advised of and does not object to the participation of the geologist and/or other professionals involved; and~~

~~2.2.5.3 the total fee is reasonable.~~

~~2.2.6 A geologist shall not accept a concealed fee for referring an employer or client to a specialist or for recommending geological services other than his/her own. A geologist who engages or advises a client or employer to engage collateral services shall use his/her best judgement to ensure the collateral services are used prudently and economically.~~

~~2.3 Provisions Concerning The Relationship With The Client~~

~~2.3.1 A geologist shall not undertake, or offer to undertake, any type of work with which he/she is not familiar or competent by reason of lack of training or experience unless he/she makes full disclosure of his/her lack of training or experience to the appropriate parties prior to undertaking the work.~~

~~2.3.2 A geologist shall protect to the fullest extent the employer or client's interest, so far, as is consistent with the public welfare and professional obligations and ethics.~~

~~2.3.3 A geologist who finds that an obligation to an employer or client conflicts with professional obligations or ethics should have the objectionable conditions changed or terminate the services.~~

~~2.3.4 A geologist shall not use either directly or indirectly any proprietary information which is developed or acquired as a result of working for an employer or client in any way that conflicts with the employer's or client's interest and without the consent of the employer or client.~~

~~2.3.5 A geologist who has worked or performed a service for any employer or client shall not use the information peculiar to that employment and which is gained in such employment for his/her own personal profit unless he/she is given written permission to do so or until the employer, client, or their successor's interest in such information has changed in such a way that the information is valueless to him/her or of no further interest to him/her.~~

~~2.3.6 A geologist shall not divulge confidential information. This does not relieve a licensed geologist from the duty to report conditions required by law or regulation.~~

~~2.3.7 A geologist retained by a client shall not accept, without the client's consent, an engagement by another if there is a possibility of a conflict between the interest of the two clients.~~

~~2.3.8 A geologist shall advise an employer or client to retain, and cooperate with, other experts and specialists whenever the employer's or client's interests are best served by such services.~~

~~2.3.9 A geologist shall not terminate services to an employer or client when it will cause immediate jeopardy to the employer's or client's interests. The geologist shall attempt to give due notice of termination; however, the geologist may terminate services under any of the following circumstances:~~

~~2.3.9.1 failure to receive compensation or good evidence indicating compensation will not be received for services performed;~~

~~2.3.9.2 when continued employment will result in a violation of 24 Del.C., Ch. 36 or other illegality;~~

~~2.3.9.3 when continued employment will result in sickness or injury to the geologist or his/her dependents.~~

~~2.3.10 A geologist shall not use or abuse drugs, narcotics, controlled substances, or illegal drugs without a prescription from a licensed physician. A geologist shall also not abuse alcoholic beverages such that it impairs his/her ability to perform his/her work~~

2.0 Procedures for Licensure

2.1 Application - Initial Licensure

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

2.1.1 An application for licensure, which shall include:

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

PROPOSED REGULATIONS

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

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

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

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

2.2 Application - By Reciprocity

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

2.2.1 An application for licensure, which shall include:

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

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

2.2.1.3 Evidence that the applicant is licensed or certified in the jurisdiction from which he/she is applying and the applicant has practiced for a minimum of two (2) years after licensure in the jurisdiction from which he/she is applying including two (2) professional references on forms provided by the Board. The references must attest that the Applicant has completed at least two (2) years of work experience in Geologic work satisfactory to the Board.

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

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

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

3.0 Stamp/Seal Requirements

3.1 The stamp or seal authorized by the Delaware State Board of Geologists shall be of the design shown here and shall not be less than one and one-half (1 ½) inches in diameter. It may be purchased by the licensee from any convenient source.

3.2 All reports, drawings, maps, or similar technical submissions involving the practice of geology that have been prepared, or reviewed and approved, by a licensed geologist and that will become a matter of public record, or relied upon by any person, within this state for geological purposes, shall be impressed with the stamp or seal. The stamp or seal will indicate that the licensee has accepted responsibility for the work.

3.3 Any licensee who affixes, or allows to be affixed, his/her seal or name to a document or report is responsible for all work contained therein regardless of whether such work has been performed by the geologist or a subordinate.

3.4 No person shall stamp or seal any plans, reports, specifications, plats or similar technical submissions with the stamp or seal of a geologist or in any manner use the title "geologist," unless such person is duly licensed in compliance with 24 Del.C. Ch. 36.

3.5 No person shall stamp or seal any plans, specifications, plats, reports, or a similar document with the stamp or seal of a licensed geologist if his/her license has been suspended, revoked or has expired.

3.6 Computer files of reports, drawings or similar technical work involving the practice of geology and that will become a matter of public record or relied upon by any person shall include the following statement:

This submission is made in compliance with 24 **Del.C.**, Ch. 36 by (name) _____, P.G., DE license number ____ on this date _____.

4.0 Licensing Exemption

4.1 Any person who claims exemption from the provisions of 24 **Del.C.** Ch. 36 under §3617(a), shall be entitled to such exemption so long as his/her remuneration from the practice of geology is solely related to a teaching function. If such remuneration is processed through his/her academic unit, it shall be considered prima facie evidence of the fact that such work is related to his/her teaching. Any person claiming such exemption shall, in a conspicuous manner at the conclusion of any report or study bearing his/ her name, include the statement:

"I hereby claim exemption from the requirements of 24 **Del.C.** Ch. 36 (Delaware Professional Geologist Act) and am not subject to the provisions of that Act and the standards and regulations adopted pursuant thereto."

Such a disclaimer shall not be required on reports or studies submitted solely to refereed professional journals for publications.

Any other geologic work, including consulting, not directly related to educational activities, shall not be considered exempt.

5.0 Issuance and Renewal of License

5.1 Each license shall be renewed biennially. The failure of the Board to notify a licensee of his/her expiration date and subsequent renewals does not, in any way, relieve the licensee of the requirement to renew his/her certificate pursuant to the Board's regulations and 24 **Del.C.** Ch. 36.

5.2 Renewal may be effected by:

5.2.1 filing a renewal application prescribed by the Board and provided by the Division of Professional Regulation. Beginning in 2006, license renewal may be accomplished online at www.dpr.delaware.gov;

5.2.2 providing other information as may be required by the Board to ascertain the licensee's good standing;

5.2.3 attesting on the renewal application to the completing of continuing education as required by Rule 6.0;

5.2.4 payment of fees as determined by the Division of Professional Regulation.

5.3 Failure of a licensee to renew his/her license shall cause his/her license to expire. A geologist whose license has expired may renew his/her license within one year after the expiration date upon fulfilling items 5.2.1 - 5.2.4 above, certifying that he/she has not practiced geology in Delaware while his/her license has expired, and paying the renewal fee and a late fee which shall be 50% of the renewal fee.

5.4 No geologist will be permitted to renew his/her license once the one-year period has expired.

5.5 The former licensee may re-apply under the same conditions that govern applicants for licensure under 24 **Del.C.** Ch. 36.

5.6 No geologist shall practice geology in the State of Delaware during the period of time that his/her Delaware license has expired.

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

6.0 Continuing Education

6.1 The Board will require continuing education as a condition of license renewal. Continuing education shall be waived for the first licensure renewal following the effective date of the Board's Rules and Regulations.

6.1.1 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the Requirement of Rule 6.0.

6.1.2 Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion may be submitted.

6.1.3 Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 6.3.

PROPOSED REGULATIONS

6.2 Licenses are renewed biennially (every two years on the even year) on September 30 (e.g. September 30, 2006, 2008). Continuing education (CE) reporting periods run concurrently with the biennial licensing period.

6.3 Each licensed geologist shall complete, biennially, 24 units of continuing education as a condition of license renewal. The licensee is responsible for retaining all certificates and documentation of participation in approved continuing education programs. Upon request, such documentation shall be made available to the Board for random post renewal audit and verification purposes. A continuing education unit is equivalent to one contact hour (60 minutes), subject to the Board's review. The preparing of original lectures, seminars, or workshops in geology or related subjects shall be granted one (1) contact hour for preparation for each contact hour of presentation. Credit for preparation shall be given for the first presentation only.

6.4 A candidate for renewal may be granted an extension of time in which to complete continuing education hours upon a showing of hardship. "Hardship" may include, but is not limited to, disability; illness; extended absence from the jurisdiction; or exceptional family responsibilities. Requests for hardship consideration must be submitted to the Board in writing prior to the end of the licensing period for which it is made.

6.5 Continuing education shall be prorated for new licensees in the following manner:

6.5.1 If at the time of renewal, a licensee has been licensed for less than one year, no continuing education is required; if he/she has been licensed for more than one year, but less than two years, twelve of the twenty-four hours will be required; if he/she has been licensed for two years or more the full twenty-four hours is required.

6.6 In his/her personal records, each licensee must keep proof of attendance for each activity for which the licensee is requesting credit. If the Board conducts an audit of a licensee's CE records, the Board will require the licensee to complete a CE log provided by the Board and submit the licensee's documentation of attendance to the CE event listed on the CE log. Failure to submit proof of attendance during an audit will result in loss of CE credit for that event.

6.7 Continuing education must be in a field related to Geology. Approval will be at the discretion of the Board. CEUs earned in excess of the required credits for the two- (2) year period may not be carried over to the next biennial period.

6.8 Categories of Continuing Education & Maximum Credit Allowed:

6.8.1 Courses/Workshops – 24 CEUs Total

Academic – 24 CEUs

Professional Development – 24 CEUs

Documentation – Proof of Completion

6.8.2 Professional Meetings & Activities/Field Trips – 12 CEUs Total

Meetings – 12 CEUs

Field Trips – 12 CEUs

Documentation – Proof of Attendance and Duration

6.8.3 Peer Reviewed of (12 CEUs) or Peer Reviewed Geologic Publications– 12 CEUs Total

Composition – 12 CEUs

Review – 12 CEUs

Documentation – Proof of Participation

6.8.4 Presentations/Seminars – 12 CEUs Total

Presentation – 12 CEUs (1 hour prep time per hour presented)

Attendance – 12 CEUs

Documentation – Proof of Attendance and Duration

6.8.5 Research/Grants – 12 CEUs Total

Documentation – Proof of Submission

6.8.6 Specialty Certifications – 12 CEUs Total

Documentation – Proof of Completion

6.8.7 Home Study Courses – 12 CEUs Total

Documentation – Proof of Completion

6.8.8 Teaching – 12 CEUs Total

Documentation – Verification from Sponsoring Institution

6.8.9 Service on a Geological Professional Society, Geological Institution Board/Committee or Geological State Board – 6 CEUs Total

Documentation – Proof of Appointment

6.8.10 Regulatory Based Activities – 12 CEUs Total

Certifications/Training – 12 CEUs Total

Documentation – Proof of Completion

6.8.4011 For any of the above activities, when it is possible to claim credit in more than one category, the licensee may claim credit for the same time period in only one category.

6.9 Automatic Approval for course work sponsored by the following Professional Societies:

- 6.9.1 American Association of Petroleum Geologists (AAPG)
- 6.9.2 American Association of Stratigraphic Palynologists (AASP)
- 6.9.3 American Geological Institute (AGI)
- 6.9.4 American Geophysical Union (AGU)
- 6.9.5 American Institute of Hydrology (AIH)
- 6.9.6 American Institute of Professional Geologists (AIPG)
- 6.9.7 Association of American State Geologists (AASG)
- 6.9.8 Association of Earth Science Editors (AESE)
- 6.9.9 Association of Engineering Geologists (AEG)
- 6.9.10 Association of Ground Water Scientists & Engineers (AGWSE)
- 6.9.11 Association of Women Geoscientists (AWG)
- 6.9.12 Clay Mineral Society (CMS)
- 6.9.13 Council for Undergraduate Research-Geology Div. (CUR)
- 6.9.14 Geologic Society of America (GSA)
- 6.9.15 Geoscience Information Society (GIS)
- 6.9.16 International Association of Hydrogeologists/US National Committee (IAH)
- 6.9.17 Mineralogical Society of America (MSA)
- 6.9.18 National Association of Black Geologists and Geophysicists (NABGG)
- 6.9.19 National Association of Geoscience Teachers (NAGT)
- 6.9.20 National Association of State Boards of Geology (ASBOG)
- 6.9.21 National Earth Science Teachers Association (NESTA)
- 6.9.22 National Speleological Society (NSS)
- 6.9.23 Paleontological Research Institution (PRI)
- 6.9.24 Paleontological Society (PS)
- 6.9.25 Seismological Society of America (SSA)
- 6.9.26 Society of Economic Geologists (SEG)
- 6.9.27 Society of Exploration Geophysicists (SEG)
- 6.9.28 Society of Independent Professional Earth Scientists (SIPES)
- 6.9.29 Society for Mining, Metallurgy, and Exploration, Inc. (SME)
- 6.9.30 Society for Organic Petrology (TSOP)
- 6.9.31 Society for Sedimentary Geology (SEPM)
- 6.9.32 Society of Vertebrate Paleontology (SVP)
- 6.9.33 Soil Science Society of America (SSSA)
- 6.9.34 Other professional or educational organizations as approved periodically by the

Board.

6.10 Courses not pre-approved by the Board may be submitted for review and approval throughout the biennial licensing period.

Note: Since regulation 6.9 provides the list of sponsors that are automatically approved by the Board for any course work used for Continuing Education units (CEU) towards the total of 24 CEUs in the biennial license period, please note that regulation 6.10, allowing for pre-approval of courses for CEUs, only pertains to courses NOT offered by a sponsor listed in the list provided in regulation 6.9. Furthermore, one CEU = one Contact Hour.

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

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

7.0 ASBOG Examination

7.1 An applicant wishing to sit for any portion for the ASBOG examination required for a license as a Geologist shall make application in writing, on forms provided by the Board.

7.1.1 An applicant wishing to sit for the ASBOG Fundamentals of Geology (FG) Exam may do so provided they meet the minimum educational requirements set forth in 24 **Del.C.** §3608(a)(1). To apply, the applicant must fill out the request to sit for the fundamentals application and submit their transcripts [to date] to the Board for approval. Once taken, the applicants score will be held on file indefinitely by ASBOG.

7.1.2 An applicant wishing to sit for the ASBOG Practice of Geology (PG) must have acquired 5 years of professional work experience as defined in Rule 1.0 and must submit a full application for licensure to the Board for review. Approval to sit for the PG will be dependant upon the applicant providing sufficient evidence, satisfactory, to the Board that he/she meets the qualifications for licensure set forth in 24 **Del.C.** §3608.

7.2 An applicant for licensure must have satisfactorily passed each part of the ASBOG examination with a scaled score of not less than 70%.

7.3 An applicant's approval to sit for either part of the ASBOG exam shall be valid for a period not to exceed two years.

9 DE Reg. 456 (9/1/05)

8.0 Reciprocity

~~8.1 Applicants applying for licensure by reciprocity must submit the state law and rules and regulations from at least one state in which they have been licensed. The Board will review these documents for substantial similarity to Delaware's state law and rules and regulations.~~

~~8.2 Applicants, who were originally licensed in another jurisdiction after June 17, 1998, will be required to have a passing score (70%) on each part of the ASBOG examination.~~

8.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

~~8.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.~~

~~8.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.~~

~~8.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).~~

~~8.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.~~

~~8.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection 10.8 of this section.~~

~~8.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:~~

~~8.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and~~

evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

8.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

8.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

8.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

8.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

8.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

8.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

8.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

8.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

8.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

8.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

8.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

9.0 Crimes substantially related to the practice of geology:

9.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of geology in the State of Delaware without regard to the place of conviction:

9.1.1 Abuse of a pregnant female in the first degree. 11 Del.C. §606.

9.1.2 Assault in the first degree. 11 Del.C. §613.

9.1.3 Assault by abuse or neglect. 11 Del.C. §615.

9.1.4 Murder by abuse or neglect in the first degree. 11 Del.C. §634.

9.1.5 Murder in the second degree. 11 Del.C. §635.

- 9.1.6 Murder in the first degree. 11 **Del.C.** §636.
- 9.1.7 Rape in the third degree. 11 **Del.C.** §771.
- 9.1.8 Rape in the second degree. 11 **Del.C.** §772.
- 9.1.9 Rape in the first degree. 11 **Del.C.** §773.
- 9.1.10 Continuous sexual abuse of a child. 11 **Del.C.** §778.
- 9.1.11 Dangerous crime against a child. 11 **Del.C.** §779.
- 9.1.12 Kidnapping in the first degree. 11 **Del.C.** §783A.
- 9.1.13 Burglary in the first degree. 11 **Del.C.** §826.
- 9.1.14 Robbery in the first degree. 11 **Del.C.** §832.
- 9.1.15 Carjacking in the first degree. 11 **Del.C.** §836.
- 9.1.16 Identity theft. 11 **Del.C.** §854.
- 9.1.17 Forgery; felony. 11 **Del.C.** §861.
- 9.1.18 Possession of forgery devices. 11 **Del.C.** §862.
- 9.1.19 Tampering with public records in the first degree. 11 **Del.C.** §876.
- 9.1.20 Offering a false instrument for filing. 11 **Del.C.** §877.
- 9.1.21 Issuing a false certificate. 11 **Del.C.** §878.
- 9.1.22 Unlawful use of credit card; felony. 11 **Del.C.** §903.
- 9.1.23 Reencoder and scanning devices. 11 **Del.C.** §903A.
- 9.1.24 Criminal impersonation. 11 **Del.C.** §907
- 9.1.25 Criminal impersonation, accident related. 11 **Del.C.** §907A.
- 9.1.26 Criminal impersonation of a police officer. 11 **Del.C.** §907B.
- 9.1.27 Sexual exploitation of a child. 11 **Del.C.** §1108.
- 9.1.28 Unlawfully dealing in child pornography. 11 **Del.C.** §1109.
- 9.1.29 Bribery. 11 **Del.C.** §1201.
- 9.1.30 Receiving a bribe. 11 **Del.C.** §1203.
- 9.1.31 Improper influence. 11 **Del.C.** §1207.
- 9.1.32 Official misconduct. 11 **Del.C.** §1211.
- 9.1.33 Profiteering. 11 **Del.C.** §1212.
- 9.1.34 Perjury in the second degree. 11 **Del.C.** §1222.
- 9.1.35 Perjury in the first degree. 11 **Del.C.** §1223.
- 9.1.36 Terroristic threatening of public officials or public servants. 11 **Del.C.** §1240.
- 9.1.37 Bribing a witness. 11 **Del.C.** §1261.
- 9.1.38 Bribe receiving by a witness. 11 **Del.C.** §1262.
- 9.1.39 Tampering with a witness. 11 **Del.C.** §1263.
- 9.1.40 Bribing a juror. 11 **Del.C.** §1264.
- 9.1.41 Bribe receiving by a juror. 11 **Del.C.** §1265.
- 9.1.42 Tampering with physical evidence. 11 **Del.C.** §1269.
- 9.1.43 Escape after conviction; Class B felony. 11 **Del.C.** §1253.
- 9.1.44 Assault in a detention facility; Class B felony. 11 **Del.C.** §1254.
- 9.1.45 Hate Crimes; Class A or B felony. 11 **Del.C.** §1304.
- 9.1.46 Adulteration; Class A felony. 11 **Del.C.** §1339.
- 9.1.47 Possession of a deadly weapon during the commission of a felony. 11 **Del.C.** §1447.
- 9.1.48 Possession of a firearm during the commission of a felony. 11 **Del.C.** §1447A.
- 9.1.49 Wearing body armor during the commission of a felony. 11 **Del.C.** §1449.
- 9.1.50 Organized crime and racketeering. 11 **Del.C.** §1504.
- 9.1.51 Victim or witness intimidation. 11 **Del.C.** §§3532 & 3533.
- 9.1.52 Prohibited acts A [delivery/manufacture/possession with intent to deliver narcotics (death);

Class B. 16 **Del.C.** §4751.

9.1.53 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3,4-methylenedioxymethamphetamine (MDMA). 16 **Del.C.** §47513A.

9.2 Crimes substantially related to the practice of geology shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

8 DE Reg. 1105 (2/1/05)

10.0 Code of Ethics

10.1 General Provisions:

10.1.1 A geologist shall be guided by the highest standards of ethics, honesty, integrity, fairness, personal honor, and professional conduct.

10.1.2 A geologist shall not knowingly permit the publication or use of his/her work or name in association with any unsound or illegitimate venture.

10.1.3 A geologist shall not give a professional opinion or make a report without being as completely informed as might be reasonably expected considering the purpose for which the opinion or report is desired. All assumptions on which the results of the report or opinion are based shall be set forth in the report or opinion.

10.1.4 A geologist shall be as objective as possible in any opinion, report or other communication he/ she makes which will be used to induce participation in a venture. He/she shall not make sensational, exaggerated, or unwarranted statements. He/she shall not misrepresent data, omit relevant data, or fail to mention the lack of data that might affect the results or conclusions of such opinion, report or communication.

10.1.5 A geologist shall not falsely or maliciously attempt to injure the reputation or business of another geologist.

10.1.6 A geologist shall freely give credit for work done by others. A geologist shall not knowingly accept credit rightfully due to others or otherwise indulge in plagiarism in oral and written communications.

10.1.7 A geologist, having knowledge of the unethical or incompetent practice of another geologist, shall avoid association with that geologist in professional work. If a geologist acquires tangible evidence of the unethical or incompetent practice of another geologist, he/she shall submit the evidence to the Board.

10.1.8 A geologist shall not use the provisions of 24 Del.C., Ch. 36 or the Board's regulations to maliciously prosecute, harass or otherwise burden another geologist with unfounded or false charges.

10.1.9 A geologist shall endeavor to cooperate with others in the profession in encouraging the ethical dissemination of geological knowledge especially when it is in the public interest.

10.1.10 A geologist shall not engage in conduct that involves fraud, dishonesty, deceit or misrepresentation either directly or through the action of others.

10.1.11 A geologist shall not discriminate against any person on the basis of race, creed, sex or national origin.

10.1.12 A geologist shall not aid any person in the unauthorized practice of geology.

10.1.13 A geologist shall not practice geology in a jurisdiction where that practice would violate the standards applicable to geologists in the jurisdiction.

10.2 Provisions Concerning Monetary Matters

10.2.1 A geologist having, or expecting to have, any interest in a project or property on which he/ she performs work, must make full disclosure of the interest to all parties concerned with the project or property.

10.2.2 A geologist's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

10.2.2.1 the time and labor required, the novelty and difficulty of the work involved, and the skill requisite to perform the service properly;

10.2.2.2 the likelihood, if apparent to the client or employer, that the acceptance of the particular employment will preclude other employment of the geologist;

10.2.2.3 the fee customarily charged in the area for similar geological services;

10.2.2.4 the total value of the project and the results obtained;

10.2.2.5 the time limitations imposed by the client or by the circumstances;

10.2.2.6 the nature and length of the professional relationship with the client;

10.2.2.7 the experience, reputation, and ability of the geologist or geologists performing the service; and

10.2.2.8 whether the fee is fixed or contingent.

10.2.3 When the geologist has not regularly performed services for the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing services.

10.2.4 A fee may be contingent on the outcome of a project for which geological services are rendered, except for a project where a contingent fee is prohibited by law or professional ethics. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined.

PROPOSED REGULATIONS

10.2.5 A division of fee between geologist and other professionals who are not associated may be made only if:

10.2.5.1 the division is in proportion to the services performed by each geologist or professional or, by written agreement with the client. Each geologist or professional assumes joint responsibility for the services performed:

10.2.5.2 the client is advised of and does not object to the participation of the geologist and/or other professionals involved; and

10.2.5.3 the total fee is reasonable.

10.2.6 A geologist shall not accept a concealed fee for referring an employer or client to a specialist or for recommending geological services other than his/her own. A geologist who engages or advises a client or employer to engage collateral services shall use his/her best judgement to ensure the collateral services are used prudently and economically.

10.3 Provisions Concerning The Relationship With The Client

10.3.1 A geologist shall not undertake, or offer to undertake, any type of work with which he/she is not familiar or competent by reason of lack of training or experience unless he/she makes full disclosure of his/her lack of training or experience to the appropriate parties prior to undertaking the work.

10.3.2 A geologist shall protect to the fullest extent the employer or client's interest, so far, as is consistent with the public welfare and professional obligations and ethics.

10.3.3 A geologist who finds that an obligation to an employer or client conflicts with professional obligations or ethics should have the objectionable conditions changed or terminate the services.

10.3.4 A geologist shall not use either directly or indirectly any proprietary information which is developed or acquired as a result of working for an employer or client in any way that conflicts with the employer's or client's interest and without the consent of the employer or client.

10.3.5 A geologist who has worked or performed a service for any employer or client shall not use the information peculiar to that employment and which is gained in such employment for his/her own personal profit unless he/she is given written permission to do so or until the employer, client, or their successor's interest in such information has changed in such a way that the information is valueless to him/her or of no further interest to him/her.

10.3.6 A geologist shall not divulge confidential information. This does not relieve a licensed geologist from the duty to report conditions required by law or regulation.

10.3.7 A geologist retained by a client shall not accept, without the client's consent, an engagement by another if there is a possibility of a conflict between the interest of the two clients.

10.3.8 A geologist shall advise an employer or client to retain, and cooperate with, other experts and specialists whenever the employer's or client's interests are best served by such services.

10.3.9 A geologist shall not terminate services to an employer or client when it will cause immediate jeopardy to the employer's or client's interests. The geologist shall attempt to give due notice of termination; however, the geologist may terminate services under any of the following circumstances:

10.3.9.1 failure to receive compensation or good evidence indicating compensation will not be received for services performed;

10.3.9.2 when continued employment will result in a violation of 24 Del.C., Ch. 36 or other illegality;

10.3.9.3 when continued employment will result in sickness or injury to the geologist or his/her dependents.

10.3.10 A geologist shall not use or abuse drugs, narcotics, controlled substances, or illegal drugs without a prescription from a licensed physician. A geologist shall also not abuse alcoholic beverages such that it impairs his/ her ability to perform his/her work.

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)

PUBLIC NOTICE

Standards and Regulations for Subdivision Streets and State Highway Access

Background

The Delaware Department of Transportation through its Planning Division has developed revised regulations for access to State-maintained roads and for planning, design, construction, and acceptance for maintenance of subdivision streets. These regulations, Standards and Regulations for Subdivision Streets and State Highway Access, revise, update, and consolidate the Rules and Regulations for Subdivision Streets, enacted in December 1981, and the Standards and Regulations for Access to State Highways, enacted in August 1983. These regulations define the requirements which apply to:

- New subdivisions and land development
- Changed or expanded subdivisions and land development
- Any new access on to a State-maintained road
- Modifications to an existing access
- Assessment of the impacts of traffic
- Off-site improvements

A public hearing will be held on July 26, 2007 at the DeIDOT Administration Building in the Farmington/Felton Room from 4:00 pm until 7:00 pm.

The Department will take comments on the Regulations from July 1, 2007 through August 6, 2007.

Any requests for copies of the Regulations, or any questions or comments regarding these Regulations should be directed to:

Theodore Bishop, Assistant Director of Planning
Delaware Department of Transportation
PO Box 778
Dover, DE 19903
(302) 760-2122 (telephone)
(302) 739-2251 (fax)
theodore.bishop@state.de.us

An authenticated copy of the proposed regulation is available at this location:

Standards and Regulations for Subdivision Streets and State Highway Access

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 INSURANCE

Statutory Authority: 18 Delaware Code, Sections 311 and 332 (18 **Del.C.** §§ 311, 332 and 6401 *et seq.*)

18 **DE Admin. Code** 1301

ORDER

Proposed changes to Regulation 1301 relating to the internal review, arbitration and independent utilization review of health insurance claims were first published in the *Delaware Register of Regulations* on February 1, 2007. The original comment period remained open until March 6, 2007. A public hearing on the proposed changes to Regulation 1301 was held on February 26th, 2007. Public notice of the proposed changes to Regulation 1301 in the *Register of Regulations* and two newspapers of general circulation was in conformity with Delaware law. As a result of the public comment, substantive changes were made to the proposed regulatory changes and Regulation 1301 was re-submitted for public comment.

Summary of the Evidence and Information Submitted

Prior to January 8, 2007, the Department of Health and Social Services (“DHSS”) had jurisdiction over MCOs insofar as the regulation of and MCO’s activities in the State of Delaware were concerned. As a result of Senate Bill 295 passed in the 143rd General Assembly, full jurisdiction over MCO’s was transferred to the Department of Insurance (“Department”). Regulation 1301, prior to January 8, 2007, governed MCOs with respect to the licensing of such entities and the nature of the insurance products they could offer. The proposed changes are designed to update the regulation and provide regulatory guidance for MCOs based on the now current law codified at 18 **Del.C.** Ch. 64.

BCBSD, Inc., Christiania Care, Peter Shanley, Esquire, the Delaware Developmental Disabilities Council and the State Council for Persons with Disabilities submitted written comment to the Department on the regulation. The Delaware Developmental Disabilities Council and the State Council for Persons with Disabilities were supportive of the regulation. BCBSD’s comments addressed a number of technical drafting issues. BCBSD also

observed that Section 11.3.1.3, which requires coverage for non-network providers in accordance with the Patient's Bill of Rights contains the requirement that the carrier "make acceptable service arrangements with the provider and prohibit balance billing". While BCBSD acknowledges that this language was contained in the DHSS Regulation, it contended that it inappropriately exceeds the statutory language that is the basis for this requirement.

The written comments from Mr. Shanley and Christiana Care were similar to public comment from Mr. Shanley, Dr. Leonard Nitowski and Mr. Robert Lynn at the public hearing. At the public hearing several witnesses addressed matters in the law itself. To the extent those comments were directed to provisions in the law, it is not necessary to summarize them here since such comments are not directly relevant to a rule making process. The bulk of Dr. Nitowski's comments addressed matters relating to proposed changes to Regulation 1301 and is not directly relevant to the proposed changes to Regulation 1301. Nevertheless, Dr. Nitowski's comments relating to the reimbursement protocols for emergency room physicians are noteworthy insofar as they address problems in the prompt delivery of health care to Delaware's citizens.

Mr. Shanley provided public comment on his own behalf and on behalf of EMCODE ("Emergency Medicine Coalition of Delaware). EMCODE's purpose is to participate when the opportunity presents itself whenever there is legislation or a regulation that affects the quality and availability of emergency medicine care in Delaware or the financing related to that care. He echoed Mr. Lynn's comments that volunteer fire companies should be excluded from consideration since that is how they are treated for purposes of Regulation 1301. He recommended that the arbitration provisions of Regulation 1301 should be required under Regulation 1301. He also suggested (as did others) that the regulation make it clear that the geographic service is Delaware and that there is no coverage people who received emergency services in another state and then want to have follow-up care in Delaware by a local doctor or primary care physician.

Findings of Fact

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

1. Based on the transfer of jurisdiction over MCOs from DHSS requires the amendment of current Regulation 1301.
2. The proposed amendments comply with existing Delaware law.
3. The reasons given for suggested changes to the proposed amendments are not sufficiently persuasive to require me to make changes to the proposed regulation as originally published for comment.
4. The adoption of these proposed changes to Regulation 1301 will provide continuity of regulatory oversight of MCOs in the State of Delaware.

Decision and Effective Date

Based on the provisions of 18 **Del.C.** §§311(a) and 6408 and 29 **Del.C.** §§10113-10118 and the record in this docket, I hereby adopt Regulation 1301 as amended and as may more fully and at large appear in the version attached hereto to be effective on July 11, 2007.

Text and Citation

The text of the proposed amendments to Regulation 1301 last appeared in the *Register of Regulations* Vol. 10, Issue 8, pages 1249-1280.

IT IS SO ORDERED this 11th day of June, 2007.

Matthew Denn, Insurance Commissioner

1301 Internal Review, Arbitration and Independent Utilization Review of Health Insurance Claims***(Break in Continuity of Sections)*****2.0 Definitions**

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

“Adverse determination” means a decision by a carrier to deny (in whole or in part), reduce, limit or terminate health insurance benefits.

“Appeal” means a request for external review of a carrier’s final coverage decision through the Independent Health Care Appeals Program.

“Appropriateness of services” means an appeal classification for adverse determinations that are made based on identification of treatment as cosmetic, investigational, experimental or not an appropriate or preferred treatment method or setting for the condition for which treatment is sought.

“Authorized representative” means an individual who a covered person willingly acknowledges to represent his interests during the internal review process, arbitration and/or an appeal through the Independent Health Care Appeals Program, including but not limited to a provider to whom a covered person has assigned the right to collect sums due from a carrier for health care services rendered by the provider to the covered person. A carrier may require the covered person to submit written verification of his consent to be represented. If a covered person has been determined by a physician to be incapable of assigning the right of representation, the covered person may be represented by a family member or a legal representative.

“Carrier” means any entity that provides health insurance in this State. Carrier includes an insurance company, health service corporation, managed care organization and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation. Carrier also includes any third-party administrator or other entity that adjusts, administers or settles claims in connection with health insurance.

“Covered person” means an individual and/or family who has entered into a contractual arrangement, or on whose behalf a contractual arrangement has been entered into, with a carrier, pursuant to which the carrier provides health insurance for such person or persons.

“Department” means the Delaware Insurance Department.

“Emergency care provider” means a provider of emergency care services.

“Emergency care services” means those services identified in 18 **Del.C.** §§3349(c) and 3565(c) including:

A. Any covered service providing for the transportation of a patient to a hospital emergency facility for an emergency medical condition including air and sea ambulances so long as medical necessity criteria are met; and

B. Facility and professional providers of emergency medical services in an approved emergency care facility.

“Emergency medical condition” shall have the meaning assigned to it by 18 **Del.C.** §§3349(d) and 3565(d).

“Final coverage decision” means the decision by a carrier at the conclusion of its internal review process upholding, modifying or reversing its adverse determination.

“Grievance” means a request by a covered person or his authorized representative that a carrier review an adverse determination by means of the carrier’s internal review process.

“Health care services” means any services or supplies included in the furnishing to any individual of medical ~~or dental~~ care, or hospitalization or incidental to the furnishing of such care or hospitalization, as well as the furnishing to any individual of any and all other services for the purpose of preventing, alleviating, curing or healing human illness, injury, disability or disease.

“Health insurance” means a plan or policy issued by a carrier for the payment for, provision of, or reimbursement for health care services.

“Independent Health Care Appeals Program (“IHCAP”)” means a program administered by the Department that provides for an external review by an Independent Utilization Review Organization of a carrier’s final coverage decision based on medical necessity or appropriateness of services.

“Independent Utilization Review Organization (“IURO”)” means an entity that conducts independent external reviews of a carrier’s final coverage decisions resulting in a denial, termination, or other limitation of

covered health care services based on medical necessity or appropriateness of services.

“Internal review process (“IRP”)” means a procedure established by a carrier for internal review of an adverse determination.

“Medical necessity” means providing of health care services or products that a prudent physician would provide to a patient for the purpose of diagnosing or treating an illness, injury, disease or its symptoms in a manner that is:

- A. In accordance with generally accepted standards of medical practice;
- B. Consistent with the symptoms or treatment of the condition; and
- C. Not solely for anyone’s convenience.

“Network carrier” is a carrier that has a written participation agreement with an emergency care provider to pay for emergency care services in Delaware.

“Network emergency care provider” is an emergency care provider who has a written participation agreement with the carrier to provide emergency care services or governing payment of emergency care services in Delaware as of the date those services were provided. All other emergency care providers shall be considered non-network emergency care providers.

“Provider” means an individual or entity, including without limitation, a licensed physician, a licensed nurse, a licensed physician assistant and a licensed nurse practitioner, a licensed diagnostic facility, a licensed clinical facility, and a licensed hospital, who or which provides health care services in this State.

3.0 Minimum Requirements for an Internal Review Process (IRP)

In addition to the requirements set forth in 18 Del.C. §332, the following provisions shall govern the internal review process of all carriers offering health insurance in Delaware:

3.1 All written procedures and forms utilized by a carrier shall be readable and understandable by a person of average intelligence and education. All such documents shall meet the following criteria:

3.1.1 The type size shall not be smaller than 11 point;

3.1.2 The type style selection shall be at the discretion of the carrier but shall be of a type that is clear and legible;

3.1.3 Captions or headings shall be designed to stand out clearly;

3.1.4 White space separating subjects or sections should be distinct;

3.1.5 There must be included a table of contents sufficient to guide and assist the covered person or his authorized representative;

3.1.6 Where appropriate, definitions shall be included, shall be sufficient to clearly apply to the usage intended, and shall not conflict with the definitions contained in this regulation.

3.1.7 The forms shall be written in everyday, conversational language to the extent possible to preserve the legal meaning.

3.1.8 Short familiar words shall be used and sentences shall be kept as short and simple as possible.

3.2 The carrier shall provide all forms relating to grievances, appeals, arbitration or other procedures relating to IRP as examples along with the written notice of IRP provided to the covered person.

3.3 Written notice.

3.3.1 For any IRP not previously approved by the Department, the carrier shall provide written notice of the IRP to all covered persons within 30 days of approval by the Department.

3.3.2 The carrier shall provide the annual notice required by 18 Del.C. §332(c)(1) to covered persons either upon the policy renewal date, open enrollment date, or a set date for all covered persons, in the carrier’s discretion.

3.3.3 For every new policy issued after the Department’s approval of the IRP, the carrier shall provide covered persons with a copy of the IRP at the time, or prior to the time, the carrier sends identification cards, member handbooks or similar member materials to newly covered persons.

3.3.4 When a covered person’s dependents ~~[are also covered reside in the same household as the covered person]~~, a single notice to the principal covered person shall be sufficient under this section.

3.4 Under circumstances where an oral or written grievance may not contain sufficient information and the carrier requests additional information, such request shall not be burdensome or require such information as the carrier might reasonably be expected to obtain through its normal claims process.

(Break in Continuity of Sections)

7.0 Special Provisions Applicable to Arbitration Pursuant to 18 Del.C. §§3349 and 3565

7.1 In any arbitration pursuant to 18 Del.C. §§3349 or 3565, the Arbitrator shall, at a minimum, receive evidence relating to the following items:

7.1.1 The highest amount of money paid by the carrier to any emergency care provider for the particular service in a comparable medical facility where the service was provided during the preceding twelve months;

7.1.2 The lowest amount of money paid by the carrier to any emergency care provider for the particular service in a comparable medical facility where the service was provided during the preceding twelve months;

7.1.3 The highest amount of money received by the non-network emergency care provider from any carrier for the particular service in a comparable medical facility where the service was provided during the preceding twelve months;

7.1.4 The lowest amount of money received by the non-network emergency care provider from any carrier for the particular service in a comparable medical facility where the service was provided during the preceding twelve months;

7.1.5 The number of times during the preceding twelve months that the carrier experienced a dispute or disagreement with respect to the payment for the particular service in a comparable medical facility where the service was provided, and the outcome of such disputes or disagreements.

7.2 The information specified in section 7.1 of this regulation and provided to the Arbitrator shall presumptively be considered trade secret or confidential financial information under the Delaware Freedom of Information Act and shall not be disclosed to or available at any time to any person, firm or entity not involved in the arbitration.

7.3 The Arbitrator shall consider the following guidelines as a basis for determining the rate or charge for a disputed service unless the evidence adduced at arbitration requires a determination on a different basis:

7.3.1 ~~Payments for emergency care services with CPT codes. A carrier shall pay non-network emergency care providers an amount equal to the lesser of the non-network emergency care provider billed fee for such service or the highest negotiated rate between the carrier and any network provider for the service based on the appropriate CPT code until such time as the non-network provider becomes a network provider pursuant to a written participation agreement. Thereafter payments will be based on the new negotiated rates.~~

Payments for emergency services to a non-network emergency care provider who was a network emergency care provider at any time prior to the date the provider delivered the emergency care services which are the subject of the arbitration. A carrier shall pay such non-network emergency care provider the higher of either (1) the highest contract rate for the services provided during the term of the provider's contract with the insurer, subject to such rate adjustments as may be published in bulletins by the Commissioner from time to time, or (2) the highest undisputed amount regularly paid by any network insurer to the non-network provider for performance of the same service. All payments pursuant to this section are subject to reduction based on the insured's obligations for co-payments or deductibles.

7.3.2 Other payments for emergency care services with CPT codes. A carrier shall pay non-network emergency care providers who were never network providers with the carrier an amount equal to the lesser of the non-network emergency care provider billed fee for such service or the highest negotiated rate between the carrier and any network provider for the service based on the appropriate CPT code until such time as the non-network provider becomes a network provider pursuant to a written participation agreement. Thereafter payments will be based on the new negotiated rates.

7.3.23 ~~Payments for emergency care services without CPT codes. For emergency care services that do not have a CPT code or other identifiable code number, a carrier shall pay non-network emergency care providers the lesser of the non-network emergency care provider billed fee, or the highest negotiated network rate received by the non-network provider from any carrier for the performance of the same service. When and if the non-network provider becomes a network provider, payments will be based on the negotiated rate.~~

7.3.34 Changes in the membership of a provider group will not affect the remaining group member(s) insofar as the application of this section to payments for emergency care services. In the

absence of a contract provision to the contrary, a physician's existing network status and payment rights shall not be transferable to that physician's new group or practice.

7.4 *Duty to Arbitrate.* Every carrier and provider shall submit to arbitration pursuant to this Section 7.0 all fee disputes arising from the provision of emergency care services under 18 Del.C. §3349 and 3565, except as provided in Section 5.4.]

(Break in Continuity of Sections)

16.0 Effective Date

16.1 This regulation shall become effective on ~~April July~~ 11, 2007. ~~[Pursuant to the order of the Commissioner dated January 8, 2007, any claim filed for review or arbitration after January 8, shall be governed by this regulation. Any claim filed for review or arbitration prior to January 8, 2007 under the version of this regulation adopted February 15, 2002 and not resolved prior to January 8, 2007 shall be governed by the February 15, 2002 version of this regulation.]~~

*Please Note: As the rest of the sections were not amended since the proposal in the April 2007 issue, they are not being published here. Please refer to the April 2007 *Register*, page 1523 (10 DE Reg. 1523) or contact the Department of Insurance for more information.

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 311 and 332 (18 Del.C. §§311 and 6401 et seq.)

18 DE Admin. Code 1403

ORDER

Proposed changes to Regulation 1403 relating to Managed Care Organizations ("MCO") were first published in the *Delaware Register of Regulations* on February 1, 2007. The original comment period remained open until March 6, 2007. A public hearing on the proposed changes to Regulation 1403 was held on February 26th, 2007. Public notice of the proposed changes to Regulation 1403 in the *Register of Regulations* and two newspapers of general circulation was in conformity with Delaware law.

Summary of the Evidence and Information Submitted

Prior to January 8, 2007, the Department of Health and Social Services ("DHSS") and the Department of Insurance ("Department") had separate but concurrent jurisdiction over MCOs with respect to their licensing, authority to operate and the resolution of claims arising from services performed or denied in this State. As a result of Senate Bill 295 passed in the 143rd General Assembly, full jurisdiction over MCO's was transferred to the Department. Regulation 1403, prior to January 8, 2007, governed MCOs with respect to the licensing of such entities and the nature of the insurance products they could offer. The proposed changes are designed to update the regulation and provide regulatory guidance for MCOs based on the now current law codified at 18 Del.C. Ch. 64.

BCBSD, Inc., Christiana Care, Peter Shanley, Esquire, the Delaware Developmental Disabilities Council and the State Council for Persons with Disabilities submitted written comment to the Department on the regulation. The Delaware Developmental Disabilities Council and the State Council for Persons with Disabilities were supportive of the regulation. BCBSD's comments addressed a number of technical drafting issues. BCBSD also observed that Section 11.3.1.3, which requires coverage for non-network providers in accordance with the Patient's Bill of Rights contains the requirement that the carrier "make acceptable service arrangements with the provider and prohibit balance billing". While BCBSD acknowledges that this language was contained in the DHSS Regulation, it contended that such language inappropriately exceeds the statutory authority for this regulation.

The written comments from Mr. Shanley and Christiana Care were similar to public comment from Mr. Shanley, Dr. Leonard Nitowski and Mr. Robert Lynn at the public hearing. At the public hearing several witnesses addressed matters in the law itself. To the extent those comments were directed to provisions in the law, it is not necessary to summarize them here since such comments are not directly relevant to a rule making process. The bulk of Dr. Nitowski's comments addressed matters relating to proposed changes to Regulation 1301 and is not directly relevant to the proposed changes to Regulation 1403. Nevertheless, Dr. Nitowski's comments relating to the reimbursement protocols for emergency room physicians are noteworthy insofar as they address problems in the prompt delivery of health care to Delaware's citizens.

Mr. Shanley provided public comment on his own behalf and on behalf of EMCODE ("Emergency Medicine Coalition of Delaware). EMCODE's purpose is to participate when the opportunity presents itself whenever there is legislation or a regulation that affects the quality and availability of emergency medicine care in Delaware or the financing related to that care. He echoed Mr. Lynn's comments that volunteer fire companies should be excluded from consideration since that is how they are treated for purposes of Regulation 1301. He recommended that the arbitration provisions of Regulation 1301 should be required under Regulation 1403. He also suggested (as did others) that the regulation make it clear that the geographic service is Delaware and that there is no coverage for people who received emergency services in another state and then want to have follow-up care in Delaware by a local doctor or primary care physician.

Findings of Fact

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

1. The change in law due to Senate Bill 295 transferring all jurisdiction over MCOs to the Department of Insurance requires that current Regulation 1403 be amended to comply therewith.
2. The reasons given during public comment for suggested changes to the proposed amendments are not sufficiently persuasive to require me to make changes to the proposed regulation as originally published for comment.
3. The adoption of these proposed changes to Regulation 1403 will provide continuity of regulatory oversight over MCOs in the State of Delaware.

Decision and Effective Date

Based on the provisions of 18 **Del.C.** §§311(a) and 6408 and 29 **Del.C.** §§10113-10118 and the record in this docket, I hereby adopt Regulation 1403 as amended and as may more fully and at large appear in the version attached hereto to be effective on July 11, 2007.

Text and Citation

The text of the proposed amendments to Regulation 1403 last appeared in the *Register of Regulations* Vol. 10, Issue 8, pages 1249-1280.

IT IS SO ORDERED this 11th day of June, 2007.

Matthew Denn, Insurance Commissioner

*** Please note that no changes were made to the regulation as originally proposed and published in the April 2007 issue of the *Register* at page 1502 (10 DE Reg. 1502). Therefore, the final regulation is not being republished. Please refer to the April 2007 issue of the *Register* or contact the Department of Insurance for more information.**

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

Statutory Authority: 7 Delaware Code, Chapter 60 (7 **Del.C.**, Ch. 60)
7 **DE Admin. Code** 1142

Secretary's Order No. 2007-A-0022
1142 Specific Emission Control Requirements

Date of Issuance: June 15, 2007
Effective Date: July 11, 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., 29 **Del.C.** §§10111 et seq. and 7 **Del.C.** §6010(a), the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

On January 11, 2006, the Department opened a rulemaking proceeding in Start Action Notice ("SAN") 2005-13, which was to develop a proposed regulation for the purpose of regulating and reducing the air emission of nitrogen oxides ("NOx") from industrial boilers and process heaters at petroleum refineries. Delaware's only petroleum refinery is located near Delaware City, New Castle County, and the Department identified its boilers and process heaters as significant sources of emissions of NOx oxides. NOx is a harmful air pollutant and a precursor to the formation of ground-level ozone, which is a major cause of adverse human health consequences, particularly for the young, the elderly and anyone with impaired breathing ability. Ozone also adversely impacts agriculture. The Department's regulatory action was taken in order to comply with federal air quality requirements, notably, the Environmental Protection Agency's ("EPA") 8 Hour Ozone National Ambient Air Quality Standard ("NAAQS"). Delaware is within the EPA's Philadelphia-Wilmington-Atlantic City ozone non-attainment area, which means that Delaware must take regulatory actions to improve air quality to meet the NAAQS by 2010.

The Department published the proposed regulation on February 1, 2007 in the *Delaware Register of Regulations*, and held a public hearing on March 6, 2007 before the Department's hearing officer, Robert P. Haynes, who issued a report dated June 12, 2007 recommending approval of the proposed regulation as a final regulation. This report include the Department's response to the public comments, as prepared by the Division of Air and Waste Management, Air Quality Management Section ("AQMS"), notably, Frank Gao and Ravi Rangan. Based upon the record developed by the Department, including all the public comments, I adopt the report and incorporate it into this order. I elaborate on some of the issues raised.

First, this Order and its approval of the proposed regulation as a final regulation will allow the Department and Delaware to fulfill its federal regulatory responsibilities, along with the other regulatory actions already taken and that will be taken, as outlined in the Department's ozone State Implementation Plan ("SIP"). The SIP, as periodically revised and updated, is a federal regulatory requirement imposed on Delaware by the federal Clean Air Act and EPA's regulations issued under the CAA. The SIP must demonstrate to EPA Delaware's regulatory actions that will result in Delaware's air quality attaining the NAAQS by 2010. The Department supports the attainment of NAAQS as it will bring cleaner air and better health to Delaware's citizens and visitors. The regulation approved by this Order will result in significantly lower air emissions of harmful pollutants.

Second, the regulation also is supported by the considerable scientific evidence developed by the Department's experts and in a collaborative manner with interested participants. AQMS drafted the proposed regulation based upon currently available and economically feasible control technologies, and worked in a cooperative manner with the owner of the petroleum refinery, Premcor Refining Group. In addition, the American Lung Association, Green Delaware and the Mid-Atlantic Environmental Law Center participated and contributed. These groups supported the proposed regulation in general, but they also expressed positions that the Department did not go far enough in this regulation and would require even more stringent air quality controls. The Department's approval of the final regulation is made based upon careful consideration of all the comments, and the expert opinion that the proposed regulation provides a reasonable and well-supported basis to improve air quality and allow Delaware to attain cleaner air in order to meet the NAAQS by 2010. The Department compliments all the participants in the regulatory development process for their participation and cooperation, even if a

regulation could not satisfy all the interests.

I find that the record developed during the public hearing process, including the Department's response, provides ample support for the Department to adopt this final regulation. The justification is that it will result in cleaner air quality through reasonably available air pollution controls. The regulation approved by this Order will result in the reduction of NO_x from significant sources of such emissions, which are not subject to control under other air quality regulations.

In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary and 29 Del.C. §10118(d), hereby approved the final regulation in Appendix A to the Report,
2. The Department shall have this Order published in the *Delaware Register of Regulations* and in newspapers in the same manner as the notice of the proposed regulation;
3. The Department shall provide notice to the persons affected by the Order, as determined by the Department, including all those who submitted comments to the Department, who otherwise participated in the public hearing, and who requested to receive notice of all actions on proposed regulations.

John A. Hughes, Secretary

1142 Specific Emission Control Requirements

07/11/2007

1.0 Control of NO_x Emissions from Industrial Boilers

1.1 Purpose.

New Castle County and Kent County are part of the Philadelphia-Wilmington-Trenton 1-hour ozone non-attainment area. All areas of Delaware impact this non-attainment area. On December 19, 1999 the EPA identified an emission reduction "shortfall" associated with this non-attainment area. Promulgation of Section 1 of this regulation is one measure that the Department is taking to mitigate this shortfall.

In determining the applicability of this Section the Department attempted to minimize the impact on facilities that recently installed NO_x controls under Regulation No. 12 (NO_x RACT) and Regulation No. 37/39 (NO_x Budget Trading Program). The Department did this by regulating only large sources that, as of the effective date of this Section, emitted NO_x at a rate greater than the rate identified in Table I of Regulation No. 12, were not equipped with NO_x emission control technology, and were not subject to the requirements of Regulation No. 39. In effect, this Section regulates sources that remain high NO_x emitters after the application of RACT and post RACT requirements, and that have not committed substantial capital funds to reduce NO_x emissions.

1.2 Applicability.

1.2.1 This section applies to any person that owns or operates any combustion unit with a maximum heat input capacity of equal to or greater than 100 million btu per hour, except that this section shall not apply to any unit that, as of the effective date of this Section:

1.2.1.1 Emits NO_x at a rate equal to or less than the rate identified in Table I of Regulation No. 12 of the State of Delaware "Regulations Governing the Control of Air Pollution."

1.2.1.2 Is equipped with low NO_x burner, flue gas recirculation, selective catalytic reduction, or selective noncatalytic reduction technology.

1.2.1.3 Is subject to the requirements of Regulation No. 39 of the State of Delaware "Regulations Governing the Control of Air Pollution."

1.2.2 The requirements of this section are in addition to all other state and federal requirements.

1.2.3 Affected persons shall comply with the requirements of paragraph 1.3 of this Section as soon as practicable, but no later than May 1, 2004.

1.3 Standards.

1.3.1 The NO_x emission rate from any unit subject to this Section shall be equal to or less than the following:

1.3.1.1 Between May 1st through September 30th of each year, inclusive: 0.10 lb./mmBTU, 24-hour calendar day average.

1.3.1.2 During all times that gaseous fuel is being fired: 0.10 lb./mmBTU, 24-hour calendar day average.

1.3.1.3 During all times not covered by Section 1.3.1.1 and 1.3.1.2: 0.25 lb./mmBTU, 24-hour calendar day average.

1.3.2 As an alternative to compliance with the requirements of paragraph 1.3.1 of this Section, compliance may be achieved through the procurement and retirement of NO_x allowances authorized for use under Regulation No. 39 of the State of Delaware "Regulations Governing the Control of Air Pollution," as follows:

1.3.2.1 The actual 24-hour calendar day average NO_x emission rate in pounds per million btu shall be determined for each day of unit operation, using CEMs operated in accordance with paragraph 1.4 of this section.

1.3.2.2 The actual heat input to each unit in million btu shall be determined for each day of unit operation, using methods proposed by the person subject to this Section and acceptable to the Department.

1.3.2.3 0.10 or 0.25, as applicable and consistent with paragraph 1.3.1 of this section, shall be subtracted from the rate determined in paragraph 1.3.2.1 of this section.

1.3.2.4 To obtain the number of pounds of NO_x emitted for a particular day the emission rate determined in paragraph 1.3.2.3 of this section shall be multiplied by the heat input to the unit for that day determined in paragraph 1.3.2.2 of this section. If the emission rate determined in paragraph 1.3.2.3 of this section is equal to or less than zero, then the number of pounds of NO_x emitted for that day shall be zero.

1.3.2.5 Not later than the 20th day of each month:

1.3.2.5.1 The number of pounds of NO_x emissions calculated pursuant to paragraph 1.3.2.4 of this section shall be summed for each calendar month, the result shall be divided by 2000, and shall be rounded to the nearest whole ton.

1.3.2.5.2 For each ton of NO_x emissions calculated pursuant to paragraph 1.3.2.5.1, records shall be maintained demonstrating that one NO_x allowance owned by the person subject to this Section is identified and available, by serial number, for retirement.]

1.3.2.6 Not later than February 1 of each calendar year, the NO_x allowances identified pursuant to paragraph 1.3.2.5.2 of this Section for the previous calendar year, shall be submitted to the Department for retirement. Such submission shall detail the calculations specified in 1.3.2.1 through 1.3.2.5 above, and shall indicate the serial number of each allowance to be retired.

1.4 Monitoring Requirements. Compliance with the NO_x emission standards specified in this section shall be determined based on CEM data collected in accordance with the requirements of Regulation 17, Section 3.1.2 (Performance Specification 2), and in compliance with the requirements of 40 CFR, Part 60, Appendix F.

1.5 Recordkeeping and Reporting Requirements.

1.5.1 Not later than 180 days after the effective date of this Section, any person subject to this Section shall develop, and submit to the Department for approval, a schedule for bringing the affected emission unit(s) into compliance with the requirements of this Section. Such schedule shall include, at a minimum, all of the following:

1.5.1.1 The method by which compliance will be achieved

1.5.1.2 The dates by which the affected person commits to completing the following major increments of progress, as applicable:

1.5.1.2.1 Completion of engineering

1.5.1.2.2 Submission of permit applications

1.5.1.2.3 Awarding of contracts for construction and/or installation

1.5.1.2.4 Initiation of construction

1.5.1.2.5 Completion of construction

1.5.1.2.6 Commencement of trial operation

1.5.1.2.7 Initial compliance testing

1.5.1.2.8 Submission of compliance testing reports

1.5.1.2.9 Commencement of normal operations (in full compliance)

1.5.2 Any person subject to this Section shall submit to the Department an initial compliance certification not later than May 1, 2004. The initial compliance certification shall, at a minimum, include the following information:

- 1.5.2.1 The name and the location of the facility.
- 1.5.2.2 The address and telephone number of the person responsible for the facility.
- 1.5.2.3 Identification of the subject source(s).
- 1.5.2.4 The applicable standard.
- 1.5.2.5 The method of compliance.
- 1.5.2.6 Certification that each subject source is in compliance with the applicable standard
- 1.5.2.7 All records necessary for determining compliance with the standards of this Section shall be maintained at the facility for a period of five years.

1.5.3 Any person subject to this Section shall, for each occurrence of excess emissions, within 30 calendar days of becoming aware of such occurrence, supply the Department with the following information:

- 1.5.3.1 The name and location of the facility.
- 1.5.3.2 The subject source(s) that caused the excess emissions.
- 1.5.3.3 The time and date of first observation of the excess emissions.
- 1.5.3.4 The cause and expected duration of the excess emissions.
- 1.5.3.5 The estimated rate of emissions (expressed in the units of the applicable emission limitation) and the operating data and calculations used in determining the magnitude of the excess emissions.
- 1.5.3.6 The proposed corrective actions and schedule to correct the conditions causing the excess emissions.

1.5.4 Any person subject to this section shall maintain all information necessary to demonstrate compliance with the requirements of this section for a minimum period of five years. Such information shall be immediately made available to the Department upon verbal and written request.

5 DE Reg. 1299 (12/1/01)

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

2.1 Purpose

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

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

Additionally, New Castle County of Delaware is a part of the Philadelphia-Wilmington-Camden, PA-DE-NJ NAA for the annual fine particulate matter (PM_{2.5}) NAAQS, and is required by the CAA to attain the NAAQS by 2010. Since NO_x is a significant precursor to PM_{2.5} formation, reducing NO_x emissions will also assist in attainment and maintenance of the PM_{2.5} standard.

2.2 Applicability and Compliance Dates

2.2.1 Section 2.0 of this regulation applies to any industrial boiler or process heater with a maximum heat input capacity of equal to or greater than 200 million BTUs per hour (mmBTU/Hour) (except for any Fluid Catalytic Cracking Unit carbon monoxide (CO) boiler), which is operated or permitted to operate within a petroleum refinery facility on the effective date of this section. This comprises the following nine (9) units at the Delaware City refinery:

- 2.2.1.1 Crude Unit Vacuum Heater (Unit 21-H-2)
- 2.2.1.2 Crude Unit Atmospheric Heater (Unit 21-H-701)
- 2.2.1.3 Fluid Coking Unit Carbon Monoxide boiler (Unit 22-H-3)
- 2.2.1.4 Steam Methane Reformer Heater (Unit 37-H-1)
- 2.2.1.5 Continuous Catalyst Regenerator Reformer Heater (Unit 42-H-1,2,3)

2.2.1.6 Boiler 1 (Unit 80-1)

2.2.1.7 Boiler 2 (Unit 80-2)

2.2.1.8 Boiler 3 (Unit 80-3)

2.2.1.9 Boiler 4 (Unit 80-4)

2.2.2 The requirements of Section 2.0 of this regulation are in addition to all other state and federal requirements.

2.2.3 The following units shall be in compliance with the requirements of Section 2.0 of this regulation on and after (insert the effective date of this regulation): Crude Unit Atmospheric Heater (Unit 21-H-701), Steam Methane Reformer Heater (Unit 37-H-1) and Boiler 2 (Unit 80-2).

2.2.4 The following units shall be in compliance with the requirements of Section 2.0 of this regulation as soon as practicable, but not later than:

2.2.4.1 December 31, 2008: Boiler 1 (Unit 80-1) and Crude Unit vacuum Heater (Unit 21-H-2).

2.2.4.2 May 1, 2011: Boiler 3 (Unit 80-3) and Boiler 4 (Unit 80-4).

2.2.4.3 December 31, 2012: Continuous Catalyst Regenerator Reformer Heater (Unit 42-H-1, 2, 3).

2.3 Standards.

The owner or operator of any industrial boiler or process heater identified in Section 2.2.1 of this regulation shall not allow NOx to be emitted at a rate that exceeds the following:

2.3.1 For the Fluid Coking Unit Carbon Monoxide boiler (Unit 22-H-3), Reserved.

2.3.2 For the Steam Methane Reformer (SMR) Heater (Unit 37-H-1), ~~0.07 lb./mmBTU, on a 24-hour rolling average basis.~~ Reserved.]

2.3.3 Boiler 3 (Unit 80-3) and Boiler 4 (Unit 80-4) shall not operate after May 1, 2011. On or before May 1, 2011 the owner or operator of Boiler 3 and Boiler 4 shall request that any operating permit issued by the Department be cancelled.

2.3.4 For any unit not covered by 2.3.1, 2.3.2, or 2.3.3, 0.04 lb./mmBTU, on a 24-hour rolling average basis.

2.4 Monitoring Requirements. Compliance with the NOx emission standards specified in 2.3.1, 2.3.2, and 2.3.4 of this regulation shall be determined based on CEM data collected in accordance with the appropriate requirements set forth in 40 CFR, Part 60, Appendix B, Performance Specification 2, and the QA/QC requirements in 40 CFR Part 60, Appendix F.

2.5 Recordkeeping and Reporting Requirements

2.5.1 Not later than 180 days after the effective date of Section 2.0 of this regulation, any person subject to Section 2.0 of this regulation shall develop, and submit to the Department, a schedule for bringing the affected emission unit(s) identified in Section 2.2.4. into compliance with the requirements of Section 2.3 of this regulation. Such schedule shall include, at a minimum, all of the following:

2.5.1.1 The method by which compliance will be achieved.

2.5.1.2 The dates by which the affected person plans to complete the following major increments of progress, as applicable:

2.5.1.2.1 Completion of engineering

2.5.1.2.2 Submission of permit applications

2.5.1.2.3 Awarding of contracts for construction and/or installation

2.5.1.2.4 Initiation of construction

2.5.1.2.5 Completion of construction

2.5.1.2.6 Commencement of trial operation

2.5.1.2.7 Initial compliance testing

2.5.1.2.8 Submission of compliance testing reports

2.5.1.2.9 Commencement of normal operations (in full compliance)

2.5.2 Any person subject to Section 2.0 of this regulation shall submit to the Department an initial compliance certification by (insert 60 days after the effective date of this regulation) for units identified in Section 2.2.3 of this regulation and, for units identified in Section 2.2.4, by the compliance date specified in Section 2.2.4. The initial compliance certification shall include, at a minimum, all of the following information:

2.5.2.1 The name and the location of the facility.

2.5.2.2 The name, address and telephone number of the person responsible for

the facility.

<u>2.5.2.3</u>	<u>Identification of the subject source(s).</u>
<u>2.5.2.4</u>	<u>The applicable standard.</u>
<u>2.5.2.5</u>	<u>The method of compliance.</u>
<u>2.5.2.6</u>	<u>Certification that each subject source is in compliance with the applicable</u>

standard.

2.5.3 Any person subject to Section 2.0 of this regulation shall, for each occurrence of excess emissions above the standards of Section 2.3 of this regulation, within thirty (30) calendar days of becoming aware of such occurrence, supply the Department with the following information:

<u>2.5.3.1</u>	<u>The name and location of the facility.</u>
<u>2.5.3.2</u>	<u>The subject source(s) that caused the excess emissions.</u>
<u>2.5.3.3</u>	<u>The time and date of first observation of the excess emissions.</u>
<u>2.5.3.4</u>	<u>The cause and expected duration of the excess emissions.</u>
<u>2.5.3.5</u>	<u>The estimated rate of emissions (expressed in the units of the applicable</u>

emission limitation) and the operating data and calculations used in determining the magnitude of the excess emissions.

2.5.3.6 The proposed corrective actions and schedule to correct the conditions causing the excess emissions.

2.5.4 Any person subject to Section 2.0 of this regulation shall maintain all information necessary to determine and demonstrate compliance with the requirements of this section for a minimum period of five (5) years. Such information shall be immediately made available to the Department upon verbal and written request.

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Chapter 60 (7 **Del.C.**, Ch. 60)
7 **DE Admin. Code** 1148

1148 Control of Stationary Combustion Turbine Electric Generating Unit Emissions

Secretary's Order No. 2007-A-0023

Date of Issuance: June 19, 2007

Effective Date: July 11, 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., 29 **Del.C.** §§10111 et seq. and 7 **Del.C.** §6010(a), the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

On October 6, 2005, the Department opened a proposed rulemaking proceeding in Start Action Notice ("SAN") 2005-10, which was to develop a proposed regulation for the purpose of regulating and reducing the air emission of nitrogen oxides ("NOx") from certain larger stationary combustion turbines ("CT") used for electric generation. The Department identified the following six CTs as sources of air pollution emission of NOx as the subject of this regulation: units 11 and 14 at Conectiv Delmarva Generation's ("Conectiv") Christiana Generating Station in Wilmington, New Castle County, unit 10 at NRG's Indian River Generating Station near Millsboro, Sussex County, unit 10 at Conectiv's Delaware City Generation Station near Delaware City, New Castle County, unit 10 at Conectiv's Edgemoor Generating Station in Edge Moor, New Castle County, and unit 10 at Conectiv's West Substation Generating Station in Wilmington, New Castle County.

The Department's experts with the Division of Air and Waste Management, Air Quality Management Section ("AQMS") identified these CTs as sources of air pollution, and that these sources could have significant reductions to their emission of NOx through the installation and use of emission controls, for example, water injection pollution control equipment. Moreover, the installation could occur reasonably economically and without

any undue disruption to the electric system's reliability. These CTs operate to provide electricity only during periods when there is a high demand for electricity, which often coincides with hot, humid weather that also creates conditions suitable for the formation of ozone. Thus, reducing NOx emissions from the CTs is important because NOx is a harmful air pollutant and a precursor to the formation of ground-level ozone and fine particular matter. Ozone is a major cause of adverse human health consequences, particularly for the young, the elderly and anyone with impaired breathing ability. Ozone also adversely impacts agriculture.

The Department's regulatory action is taken in part to comply with federal air quality requirements, notably, the Environmental Protection Agency's ("EPA") 8 Hour Ozone National Ambient Air Quality Standard ("NAAQS"). Delaware is within the EPA's Philadelphia-Wilmington-Atlantic City ozone non-attainment area, which means that Delaware must take regulatory actions to improve air quality to meet the NAAQS by 2010. The Department published the proposed regulation on April 1, 2007 in the *Delaware Register of Regulations*, and held a public hearing on April 26, 2007 before the Department's hearing officer, Robert P. Haynes, who issued a report dated June 15, 2007 recommending approval of the proposed regulation as a final regulation. This report includes the Department's response to the public comments, as prepared by Mark Prettyman in the Division of Air and Waste Management, Air Quality Management Section ("AQMS"). Based upon the record developed by the Department, including all the public comments, I adopt the report and incorporate it into this order.

This Order and its approval of the proposed regulation as a final regulation will allow the Department and Delaware to fulfill certain federal regulatory responsibilities under the federal Clean Air Act, amended, and EPA's CAA regulations. The regulation is part of the Department's ozone State Implementation Plan ("SIP"), which is periodically revised and updated, to plan Delaware's regulatory steps and to demonstrate to the EPA that Delaware's regulatory actions will result in Delaware attaining the NAAQS by 2010. The Department supports the attainment of NAAQS as it will bring cleaner air and better health to Delaware's citizens and visitors. The regulation approved by this Order will result in significantly lower air emissions of harmful pollutants based upon the estimated 2.21 tons per day of NOx emitted from the CTs currently when they operate, which will be reduced by the installation of water injection technology by about 40% to approximately 1.33 tons per day. Thus, on the worst ozone days the Department projects that CTs will be operating and that when the CTs comply with this regulation they will emit significantly less of ozone causing air pollution NOx than they currently emit.

The regulation is supported by the considerable scientific evidence developed by the Department's experts and in a collaborative manner with interested participants. AQMS drafted the proposed regulation based upon reasonably available control technology. At the hearing Conectiv Delmarva Generation submitted comments and the Department has adopted certain changes that the hearing officer determined not to be substantive as they allow the Department's regulations to be consistent with federal regulations. The Department's approval of the final regulation is made based upon careful consideration of all the comments, and the expert opinion that the proposed regulation provides a reasonable and well-supported basis to improve air quality and allow Delaware to attain cleaner air in order to meet the NAAQS by 2010. The Department compliments all the participants in the regulatory development process for their participation and cooperation, even if a regulation could not satisfy all the interests.

I find that the record developed during the public hearing process, including the Department's response, provides ample support for the Department to adopt this final regulation. The justification is that it will result in cleaner air quality through reasonably available air pollution controls. The regulation approved by this Order will result in the reduction of NOx from significant sources of such emissions, which have not installed emission controls under other air quality regulations.

In conclusion, the following findings and conclusions are entered:

The Department, acting through this Order of the Secretary and 29 **Del.C.** §10118(d), hereby approved the final regulation in Appendix A to the Report,

The Department shall have this Order published in the *Delaware Register of Regulations* and in newspapers in the same manner as the notice of the proposed regulation;

The Department shall provide notice to the persons affected by the Order, as determined by the Department, including all those who submitted comments to the Department, who otherwise participated in the public hearing, and who requested to receive notice of all actions on proposed regulations.

John A. Hughes, Secretary

1148 Control of Stationary Combustion Turbine Electric Generating Unit Emissions

~~xx/xx/2007 07/11/2007~~

1.0 Purpose.

The purpose of this regulation is to control the emissions of nitrogen oxides (NOx) from stationary combustion turbine electric generating units in the State of Delaware to reduce the impact on public health, safety, and welfare. This regulation will also reduce NOx emissions in the State of Delaware from the subject units during high electric demand days (HEDD). This will meet Delaware's obligation to support the regional HEDD NOx reduction initiative for the units subject to this regulation.

~~xx/xx/2007 07/11/2007~~

2.0 Applicability.

2.1 This regulation applies to existing, stationary combustion turbine electric generating units located in Delaware with a base-load nameplate capacity of 1 MW or greater.

2.2 This regulation is not applicable to existing stationary combustion turbine electric generating units that are subject to Regulation No. 12, "Control of Nitrogen Oxides Emissions," and meet the NOx emissions limitations identified in Table II [of paragraph 3.5] of Regulation No. 12, and are not otherwise exempt from the NOx emissions limitations of Table II of Regulation No. 12.

[2.3 This regulation is not applicable to *existing stationary combustion turbine electric generating units* that have undergone New Source Review in accordance with Regulation No. 1125 "Requirements for Preconstruction Review," and are covered by a permit which imposes NOx emissions limitations established to meet Best Available Control Technology and/or Lowest Achievable Emission Rate technology standards.]

~~xx/xx/2007 07/11/2007~~

3.0 Definitions.

The following words and terms, when used in this regulation, shall have the following meanings:

"**Annual capacity factor**" means the ratio of the megawatt-hours produced in a calendar year by a stationary combustion turbine electric generating unit to the maximum possible annual electric generation determined on the base-load nameplate capacity of the stationary combustion turbine electric generating unit.

"**Base-load nameplate capacity**" means, starting from the initial installation of a combustion turbine electric generating unit, the maximum electrical generating output (in MWe) that the combustion turbine electric generating unit is capable of producing on a steady basis during continuous operation at rated ambient temperature and atmospheric pressure as specified by the manufacturer of the combustion turbine electric generating unit or, starting from the completion of a physical change in the combustion turbine electric generating unit resulting in an increase in the maximum electrical generating output (in MWe) that the combustion turbine electric generating unit is capable of producing on a steady state basis and during continuous operation, such increased maximum output as specified by the person conducting the physical change.

"**Combustion turbine**" means a combustion engine consisting of a compressor, combustor(s) and power turbine used to provide rotary motion to an output shaft. The combustion turbine may be fueled by gaseous and/or liquid fuels.

"**Combustion turbine electric generating unit**" means a combustion turbine used to drive an electric generator.

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

"**Electric generator**" means a device that utilizes rotary motion from an input shaft to create electrical energy.

"**Existing**" means the unit has been synchronized to the grid before ~~insert the effective date of this regulation July 11, 2007~~.

"**Gaseous fuel**" means any non-solid or non-liquid fuel, including natural gas, digester gas, landfill gas, process gas, or any gas stored as a liquid at high pressure such as liquefied petroleum gas.

"**Liquid fuel**" means any non-solid or non-gaseous fuel, including kerosene, jet fuel, distillate fuel oil, bio-fuels, and methanol.

"**Ozone season**" means the months of ~~April through October~~ May through September].

“Ozone season capacity factor” means the ratio of the megawatt-hours produced during the ozone season, as defined within this regulation, by a stationary combustion turbine electric generating unit to the maximum possible ozone season electric generation determined on the base-load nameplate capacity of the stationary combustion turbine electric generating unit

“Peak-load nameplate capacity” means, starting from the initial installation of a combustion turbine electric generating unit, the maximum electrical generating output (in MWe) that the combustion turbine electric generating unit is capable of producing for limited durations at rated ambient temperature and atmospheric pressure as specified by the manufacturer of the combustion turbine electric generating unit or, starting from the completion of a physical change in the combustion turbine electric generating unit resulting in an increase in the maximum electrical generating output (in MWe) that the combustion turbine electric generating unit is capable of producing for limited durations, such increased maximum output as specified by the person conducting the physical change.

“PPMV” means gaseous concentration in parts per million by volume, corrected to 15 percent O₂ dry basis.

“Shutdown” means the period of time between a combustion turbine generating unit being brought from an operating condition to fuel shut off. This period of time may be begun at either opening the generator breaker or disconnecting the combustion turbine from the electric generator, and is concluded when the fuel is completely shut off to the combustion turbine.

“Simple cycle” means a combustion turbine electric generating unit which does not recover heat from the combustion turbine electric generating unit exhaust gases to preheat the inlet combustion air to the combustion turbine electric generating unit, to heat water, or to generate steam.

“Start-up” means the period during which a combustion turbine generating unit is brought from a shutdown status to rated speed and generator breaker closure.

“Stationary” means a unit that is not self-propelled or intended to be propelled while performing its design function.

~~xxx/2007~~ 07/11/2007]

4.0 NOx Emissions Limitations.

4.1 Beginning **[April May]** 1, 2009, no existing stationary combustion turbine electric generating unit subject to this regulation shall exceed the NOx emissions limitations shown in Table I of this regulation during the ozone season, inclusive of any year:

Table I

Fuel Type	NOx Emissions Limit (ppmv)
Gaseous Fuel	42
Liquid Fuel	88

4.2 The owner or operator of an existing stationary combustion turbine electric generating unit shall, no later than **[April May]** 1, 2009, either demonstrate to the satisfaction of the Department, through source testing approved by the Department, that the existing stationary combustion turbine generating unit meets the NOx emissions limitations of Table I of this regulation or install NOx emission controls designed to meet the NOx emissions limitation of Table I of this regulation in accordance with the requirements of paragraph 4.3 of this regulation.

4.3 The owner or operator of an existing stationary combustion turbine electric generating unit installing NOx emissions reduction controls in accordance with the requirements of paragraph 4.2 of this regulation shall install the NOx emissions reduction controls and implement operating procedures with the goal of achieving the NOx emissions limits of Table I of this regulation, and shall be designed and operated to control NOx emissions across the anticipated operating load range of the combustion turbine electric generating unit, including[, if technically feasible,] periods of *startup, shutdown, and reduced load operation [insofar as technically feasible]*.

4.3.1 The owner or operator of an existing stationary combustion turbine electric generating unit installing NOx emissions reduction controls in accordance with paragraph 4.3 of this regulation, shall submit to the Department for approval an emissions control plan detailing all actions, including a schedule of increments of progress, which will be taken to comply with the requirements of paragraph 4.1 of this regulation and the emissions

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control limitations of Table I of this regulation. The plan shall contain, as a minimum, the following information:

4.3.1.1 Facility and unit identification

4.3.1.2 Combustion turbine electric generating unit manufacturer and manufacturer's model number.

4.3.1.3 Combustion turbine electric generating unit manufacturer's base and peak (when applicable) load nameplate ratings and rating conditions (atmospheric temperature and pressure, fuel type, etc.).

4.3.1.4 Primary and secondary (where applicable) fuel type(s) ~~[and typical fuel(s) analysis]~~.

4.3.1.5 Hours of operation and electrical output for the previous five years.

4.3.1.6 ~~[Results of any previous NOx emissions testing conducted in the five calendar years prior to insert the effective date of this regulation.]~~ Documentation of the *combustion turbine electric generating unit's* NOx emissions rate, without NOx emissions controls installed in compliance with this regulation. The documents may include:

4.3.1.6.1 Results of any previous NOx emissions testing conducted in the five calendar years prior to July 11, 2007; or

4.3.1.6.2 A plan to conduct NOx emissions testing, as part of the initial compliance testing conducted in accordance with paragraph 4.3.3 of this regulation, with the NOx emissions controls (installed in compliance with this regulation) turned off.]

4.3.1.7 ~~[Anticipated future operating schedule (capacity factor), annual and seasonal.]~~Reserved]

4.3.1.8 Technical description of proposed emissions control technology and equipment designed to minimize NOx emissions across the entire operating range of the existing stationary combustion turbine electric generating unit ~~([insofar as technically feasible including, if technically feasible, periods of start-up, shutdown, and reduced load operation])~~, predicted NOx emissions levels following controls installation, and supporting documentation. ~~[The proposed operating range of the control technology may be utilized by the Department in establishing permit limitations for startup and shutdown for the subject unit.]~~

4.3.1.9 Compliance schedule including compliance emissions testing conducted representative of anticipated normal load range, including base load and peak load (if applicable), and anticipated monitoring plan submittal.

4.3.1.10 Any other information requested by the Department.

4.3.2 The owner or operator of an existing stationary combustion turbine electric generating unit submitting an emissions control plan in accordance with paragraph 4.3.1 of this regulation shall submit the plan to the Department for approval no later than ~~[insert nine months from the effective date of this regulation April 11, 2008]~~.

4.3.3 Following completion of the approved NOx emissions control installation described in paragraphs 4.3.1 and 4.3.2 of this regulation, emissions testing approved by the Department shall be conducted to determine compliance with the NOx emissions requirements of paragraph 4.1 and the Table I of this regulation. Testing results shall be submitted to the Department no later than 60 days following the completion of the testing.

4.3.4 If actual achievable NOx emissions levels following completion of the approved emissions reduction plan are greater than those of Table I of this regulation, the owner or operator of the stationary combustion turbine electric generating unit may petition the Department for alternative NOx emissions limitations no greater than the actual achievable NOx emissions levels determined in the post-emissions control installation testing.

4.4 The NOx emissions limitations of paragraph 4.1 and Table I of this regulation, or alternate NOx emissions limitations approved by the Department in accordance with paragraph 4.3.4 of this regulation, are applicable to existing stationary combustion turbine electric generating units subject to this regulation whenever ~~combusting fuel during the ozone season, inclusive of any year[, except during periods of start-up or shutdown]:~~

4.4.1 except during periods of *start-up* or *shutdown*, if the control of NOx emissions during these periods is shown not to be technically feasible in the emissions control plan submitted in accordance with paragraph 4.3.1 of this regulation; or

4.4.2 including periods of *start-up* and *shutdown*, if the control of NOx emissions during these periods is shown to be technically feasible in the emissions control plan submitted in accordance with paragraph 4.3.1 of this regulation.]

4.5 Compliance with the NOx emissions limitations of paragraph 4.1 and Table I of this regulation, or alternate NOx emissions limitations approved by the Department in accordance with paragraph 4.3.4 of this regulation, are based on one hour averaging periods.

~~xxx/2007 07/11/2007]~~

5.0 Monitoring and Reporting.

5.1 For existing stationary combustion turbine electric generating units with an ozone season capacity factor of 10% or less for each of the five calendar years preceding ~~insert the effective date of this regulation July 11, 2007~~, compliance emissions testing acceptable to the Department shall be conducted by the owner or operator in the calendar ~~[year before each calendar year for which the operating permit expires years representing successive 5-year intervals from the calendar year in which the initial compliance test was conducted in accordance with paragraph 4.3.3 of this regulation].~~

5.2 For existing combustion turbine electric generating units with an ozone season capacity factor greater than 10% for any of the five calendar years preceding ~~insert the effective date of this regulation, compliance emissions testing acceptable to the Department shall be conducted by the owner or operator every two years, starting in the second calendar year after insert the effective date of this regulation. July 11, 2007:~~

5.2.1 **Compliance emissions testing acceptable to the Department shall be conducted by the owner or operator every two years following the calendar year in which the initial compliance test was conducted in accordance with paragraph 4.3.3 of this regulation.**

5.2.2 **If an existing combustion turbine electric generating unit's ozone season capacity factor drops below 10% for 5 consecutive years, the owner or operator may petition the Department to reduce the compliance testing frequency to 5 years.]**

5.3 For existing combustion turbine electric generating units in compliance with paragraph 5.1 of this regulation but which have an ozone season capacity factor of greater than 10% for any year subsequent to ~~insert the effective date of this regulation July 11, 2007~~, compliance emissions testing acceptable to the Department shall be conducted by the owner or operator every two years, starting in the calendar year after the year that the 10% ozone season capacity factor was exceeded.

5.4 The owner or operator of an existing combustion turbine electric generating unit shall submit to the Department, for approval, a monitoring plan containing monitoring information correlating control system parameters or other operating characteristic indications with NOx emissions output.

5.4.1 The correlations may be developed using actual emissions test data and parameters and characteristics recommended by the combustion turbine electric generating unit manufacturer, emission control equipment supplier, or other operating experience. The correlations shall address the entire anticipated operating load range of the combustion turbine electric generating unit.

5.4.2 This information may be used by the Department to monitor compliance with this regulation.

5.4.3 Representative data shall be continuously collected and recorded ~~[for any period that while] the combustion turbine electric generating unit combusts any fuel [during the ozone season].~~

5.4.4 The approved monitoring information shall be annually submitted to the Department no later than February 1 of the year following the calendar year for which the data is collected, and shall also include detailed explanations for any periods **[during the ozone season]** where the monitored operating parameters were outside acceptable margins and include descriptions of corrective actions taken.

5.5 The provisions of paragraphs 5.1, 5.2, 5.3 and 5.4 of this regulation are not applicable to existing stationary combustion turbine electric generating units which are otherwise required to install, test, operate, and maintain NOx continuous emissions monitoring system in accordance with Department or EPA requirements for continuous emissions monitoring systems meeting all applicable requirements of 40 CFR Part 60 or 40 CFR Part 75 (July 1, 2006 edition).

5.6 The owner or operator of an existing stationary combustion turbine electric generating unit shall maintain an operating log **[during the ozone season]** that includes, on a daily basis, actual start-up and shutdown times, total hours of operation, gross electrical megawatt-hours generated, fuel consumption, type of fuel(s), identification of any periods operating outside the monitoring parameters identified in paragraph 5.4 of this regulation (where applicable), identification of any periods of non-compliance with the requirements of this regulation, cumulative-to-date hours of operation and gross electrical megawatt-hours generated, and any other

information requested by the *Department*. This data shall be submitted annually to the *Department* no later than February 1 of the year following the calendar year for which the data is collected.

~~[xx/xx/2007 07/11/2007]~~

6.0 Recordkeeping. The owner or operator of a *stationary combustion turbine electric generating unit* subject to this regulation shall maintain, for a period of at least five years, copies of all measurements, tests, reports, operating logs, and other information required by this regulation. This information shall be provided to the *Department* upon request at any time.

~~[xx/xx/2007 07/11/2007]~~

7.0 Penalties. The *Department* may enforce all of the provisions of this regulation under 7 **Del. C.**, Chapter 60.

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

1800 Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners

Statutory Authority: 24 Delaware Code, Section 1806(a)(2) (24 **Del.C.** §1806(a)(2))
24 **DE Admin. Code** 1800

ORDER

The Board of Plumbing, Heating, Ventilation, Air Conditioning, and Refrigeration Examiners ("Board") was established to protect the general public from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered by the professions under its purview. The Board was further established to maintain minimum standards of practitioner competency and delivery of services to the public. The Board is authorized by 24 **Del.C.** §1806(a)(2) to make, adopt, amend, and repeal regulations as necessary to effectuate those objectives.

Pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** §1806(a)(2), proposed changes and additions to its regulations. By those changes and additions, the Board established the process and requirements for obtaining the Master HVACR license and the Master HVACR Restricted license, as those terms are defined in 24 **Del.C.** §1802(11) and (12), respectively. Various non-substantive structural, grammatical, typographic, and stylistic changes are also included.

Pursuant to 29 **Del.C.** §10115, notice of the public hearing and a copy of the proposed regulatory changes was published in the *Delaware Register of Regulations*, Volume 10, Issue 11, at page 1680 on May 1, 2007.

Summary of the Evidence and Information Submitted

No relevant written or verbal comments were received.

Findings of Fact

The Board finds that adoption of the proposed amendments and additions is necessary to provide for the new HVACR licensure process.

Decision and Effective Date

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

Text and Citation

The text of the final regulations is attached hereto and is formatted to show the amendments. A non-marked up version of the regulations as amended is attached hereto.

IT IS SO ORDERED this 12th day of June, 2007, by the **Delaware Board of Plumbing, Heating, Ventilation, Air Conditioning, and Refrigeration Examiners**.

Robert Briccotto, Jr., Chairperson	William Walker
Joseph Downs	Marvin Sharp
Carol Guilbert, Secretary	Shirley Good
Bruce Collins	Frank Beebe

1800 Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners

* Please note that no changes were made to the regulation as originally proposed and published in the May 2007 issue of the *Register* at page 1680 (10 DE Reg. 1680). Therefore, the final regulation is not being republished. Please refer to the May 2007 issue of the *Register* or contact the Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners for more information.

A complete set of the rules and regulations for the Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners is available at:

<http://regulations.delaware.gov/AdminCode/title24/1800%20Board%20of%20Plumbing%20Examiners.shtml#TopOfPage>

DIVISION OF PROFESSIONAL REGULATION**2900 Real Estate Commission**

Statutory Authority: 24 Delaware Code, Section 2905(a)(1) (24 **Del.C.** §2905(a)(1))
24 **DE Admin. Code** 2900

ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on May 10, 2007 at a scheduled meeting of the Delaware Real Estate Commission to receive comments regarding the proposed changes its rules and regulations to allow clarify and simplify the online renewal process, to eliminate a provision regarding the assessment of delinquency fees, to implement House Bill 122, with House Amendment No. 1 and Senate Amendment No 1 of the 143rd General Assembly, and to eliminate the regulations regarding out of state land sales, which are no longer regulated by the Commission after the enactment of Senate Bill 370 of the 143rd General Assembly. The proposed changes to the Commission's rules and regulations were published in the *Register of Regulations*, Vol. 10, Issue 10, April 1, 2007.

The Commission's authority to promulgate rules and regulations implementing or clarifying specific sections of Chapter 29 of Title 24 is set forth in 24 **Del.C.** §2905(a)(1).

Summary of the Evidence and Information Submitted

No written comments were received. Four members of the public spoke at the May 10, 2006 meeting. Three of the four went on the record to state that they were in favor of the proposed rule changes. The fourth member of the public stated that he would hold his comments, as they did not directly relate to the proposed rule changes.

Findings of Fact with Respect to the Evidence and Information Submitted

The Commission carefully reviewed and considered the proposed changes to its rules and regulations. Pursuant to Section 2905(a)(1), the Commission has the authority adopt regulations that are not inconsistent with the law and that are necessary to carry out the law. The revisions to Regulation 8.0 clarify the process for license renewal and streamline the process both for licensees and for the Division of Professional Regulation. The deletion of the delinquency fee provision in Regulation 8.2 is necessary because the Division of Professional Regulation sets all fees, as provided in Section 8725(c) of Title 29 of the Delaware Code. The revisions to Regulation 10.0 are necessary to implement House Bill 122, as amended by House Amendment No. 1 and Senate Amendment No. 1, which was enacted by the 143rd General Assembly. These revisions provide that the Commission will adopt the required Consumer Information Statement for use with respect to the purchase or sale of one-to-four family residential dwellings and provide the CIS on the Commission's website for use by licensees. The revisions also require that the relationship between a client and a licensee must be identified and confirmed in the contract for the real estate transaction. Finally, the deletion of Regulation 14.0, related to out-of-state land sales and promotions, is necessary because, after the passage of Senate Bill 370 by the 143rd General Assembly, the Commission no longer regulates these transactions.

Decision and Effective Date

The Commission hereby adopts the change to its rules and regulations to be effective 10 days following publication of this Order in the *Register of Regulations*.

Text and Citation

The text of the rule remains as published in *Register of Regulations*, Vol. 10, Issue 10, April 1, 2007, as attached hereto.

SO ORDERED this 15th day of June, 2007.

DELAWARE REAL ESTATE COMMISSION

James C. Brannon, Vice-Chairperson

Denise R. Stokes, Public Member

Harry W. Kreger, Professional Member

James L. Givens, Professional Member

Gilbert Emory, Public Member

Christopher J. Whitfield, Professional Member

*** Please note that no changes were made to the regulation as originally proposed and published in the April 2007 issue of the *Register* at page 1554 (10 DE Reg. 1554). Therefore, the final regulation is not being republished. Please refer to the April 2007 issue of the *Register* or contact the Real Estate Commission for more information.**

**A complete set of the rules and regulations for the Real Estate Commission are available at:
[http://regulations.delaware.gov/AdminCode/title24/
 2900%20Real%20Estate%20Commission.shtml#TopOfPage](http://regulations.delaware.gov/AdminCode/title24/2900%20Real%20Estate%20Commission.shtml#TopOfPage)**

DIVISION OF PROFESSIONAL REGULATION

3300 Board of Veterinary Medicine

Statutory Authority: 24 Delaware Code, Section 3306(a) (24 Del.C. §3306(a))

24 DE Admin. Code 3300

ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on May 8, 2007 at a scheduled meeting of the Board of Veterinary Medicine to receive comments regarding

proposed amendments to Rule 9.0 *Continuing Education for Veterinarians* and Rule 14.0 *Continuing Education for Veterinary Technicians* of its rules and regulations.

The proposed amendments are for the purpose of allowing and facilitating online continuing education attestation by Veterinarians and Veterinary Technicians. Documentation of having completed the required continuing education must still be maintained by the licensee but it will only be required to be produced in the event the licensee is randomly selected for continuing education audit.

The proposed amendments to the regulations were published in the *Register of Regulations*, Vol. 10, Issue 10, on April 1, 2007.

Summary of the Evidence and Information Submitted

No written comments were received. No members of the public attended the hearing.

Findings of Fact and Conclusions

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board Rule 9.0 *Continuing Education for Veterinarians* and Rule 14.0 *Continuing Education for Veterinary Technicians* of its rules and regulations. The Board received no written or verbal comments on the proposed amendments.

2. The Board finds that the proposed amendments to the rules and regulations are necessary to allow for verification of completion of continuing education consistent on online.

3. Pursuant to 24 **Del.C.** §3306 the Board has statutory authority to promulgate regulations clarifying specific statutory sections of its statute. The amendments to Rule 9.0 *Continuing Education for Veterinarians* and Rule 14.0 *Continuing Education for Veterinary Technicians* clarify the provisions of 24 **Del.C.** §3306 with regard to continuing education requirements.

Decision and Effective Date

The Board hereby adopts the changes to Rule 9.0 *Continuing Education for Veterinarians* and Rule 14.0 *Continuing Education for Veterinary Technicians* to be effective 10 days following publication of this order in the Register of Regulations.

Text and Citation

The text of the revised rules remains as published in the *Register of Regulations*, Vol. 10, Issue 10, April 1, 2007, as attached hereto.

SO ORDERED this 12th day of June, 2007.

STATE BOARD OF VETERINARY MEDICINE

Erin Vicari, V.M.D., President
Professional Member, New Castle County

Jeff Booth, V.M.D
Professional Member, Kent County

Craig Metzner, D.V.M.
Professional Member, Sussex County

Lena Corder
Public Member, Kent County

3300 Board of Veterinary Medicine

* Please note that no changes were made to the regulation as originally proposed and published in the April 2007 issue of the *Register* at page 1557 (10 DE Reg. 1557). Therefore, the final regulation is not being republished. Please refer to the April 2007 issue of the *Register* or contact the Board of Veterinary Medicine for more information.

A complete set of the rules and regulations for the Board of Veterinary Medicine are available at:
[http://regulations.delaware.gov/AdminCode/title24/
3300%20Board%20of%20Veterinary%20Medicine.shtml#TopOfPage](http://regulations.delaware.gov/AdminCode/title24/3300%20Board%20of%20Veterinary%20Medicine.shtml#TopOfPage)

Office of the State Bank Commissioner

Statutory Authority: 5 Delaware Code, Section 121(b) (5 Del.C. §121(b))
5 DE Admin. Code 2107/2208

ORDER Adopting New Regulation 2107/2208

IT IS HEREBY ORDERED, this 12th day of June, 2007, that new Regulation 2107/2208 is adopted as a regulation of the State Bank Commissioner. A copy of Regulation 2107/2208 is attached hereto and incorporated herein by reference. The effective date of Regulation 2107/2208 is July 11, 2007. The Regulation is adopted by the State Bank Commissioner in accordance with Title 5 of the Delaware Code.

New Regulation 2107/2208 is adopted pursuant to the requirements of Chapter 11 and 101 of Title 29 of the Delaware Code, as follows:

1. Notice of proposed new Regulation 2107/2208 and its text was published in the May 1, 2007 issue of the *Delaware Register of Regulations*. The notice also was published in The News Journal on May 15, 2007 and in the Delaware State News on May 16, 2007, and was mailed to all persons who had made timely written requests to the Office of the State Bank Commissioner for advance notice of its regulation-making proceedings. The notice included, among other things, a summary of the proposed new regulation, invited interested persons to submit written comments to the Office of the State Bank Commissioner on or before June 6, 2007, and stated that the proposed new regulation was available for inspection at the Office of the State Bank Commissioner, that copies were available upon request, and that a public hearing would be held on June 6, 2007 at 10:00 a.m. at the Office of the State Bank Commissioner in Dover, Delaware.

2. No written comments about the proposed new regulation were received on or before June 6, 2007.

3. A public hearing was held on June 6, 2007 at 10:00 a.m. regarding proposed new Regulation 2106/2208. The State Bank Commissioner, Thomas J. Curry, member of the Board of Directors of the Federal Deposit Insurance Corporation, Lisa Roy of the FDIC, Leslie Pappas of The News Journal and a court reporter attended the hearing. No other persons were present. The State Bank Commissioner summarized the proposed new regulation and Director Curry spoke in favor of its adoption. No other comments were made or received at the hearing.

4. After review and consideration, the State Bank Commissioner hereby adopts new Regulation 2107/2208 as proposed.

June 12, 2007

Robert A. Glen, State Bank Commissioner

Regulation 2107/2208 Guidance On Nontraditional Mortgage Product Risks
5 Del.C. §2110(a), §2210(a)

Effective Date: [July 11, 2007]

1.0 Introduction and Background

1.1 On October 4, 2006, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA) (collectively, the Agencies) published final guidance in the Federal Register (Volume 71, Number 192, Page 58609-58618) on nontraditional mortgage product risks ("interagency guidance"). The interagency guidance applies to all banks and their subsidiaries, bank holding companies and their nonbank subsidiaries, savings associations and their subsidiaries, savings and loan holding companies and their subsidiaries, and credit unions.

1.1.1 The Delaware State Bank Commissioner (the “Commissioner”) strongly supports the purpose of the guidance adopted by the Agencies and is committed to promote uniform application of its consumer protections for all borrowers.

1.1.2 The following guidance will promote consistent regulation in the mortgage market and clarify how mortgage brokers and mortgage companies (referred to as “providers”) not affiliated with a bank holding company or an insured financial institution can offer nontraditional mortgage products in a way that clearly discloses the risks that borrowers may assume.

1.1.3 In order to maintain regulatory consistency, this guidance substantially mirrors the interagency guidance, except for the deletion of sections not applicable to non-depository institutions.

1.2 The Agencies developed their guidance to address risks associated with the growing use of mortgage products that allow borrowers to defer payment of principal and, sometimes, interest. These products, referred to variously as “nontraditional,” “alternative,” or “exotic” mortgage loans (hereinafter referred to as nontraditional mortgage loans), include “interest-only” mortgages and “payment option” adjustable-rate mortgages. These products allow borrowers to exchange lower payments during an initial period for higher payments during a later amortization period.

1.3 While similar products have been available for many years, the number of institutions and providers offering them has expanded rapidly. At the same time, these products are offered to a wider spectrum of borrowers who may not otherwise qualify for more traditional mortgages. The Commissioner is concerned that some borrowers may not fully understand the risks of these products. While many of these risks exist in other adjustable-rate mortgage products, the concern of the Commissioner is elevated with nontraditional products because of the lack of principal amortization and potential for negative amortization. In addition, providers are increasingly combining these loans with other features that may compound risk. These features include simultaneous second-lien mortgages and the use of reduced documentation in evaluating an applicant’s creditworthiness.

1.4 Residential mortgage lending has traditionally been a conservatively managed business with low delinquencies and losses and reasonably stable underwriting standards. In the past few years consumer demand has been growing, particularly in high priced real estate markets, for closed-end residential mortgage loan products that allow borrowers to defer repayment of principal and, sometimes, interest. These mortgage products, herein referred to as nontraditional mortgage loans, include such products as “interest-only” mortgages where a borrower pays no loan principal for the first few years of the loan and “payment option” adjustable-rate mortgages (ARMs) where a borrower has flexible payment options with the potential for negative amortization.¹

1.5 While some providers have offered nontraditional mortgages for many years with appropriate risk management, the market for these products and the number of providers offering them has expanded rapidly. Nontraditional mortgage loan products are now offered by more lenders to a wider spectrum of borrowers who may not otherwise qualify for more traditional mortgage loans and may not fully understand the associated risks.

1.6 Many of these nontraditional mortgage loans are underwritten with less stringent income and asset verification requirements (“reduced documentation”) and are increasingly combined with simultaneous second-lien loans.² Such risk layering, combined with the broader marketing of nontraditional mortgage loans, exposes providers to increased risk relative to traditional mortgage loans.

1.7 Given the potential for heightened risk levels, management should carefully consider and appropriately mitigate exposures created by these loans. To manage the risks associated with nontraditional mortgage loans, management should:

1.7.1 Ensure that loan terms and underwriting standards are consistent with prudent lending practices, including consideration of a borrower’s repayment capacity; and

1.7.2 Ensure that consumers have sufficient information to clearly understand loan terms and associated risks prior to making a product choice.

1. Interest-only and payment option ARMs are variations of conventional ARMs, hybrid ARMs, and fixed rate products. Refer to the Appendix for additional information on interest-only and payment option ARM loans. This guidance does not apply to reverse mortgages; home equity lines of credit (“HELOCs”), other than as discussed in the Simultaneous Second-Lien Loans section; or fully amortizing residential mortgage loan products.

2. Refer to the Appendix for additional information on reduced documentation and simultaneous second-lien loans.

1.8 The Commissioner expects providers to effectively assess and manage the risks associated with nontraditional mortgage loan products.

1.9 Providers should use this guidance to ensure that risk management practices adequately address these risks. The Commissioner will carefully scrutinize risk management processes, policies, and procedures in this area. Providers that do not adequately manage these risks will be asked to take remedial action.

1.10 The focus of this guidance is on the higher risk elements of certain nontraditional mortgage products, not the product type itself. Providers with sound underwriting, and adequate risk management will not be subject to criticism merely for offering such products.

2.0 Loan Terms and Underwriting Standards

2.1 When a provider offers nontraditional mortgage loan products, underwriting standards should address the effect of a substantial payment increase on the borrower's capacity to repay when loan amortization begins.

2.2 Central to prudent lending is the internal discipline to maintain sound loan terms and underwriting standards despite competitive pressures. Providers are strongly cautioned against ceding underwriting standards to third parties that have different business objectives, risk tolerances, and core competencies. Loan terms should be based on a disciplined analysis of potential exposures and compensating factors to ensure risk levels remain manageable.

2.3 Qualifying Borrowers -- Payments on nontraditional loans can increase significantly when the loans begin to amortize. Commonly referred to as payment shock, this increase is of particular concern for payment option ARMs where the borrower makes minimum payments that may result in negative amortization. Some providers manage the potential for excessive negative amortization and payment shock by structuring the initial terms to limit the spread between the introductory interest rate and the fully indexed rate. Nevertheless, a provider's qualifying standards should recognize the potential impact of payment shock, especially for borrowers with high loan-to-value (LTV) ratios, high debt-to-income (DTI) ratios, and low credit scores. Recognizing that a provider's underwriting criteria are based on multiple factors, a provider should consider these factors jointly in the qualification process and may develop a range of reasonable tolerances for each factor. However, the criteria should be based upon prudent and appropriate underwriting standards, considering both the borrower's characteristics and the product's attributes.

2.3.1 For all nontraditional mortgage loan products, a provider's analysis of a borrower's repayment capacity should include an evaluation of their ability to repay the debt by final maturity at the fully indexed rate,³ assuming a fully amortizing repayment schedule.⁴ In addition, for products that permit negative amortization, the repayment analysis should be based upon the initial loan amount plus any balance increase that may accrue from the negative amortization provision.⁵

2.3.2 Furthermore, the analysis of repayment capacity should avoid over-reliance on credit scores as a substitute for income verification in the underwriting process. The higher a loan's credit risk, either from

3. The fully indexed rate equals the index rate prevailing at origination plus the margin that will apply after the expiration of an introductory interest rate. The index rate is a published interest rate to which the interest rate on an ARM is tied. Some commonly used indices include the 1-Year Constant Maturity Treasury Rate (CMT), the 6-Month London Interbank Offered Rate (LIBOR), the 11th District Cost of Funds (COFI), and the Moving Treasury Average (MTA), a 12-month moving average of the monthly average yields of U.S. Treasury securities adjusted to a constant maturity of one year. The margin is the number of percentage points a lender adds to the index value to calculate the ARM interest rate at each adjustment period. In different interest rate scenarios, the fully indexed rate for an ARM loan based on a lagging index (e.g., MTA rate) may be significantly different from the rate on a comparable 30-year fixed-rate product. In these cases, a credible market rate should be used to qualify the borrower and determine repayment capacity.

4. The fully amortizing payment schedule should be based on the term of the loan. For example, the amortizing payment for a loan with a 5-year interest only period and a 30-year term would be calculated based on a 30-year amortization schedule. For balloon mortgages that contain a borrower option for an extended amortization period, the fully amortizing payment schedule can be based on the full term the borrower may choose.

loan features or borrower characteristics, the more important it is to verify the borrower's income, assets, and outstanding liabilities.

2.4 Collateral-Dependent Loans -- Providers should avoid the use of loan terms and underwriting practices that may heighten the need for a borrower to rely on the sale or refinancing of the property once amortization begins. Loans to individuals who do not demonstrate the capacity to repay, as structured, from sources other than the collateral pledged may be unfair and abusive.⁶ Providers that originate collateral-dependent mortgage loans may be subject to criticism and corrective action.

2.5 Risk Layering -- Providers that originate or purchase mortgage loans that combine nontraditional features, such as interest only loans with reduced documentation or a simultaneous second-lien loan, face increased risk. When features are layered, a provider should demonstrate that mitigating factors support the underwriting decision and the borrower's repayment capacity. Mitigating factors could include higher credit scores, lower LTV and DTI ratios, significant liquid assets, mortgage insurance or other credit enhancements. While higher pricing is often used to address elevated risk levels, it does not replace the need for sound underwriting.

2.6 Reduced Documentation -- Providers increasingly rely on reduced documentation, particularly unverified income, to qualify borrowers for nontraditional mortgage loans. Because these practices essentially substitute assumptions and unverified information for analysis of a borrower's repayment capacity and general creditworthiness, they should be used with caution. As the level of credit risk increases, it is expected that a provider will more diligently verify and document a borrower's income and debt reduction capacity. Clear policies should govern the use of reduced documentation. For example, stated income should be accepted only if there are mitigating factors that clearly minimize the need for direct verification of repayment capacity. For many borrowers, providers generally should be able to readily document income using recent W-2 statements, pay stubs, or tax returns.

2.7 Simultaneous Second-Lien Loans -- Simultaneous second-lien loans reduce owner equity and increase credit risk. Historically, as combined loan-to-value ratios rise, so do defaults. A delinquent borrower with minimal or no equity in a property may have little incentive to work with a lender to bring the loan current and avoid foreclosure. In addition, second-lien home equity lines of credit (HELOCs) typically increase borrower exposure to increasing interest rates and monthly payment burdens. Loans with minimal or no owner equity generally should not have a payment structure that allows for delayed or negative amortization without other significant risk mitigating factors.

2.8 Introductory Interest Rates -- Many providers offer introductory interest rates set well below the fully indexed rate as a marketing tool for payment option ARM products. When developing nontraditional mortgage product terms, a provider should consider the spread between the introductory rate and the fully indexed rate. Since initial and subsequent monthly payments are based on these low introductory rates, a wide initial spread means that borrowers are more likely to experience negative amortization, severe payment shock, and an earlier-than-scheduled recasting of monthly payments. Providers should minimize the likelihood of disruptive early recastings and extraordinary payment shock when setting introductory rates.

2.9 Lending to Subprime Borrowers -- Providers of mortgage programs that target subprime borrowers through tailored marketing, underwriting standards, and risk selection should ensure that such programs do not feature terms that could become predatory or abusive. They should also recognize that risk-layering features in loans to subprime borrowers may significantly increase risks for both the provider and the borrower.

2.10 Non-Owner-Occupied Investor Loans -- Borrowers financing non-owner-occupied investment properties should qualify for loans based on their ability to service the debt over the life of the loan. Loan terms should reflect an appropriate combined LTV ratio that considers the potential for negative amortization and

5. The balance that may accrue from the negative amortization provision does not necessarily equate to the full negative amortization cap for a particular loan. The spread between the introductory or "teaser" rate and the accrual rate will determine whether or not a loan balance has the potential to reach the negative amortization cap before the end of the initial payment option period (usually five years). For example, a loan with a 115 percent negative amortization cap but a small spread between the introductory rate and the accrual rate may only reach a 109 percent maximum loan balance before the end of the initial payment option period, even if only minimum payments are made. The borrower could be qualified based on this lower maximum loan balance.

6. A loan will not be determined to be "collateral-dependent" solely through the use of reduced documentation.

maintains sufficient borrower equity over the life of the loan. Further, underwriting standards should require evidence that the borrower has sufficient cash reserves to service the loan, considering the possibility of extended periods of property vacancy and the variability of debt service requirements associated with nontraditional mortgage loan products.

3.0 Risk Management Practices

3.1 Providers should ensure that risk management practices keep pace with the growth of nontraditional mortgage products and changes in the market. Providers that originate or invest in nontraditional mortgage loans should adopt more robust risk management practices and manage these exposures in a thoughtful, systematic manner. To meet these expectations, providers should:

3.1.1 Develop written policies that specify acceptable product attributes, production, sales and securitization practices, and risk management expectations; and

3.1.2 Design enhanced performance measures and management reporting that provide early warning for increasing risk.

3.2 Policies -- A provider's policies for nontraditional mortgage lending activity should set acceptable levels of risk through its operating practices and policy exception tolerances. Policies should reflect appropriate limits on risk layering and should include risk management tools for risk mitigation purposes. Further, a provider should set growth and volume limits by loan type, with special attention for products and product combinations in need of heightened attention due to easing terms or rapid growth.

3.3 Concentrations -- Providers with concentrations in nontraditional mortgage products should have well-developed monitoring systems and risk management practices. Further, providers should consider the effect of employee and third party incentive programs that could produce higher concentrations of nontraditional mortgage loans. Concentrations that are not effectively managed will be subject to elevated supervisory attention and potential examiner criticism to ensure timely remedial action.

3.4 Controls -- A provider's quality control, compliance, and audit procedures should focus on mortgage lending activities posing high risk. Controls to monitor compliance with underwriting standards and exceptions to those standards are especially important for nontraditional loan products. The quality control function should regularly review a sample of nontraditional mortgage loans from all origination channels and a representative sample of underwriters to confirm that policies are being followed. When control systems or operating practices are found deficient, business-line managers should be held accountable for correcting deficiencies in a timely manner.

3.5 Third-Party Originations -- Providers often use third parties, such as mortgage brokers or correspondents, to originate nontraditional mortgage loans. Providers should have strong systems and controls in place for establishing and maintaining relationships with third parties, including procedures for performing due diligence. Oversight of third parties should involve monitoring the quality of originations so that they reflect the provider's lending standards and compliance with applicable laws and regulations.

3.5.1 Monitoring procedures should track the quality of loans by both origination source and key borrower characteristics. This will help providers identify problems such as early payment defaults, incomplete documentation, and fraud. If appraisal, loan documentation, credit problems or consumer complaints are discovered, the provider should take immediate action. Remedial action could include more thorough application reviews, more frequent re-underwriting, or even termination of the third-party relationship.

3.6 Secondary Market Activity -- The sophistication of a provider's secondary market risk management practices should be commensurate with the nature and volume of activity. Providers with significant secondary market activities should have comprehensive, formal strategies for managing risks. Contingency planning should include how the provider will respond to reduced demand in the secondary market.

3.6.1 While third-party loan sales can transfer a portion of the credit risk, a provider remains exposed to reputation risk when credit losses on sold mortgage loans or securitization transactions exceed expectations. As a result, a provider may determine that it is necessary to repurchase defaulted mortgages to protect its reputation and maintain access to the markets.

4.0 Consumer Protection Issues

4.1 While nontraditional mortgage loans provide flexibility for consumers, the Commissioner is concerned that consumers may enter into these transactions without fully understanding the product terms. Nontraditional mortgage products have been advertised and promoted based on their affordability in the near term:

that is, their lower initial monthly payments compared with traditional types of mortgages. In addition to apprising consumers of the benefits of nontraditional mortgage products, providers should take appropriate steps to alert consumers to the risks of these products, including the likelihood of increased future payment obligations. This information should be provided in a timely manner—before disclosures may be required under the Truth in Lending Act or other laws—to assist the consumer in the product selection process.

4.2 Concerns and Objectives -- More than traditional ARMs, mortgage products such as payment option ARMs and interest-only mortgages can carry a significant risk of payment shock and negative amortization that may not be fully understood by consumers. For example, consumer payment obligations may increase substantially at the end of an interest-only period or upon the “recast” of a payment option ARM. The magnitude of these payment increases may be affected by factors such as the expiration of promotional interest rates, increases in the interest rate index, and negative amortization. Negative amortization also results in lower levels of home equity as compared to a traditional amortizing mortgage product. When borrowers go to sell or refinance the property, they may find that negative amortization has substantially reduced or eliminated their equity in it even when the property has appreciated. The concern that consumers may not fully understand these products would be exacerbated by marketing and promotional practices that emphasize potential benefits without also providing clear and balanced information about material risks.

4.2.1 In light of these considerations, communications with consumers, including advertisements, oral statements, promotional materials, and monthly statements should provide clear and balanced information about the relative benefits and risks of these products, including the risk of payment shock and the risk of negative amortization. Clear, balanced, and timely communication to consumers of the risks of these products will provide consumers with useful information at crucial decision-making points, such as when they are shopping for loans or deciding which monthly payment amount to make. Such communication should help minimize potential consumer confusion and complaints, foster good customer relations, and reduce legal and other risks to the provider.

4.3 Legal Risks -- Providers that offer nontraditional mortgage products must ensure that they do so in a manner that complies with all applicable laws and regulations. With respect to the disclosures and other information provided to consumers, applicable laws and regulations include the following:

4.3.1 Truth in Lending Act (TILA) and its implementing regulation, Regulation Z.

4.3.2 Section 5 of the Federal Trade Commission Act (FTC Act).

4.4 TILA and Regulation Z contain rules governing disclosures that providers must provide for closed-end mortgages in advertisements, with an application,⁷ before loan consummation, and when interest rates change. Section 5 of the FTC Act prohibits unfair or deceptive acts or practices.

4.5 Other federal laws, including the fair lending laws and the Real Estate Settlement Procedures Act (RESPA), also apply to these transactions. Moreover, the sale or securitization of a loan may not affect a provider's potential liability for violations of TILA, RESPA, the FTC Act, or other laws in connection with its origination of the loan. State laws, including laws regarding unfair or deceptive acts or practices, may apply.

5.0 Recommended Practices

Recommended practices for addressing the risks raised by nontraditional mortgage products include the following.⁸

5.1 Communications with Consumers -- When promoting or describing nontraditional mortgage products, providers should give consumers information that is designed to help them make informed decisions when selecting and using these products. Meeting this objective requires appropriate attention to the timing, content, and clarity of information presented to consumers. Thus, providers should give consumers information at a time that will help consumers select products and choose among payment options. For example, providers

7. These program disclosures apply to ARM products and must be provided at the time an application is provided or before the consumer pays a nonrefundable fee, whichever is earlier.

8. Providers also should review the recommendations relating to mortgage lending practices set forth in other supervisory guidance from their respective primary regulators, as applicable, including guidance on abusive lending practices.

should offer clear and balanced product descriptions when a consumer is shopping for a mortgage—such as when the consumer makes an inquiry to the provider about a mortgage product and receives information about nontraditional products, or when marketing relating to nontraditional mortgage products is given by the provider to the consumer—not just upon the submission of an application or at consummation.⁹ The provision of such information would serve as an important supplement to the disclosures currently required under TILA and Regulation Z or other laws.¹⁰

5.1.1 Promotional Materials and Product Descriptions -- Promotional materials and other product descriptions should provide information about the costs, terms, features, and risks of nontraditional mortgages that can assist consumers in their product selection decisions, including information about the matters discussed below.

5.1.1.1 Payment Shock -- Providers should apprise consumers of potential increases in payment obligations for these products, including circumstances in which interest rates or negative amortization reach a contractual limit. For example, product descriptions could state the maximum monthly payment a consumer would be required to pay under a hypothetical loan example once amortizing payments are required and the interest rate and negative amortization caps have been reached.¹¹ Such information also could describe when structural payment changes will occur (e.g., when introductory rates expire, or when amortizing payments are required), and what the new payment amount would be or how it would be calculated. As applicable, these descriptions could indicate that a higher payment may be required at other points in time due to factors such as negative amortization or increases in the interest rate index.

5.1.1.2 Negative Amortization -- When negative amortization is possible under the terms of a nontraditional mortgage product, consumers should be apprised of the potential for increasing principal balances and decreasing home equity, as well as other potential adverse consequences of negative amortization. For example, product descriptions should disclose the effect of negative amortization on loan balances and home equity, and could describe the potential consequences to the consumer of making minimum payments that cause the loan to negatively amortize. (One possible consequence is that it could be more difficult to refinance the loan or to obtain cash upon a sale of the home.)

5.1.1.3 Prepayment Penalties -- If the provider may impose a penalty in the event that the consumer prepays the mortgage, consumers should be alerted to this fact and to the need to ask the lender about the amount of any such penalty.

5.1.1.4 Cost of Reduced Documentation Loans -- If a provider offers both reduced and full documentation loan programs and there is a pricing premium attached to the reduced documentation program, consumers should be alerted to this fact.

5.1.2 Monthly Statements on Payment Option ARMs -- Monthly statements that are provided to consumers on payment option ARMs should provide information that enables consumers to make informed payment choices, including an explanation of each payment option available and the impact of that choice on loan balances. For example, the monthly payment statement should contain an explanation, as applicable, next to the minimum payment amount that making this payment would result in an increase to the consumer's outstanding loan balance. Payment statements also could provide the consumer's current loan balance, what portion of the consumer's previous payment was allocated to principal and to interest, and, if applicable, the amount by which the

9. Providers also should strive to: (1) focus on information important to consumer decision making; (2) highlight key information so that it will be noticed; (3) employ a user-friendly and readily navigable format for presenting the information; and (4) use plain language, with concrete and realistic examples. Comparative tables and information describing key features of available loan products, including reduced documentation programs, also may be useful for consumers considering the nontraditional mortgage products and other loan features described in this guidance.

10. Providers may not be able to incorporate all of the practices recommended in this guidance when advertising nontraditional mortgages through certain forms of media, such as radio, television, or billboards. Nevertheless, providers should provide clear and balanced information about the risks of these products in all forms of advertising.

11. Consumers also should be apprised of other material changes in payment obligations, such as balloon payments.

principal balance increased. Providers should avoid leading payment option ARM borrowers to select a non-amortizing or negatively-amortizing payment (for example, through the format or content of monthly statements).

5.1.3 Practices to Avoid -- Providers also should avoid practices that obscure significant risks to the consumer. For example, if a provider advertises or promotes a nontraditional mortgage by emphasizing the comparatively lower initial payments permitted for these loans, the provider also should give clear and comparably prominent information alerting the consumer to the risks. Such information should explain, as relevant, that these payment amounts will increase, that a balloon payment may be due, and that the loan balance will not decrease and may even increase due to the deferral of interest and/or principal payments. Similarly, providers should avoid promoting payment patterns that are structurally unlikely to occur.¹² Such practices could raise legal and other risks for providers.

5.1.3.1 Providers also should avoid such practices as: giving consumers unwarranted assurances or predictions about the future direction of interest rates (and, consequently, the borrower's future obligations); making one-sided representations about the cash savings or expanded buying power to be realized from nontraditional mortgage products in comparison with amortizing mortgages; suggesting that initial minimum payments in a payment option ARM will cover accrued interest (or principal and interest) charges; and making misleading claims that interest rates or payment obligations for these products are "fixed."

5.2 Control Systems -- Providers should develop and use strong control systems to monitor whether actual practices are consistent with their policies and procedures relating to nontraditional mortgage products. Providers should design control systems to address compliance and consumer information concerns as well as the risk management considerations discussed in this guidance. Lending personnel should be trained so that they are able to convey information to consumers about the product terms and risks in a timely, accurate, and balanced manner. As products evolve and new products are introduced, lending personnel should receive additional training, as necessary, to continue to be able to convey information to consumers in this manner. Lending personnel should be monitored to determine whether they are following these policies and procedures. Providers should review consumer complaints to identify potential compliance, reputation, and other risks. Attention should be paid to appropriate legal review and to using compensation programs that do not improperly encourage lending personnel to direct consumers to particular products.

5.2.1 With respect to nontraditional mortgage loans that a provider makes, purchases, or services using a third party, such as a mortgage broker, correspondent, or other intermediary, the provider should take appropriate steps to mitigate risks relating to compliance and consumer information concerns discussed in this guidance. These steps would ordinarily include, among other things, (1) conducting due diligence and establishing other criteria for entering into and maintaining relationships with such third parties, (2) establishing criteria for third-party compensation designed to avoid providing incentives for originations inconsistent with this guidance, (3) setting requirements for agreements with such third parties, (4) establishing procedures and systems to monitor compliance with applicable agreements, policies, and laws, and (5) implementing appropriate corrective actions in the event that the third party fails to comply with applicable agreements, policies, or laws.

APPENDIX

Interest-Only Mortgage Loan -- A nontraditional mortgage on which, for a specified number of years (e.g., three or five years), the borrower is required to pay only the interest due on the loan during which time the rate may fluctuate or may be fixed. After the interest-only period, the rate may be fixed or fluctuate based on the prescribed index and payments include both principal and interest.

Payment Option ARM -- A nontraditional mortgage that allows the borrower to choose from a number of different payment options. For example, each month, the borrower may choose a minimum payment option based on a "start" or introductory interest rate, an interest-only payment option based on the fully indexed interest rate, or a

12. For example, marketing materials for payment option ARMs may promote low predictable payments until the recast date. Such marketing should be avoided in circumstances in which the minimum payments are so low that negative amortization caps would be reached and higher payment obligations would be triggered before the scheduled recast, even if interest rates remain constant.

fully amortizing principal and interest payment option based on a 15-year or 30-year loan term, plus any required escrow payments. The minimum payment option can be less than the interest accruing on the loan, resulting in negative amortization. The interest-only option avoids negative amortization but does not provide for principal amortization. After a specified number of years, or if the loan reaches a certain negative amortization cap, the required monthly payment amount is recast to require payments that will fully amortize the outstanding balance over the remaining loan term.

Reduced Documentation -- A loan feature that is commonly referred to as “low doc/no doc,” “no income/no asset,” “stated income” or “stated assets.” For mortgage loans with this feature, a provider sets reduced or minimal documentation standards to substantiate the borrower’s income and assets.

Simultaneous Second-Lien Loan -- A lending arrangement where either a closed-end second-lien or a home equity line of credit (HELOC) is originated simultaneously with the first lien mortgage loan, typically in lieu of a higher down payment.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

Secretary's Order No. 2007-A-0021

Delaware State Implementation Plan For Attainment Of The 8-Hour Ozone National Ambient Air Quality Standard

Date of Issuance: June 13, 2007

Effective Date: June 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 is required by EPA's regulations known as the National Ambient Air Quality Standard ("NAAQS"). In April 2004, EPA designated 126 areas as "non-attainment" in meeting NAAQS's 8-hour ozone rule, including the Philadelphia-Wilmington-Atlantic City area. This area, including all of Delaware, was classified as moderate non-attainment. The EPA regulation requires that this area attain the 8-hour ozone NAAQS by 2010.

Ground level ozone is a principal component of the air quality condition commonly known as smog. Ozone poses a major health risk, particularly to children, the elderly and anyone with impaired ability to breathe. The precursors of ozone formation are oxides of nitrogen ("NOx"), volatile organic compounds ("VOCs") and carbon monoxide ("CO"). EPA's regulations require that the Department periodically submits to EPA various SIP revisions for EPA's review and approval.

The Department's technical experts within the Division of Air and Waste Management, Air Quality Management Section, along with consultants, prepared two extensively researched studies to submit as SIP revisions to comply with the EPA regulations. These studies were based upon extensive data from air monitoring and air emission sources. One study, entitled proposed "2002 Base Year Ozone State Implementation Plan's Emissions Inventory for Volatile Organic Compounds, Nitrogen Oxides, and Carbon Monoxide for the State of Delaware" sets forth in a comprehensive detail the sources of ozone forming pollution in Delaware. The study relied on source emissions data and computer modeling of air emissions, weather conditions, and numerous other factors to determine the level of emissions in the base year 2002.

The second study was the proposed plan entitled "Delaware State Implementation Plan for Attainment of the 8-Hour Ozone National Ambient Air Quality Standard (Reasonable Further Progress and Attainment Demonstration)." This study demonstrated the regulatory actions being undertaken in Delaware, and actions taken by other areas within the modeling domain achieve sufficient VOC and NOx emission reductions in 2009, thus enabling the State and the entire moderate non-attainment area to meet the 8-hour ozone NAAQS by 2010. This study concluded that the regulatory actions taken will allow Delaware to meet the 8-hour ozone NAAQS in 2010. On May 1, 2007, the Department provided public notice of the two studies and held a public hearing on May 24, 2007 in order to receive public comments. One person from the public attended the hearing but did not make any comment. Prior to the May 24, 2007 public hearing, the EPA provided written comments, the Department responded to these comments, and as a result made several non-substantive changes to the SIP revisions. Ron Amirikian, David Fees, and Mohammed Majeed of the Department's Division of Air and Waste Management, Air Quality Management Section developed the record at the hearing.

Based upon the public record, the Department's presiding hearing officer, Robert P. Haynes, recommended that the Department approve the two SIP revisions. I agree that the proposed SIP revisions should be approved as the Department's final plans and submitted to the EPA to comply with the CAA and EPA's CAA regulations.

In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary hereby approves as reasonable studies adequately supported by considerable technical expertise: a) "2002 Base Year Ozone State

GENERAL NOTICES

Implementation Plan's Emissions Inventory for Volatile Organic Compounds, Nitrogen Oxides, and Carbon Monoxide for the State of Delaware," and b) "Delaware State Implementation Plan for Attainment of the 8-Hour Ozone National Ambient Air Quality Standard (Reasonable Further Progress and Attainment Demonstration)" in their final versions as introduced into the May 24, 2007 public hearing record.

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 plans.

John A. Hughes, Secretary

***Please Note: Due to the size of the notice, it is not being published here. To obtain a copy, contact either the Department Natural Resources and Environmental Control or the Registrar's Office. An authenticated version of this regulation - certified by the Office of the Registrar of Regulations to be complete and unaltered, is available at:**

Delaware State Implementation Plan For Attainment Of The 8-Hour Ozone National Ambient Air Quality Standard

DEPARTMENT OF STATE Division of Professional Regulation

4400 Delaware Manufactured Home Installation Board

Statutory Authority: 24 Delaware Code, Section 4416(b)(1) (24 Del.C. §4416(b)(1))

24 DE Admin. Code 4400

ORDER

Council On Manufactured Housing Operating Procedures

At its regularly scheduled meeting on April 25, 2007, the Delaware Council on Manufactured Housing adopted the attached operating procedures for the implementation of the Delaware Manufactured Housing Alternative Dispute Resolution Act, 25 Del.C. §7001A. The attached operating procedures were adopted pursuant to Section 10113(b) of the Delaware Administrative Procedures Act and will be final upon filing with the *Delaware Register of Regulations*, in accord with Section 10113.

Decision and Effective Date

The Board hereby adopts the operating procedures attached to this Order, to be effective on the date of filing this with the Registrar of Regulations.

SO ORDERED this 20th day of June, 2007.

DELAWARE ADVISORY COUNCIL ON MANUFACTURED HOUSING

William Reed, Co-Chairperson

Lisa Lewandowski

Frank Trabucco

Richard Maly

Ryan Class

Marion Fetterman

Fred Neil

State of Delaware Advisory Council on Manufacture Housing Rules of Procedure Governing Submission of Certificates of Agreement to Submit Disputes to Mandatory Non-Binding Mediation

1.0 Procedure for submitting a certificate of agreement to the Council

1.1 A party to an existing dispute or perceived grievance between a manufactured home community

owner and a tenant or group of tenants may submit that dispute to ADR pursuant to 25 **Del.C.** §7001A by completing a certificate of agreement on a form approved by the Council.

1.2 The certificate of agreement shall include the information required by 25 **Del.C.** §7001A(d)(1) as well as the following information:

1.2.1 Information identifying the parties involved in the dispute, including contact information;

1.2.2 A summary of the dispute; and

1.2.3 A summary of the efforts made to resolve the dispute or perceived grievance. If the person filing the certificate feels that he or she could not make efforts to resolve the dispute or perceived grievance, or if such efforts would be frivolous, the person filing the certificate should summarize the reasons for this belief on the form.

1.3 The form must be typewritten or, if handwritten, it must be legible.

1.4 Each certificate of agreement shall be assigned a unique number, issued in numerical order and indicating the year the certificate was submitted. Disputes shall be tracked in the Council's minutes by the assigned number.

2.0 Council procedures upon receipt of a certificate of agreement

2.1 Within ten (10) business days of receipt of a certificate of agreement, the Consumer Protection Unit, on behalf of the Council, shall send a letter to the related party or parties, including a copy of the certificate requesting a response. This information shall be sent by certified mail, return receipt requested.

2.2 Council will provide all parties the opportunity to respond. Any response shall be submitted to the Council within the number of days specified by the Council's letter, but in no event later than 20 business days after the date of mailing.

2.3 The response shall provide the information required by Rule 1.0 above, as applicable.

2.4 At the next Council meeting following the response deadline, the Council may consider the matter as required by 24 **Del.C.** §7001A(f), so long as sufficient time exists to place the item on the agenda in accord with 29 **Del.C.** §10004(e)(2).

2.5 The Council will base its decision solely on the information submitted in writing by the parties. No party to a matter will be permitted to speak regarding the matter at the Council meeting.

2.6 Once the Council has considered and voted upon a matter at a meeting, the Consumer Protection Unit, on Council's behalf, will notify both parties of its recommendation within 5 business days and provide the parties with names of mediators pursuant to Rule 4.0.

3.0 Ex Parte Communications

3.1 No member of the Council who will participate in any way in the rendering of a decision on a matter pending before the Council shall, directly or indirectly, discuss or communicate with any party concerning such matter, except upon notice to and opportunity for all parties to participate. This rule does not apply to communications required for the disposition of ex parte matters authorized by law, or to communications, not otherwise prohibited, by and among members of the Council, Council administrative staff, and Council legal counsel.

4.0 Selection of qualified mediators

4.1 Parties qualified to mediate pursuant to Section 7001A(g) shall notify Council, in writing of their desire to serve as a mediator in disputes submitted to the Council. Qualified mediators may contact Council through the Consumer Protection Unit.

4.2 Council will choose mediators on a rotating basis to the extent possible.

4.3 Council will provide the parties a list of three qualified mediators, if at least three mediators have identified themselves as willing to mediate in these matters. Each party may strike one mediator and the Consumer Protection Unit, on behalf of Council, will inform the mediator and the parties of the identity of the mediator. The mediator then has thirty (30) days to schedule a conference that will be held within ninety (90) days of scheduling as required by Section 7001A(h).

DELAWARE COUNCIL ON POLICE TRAINING**NOTICE OF PUBLIC HEARING****1901 Delaware Council on Police Training**

The Council on Police Training (COPT), in accordance with 11 **Delaware Code** §8404(a)(14) and 29 **Delaware Code** §10115 of the Administrative Procedures Act, hereby gives notice that it shall hold a public hearing on July 24, 2007 at 9:00 a.m., in the first-floor conference room of the Delaware State Police Training Academy, N. DuPont Highway, Dover, Delaware 19903.

The Council on Police Training will receive written comments or oral testimony from interested persons regarding the following regulations to amend current COPT Regulation 8.0 (Re-activation Requirements of Police Officers). The final date for interested persons to submit written comments shall be the date of the public hearing. Written comments should be directed to Captain Ralph H. Davis, III, Director, Delaware State Police Training Academy, P.O. Box 430, Dover, DE19903-0430.

Any person wishing to make written or oral comments who would like a copy of the proposed regulations may contact the COPT at (302) 739-5903, or write to the above address.

DELAWARE RIVER BASIN COMMISSION**NOTICE OF PUBLIC HEARING AND BUSINESS MEETING**

The Delaware River Basin Commission will hold a public hearing and business meeting on Wednesday, July 18, 2007 beginning at 10:15 a.m. at the Commission's offices, 25 State Police Drive, West Trenton, New Jersey. For more information visit the DRBC web site at www.drbc.net or contact Pamela M. Bush, Esq., Commission Secretary and Assistant General Counsel, at 609-883-9500 extension 203.

DEPARTMENT OF AGRICULTURE**DELAWARE FOREST SERVICE****NOTICE OF PUBLIC COMMENT PERIOD****402 State Forest Regulations**

The Department proposes these amendments to the Forest Service's Regulations pursuant to 3 **Del.C.** Sections 1008 and 1011. The purpose of these proposed amendments is to ensure that these publicly owned lands are conserved, protected, and maintained for the benefit of all. These proposals make the State Forest regulations more consistent with similar regulations for other land-managing Delaware agencies.

Copies of the proposed amendments to the regulations may be obtained from the State Forester's Office. The Department will accept written comments from the public on the proposed amendments for thirty (30) days. Public comments should be submitted to Michael Valenti, Assistant Forestry Administrator, on or before 1:00 p.m., July 31, 2007, at the Delaware Department of Agriculture, 2320 South DuPont Highway, Dover, DE, 19901.

DEPARTMENT OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, July 19, 2007 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF DEVELOPMENTAL DISABILITIES****NOTICE OF PUBLIC HEARING****2100 Eligibility Criteria**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware**

Code) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Developmental Disabilities Services (DDDS) is proposing to amend the eligibility criteria related to DDDS services.

Any person who wishes to make written suggestions, compilations of data, written testimony, written briefs or other written materials concerning the proposed new regulations must submit same to Joseph B. Keyes, Ph.D., Applicant Services Unit; Division of Developmental Disabilities Services, 1052 S. Governor's Avenue, Suite 101, Dover, Delaware 19904 or by fax to (302) 744-9711 by July 25, 2007.

A Public Hearing on the proposed new regulation will be held July 30, 2007 at 6:30 P.M. at Delaware Technical College, Terry Campus, Dover, Delaware in Room 427 of the Corporate Training Center building.

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

NOTICE OF PUBLIC HEARING

20330 Countable Resources Computation

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code)** and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend existing rules in the Division of Social Services Manual (DSSM) used to determine eligibility to comply with the transfer of assets provisions mandated by the Deficit Reduction Act (DRA) of 2005 (Public Law 109-171) related to promissory notes, loans and property agreements.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning and Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 (new fax number) by July 31, 2007.

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

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

NOTICE OF PUBLIC HEARING

50300 Referral Process

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code)** and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to amend a rule in the Division of Social Services Manual (DSSM) used to determine eligibility for the Chronic Renal Disease 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 Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 (new fax number) by July 31, 2007.

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

DIVISION OF SOCIAL SERVICES
NOTICE OF PUBLIC HEARING
9004 Non-Discrimination Policy

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM). The proposed changes described below amend the Civil Rights Program policies related to the prohibition of retaliatory acts.

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 (new fax number) by July 31, 2007.

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

DIVISION OF SOCIAL SERVICES
NOTICE OF PUBLIC HEARING
9013 Household Concept

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 definition of household.

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 (new fax number) by July 31, 2007.

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

DEPARTMENT OF INSURANCE
NOTICE OF PUBLIC COMMENT PERIOD
1216 Military Sales Practices

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of intent to adopt proposed Department of Insurance Regulation 1216 relating to the sale of life and annuity insurance products to military personnel. The docket number for this proposed amendment is 393. This proposed Regulation replaces the previous proposed Regulation.

The purpose of the proposed regulation is to set forth standards to protect service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive or unfair. The text of the proposed amendment is reproduced in the May 2007 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.state.de.us/inscom/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:30 p.m., Monday August 6, 2007, and should be

addressed to Mitchell G. Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.2021 or email to mitch.crane@state.de.us.

DEPARTMENT OF INSURANCE**NOTICE OF PUBLIC COMMENT PERIOD****1217 Unfair Discrimination in Life Insurance, Annuities and Health Insurance on the Basis of Physical or Mental Impairment**

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of intent to adopt proposed Department of Insurance Regulation 1217 relating to the Unfair Discrimination in Life Insurance, Annuities and Health Insurance on the Basis of Physical or Mental Impairment. The docket number for this proposed amendment is 396.

The purpose of the proposed regulation is to identify specific acts or practices in life and health insurance which are prohibited by 18 **Del.C.** §2304(13). The text of the proposed amendment is reproduced in the May 2007 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.state.de.us/inscom/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, and compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:30 p.m., Monday June 4, 2007, and should be addressed to Mitchell Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.6278 or email to mitch.crane@state.de.us.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF FISH AND WILDLIFE****NOTICE OF PUBLIC HEARINGS****3900 Wildlife Regulations**

This regulatory change will be presented in one of a series of public hearings on July 31, 2007, beginning at 6:00 p.m., DNREC Auditorium, 89 Kings Highway, Dover, Delaware. The hearing record for these proposed Regulations will remain open until 4:30 PM, Wednesday August 1, 2007. The order of hearings is as follows:

Regulation 3900.13 – Wildlife Rehabilitation Permits

Regulation 3900.1 – Definitions

Regulation 3900.8 – General Rules and Regulations Governing Land and Water Administered by the Division.

Regulation 3900.2 – Method of Take

Regulation 3900.4 – Seasons

Regulation 3900.5 – Wild Turkeys

Regulation 3900.7 – Deer

Regulation 3900.18 – Wanton Waste

Written comments for the hearing record should be addressed to Kenneth Reynolds, 4876 Hay Point Landing Road, Smyrna, DE 19977 or to Kenneth.Reynolds@state.de.us. The record will remain open for written public comment until 4:30 p.m. August 1, 2007.

Prepared By:

Kenneth M. Reynolds, 4876 Hay Point Landing Road, Smyrna, DE 19977

Kenneth.Reynolds@state.de.us

(302) 653-2883

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
200 Board of Landscape Architects
NOTICE OF RESCHEDULED PUBLIC HEARING

The Delaware Board of Landscape Architects in accordance with 24 **Del.C.** §205 has proposed amendments to rule 6.0 *Renewal of Licenses* and rule 7.0 *Continuing Education as a Condition of Biennial Renewal* of its rules and regulations. The proposed amendments enable licensees to renew their licenses online and attest that they have completed the required continuing education. Documentation of having completed the required continuing education must still be maintained by the licensee but it will only be required to be produced in the event the licensee is randomly selected for continuing education audit post renewal.

The public hearing originally scheduled for February 8, 2007 at 9:15 a.m. will be held on August 9, 2007 at 9:15 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Landscape Architects, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

DIVISION OF PROFESSIONAL REGULATION
1400 Board of Electrical Examiners
NOTICE OF RESCHEDULED PUBLIC HEARING

The Delaware Board of Electrical Examiners, in accordance with 29 **Del.C.** Chapter 101 and 24 **Del.C.** §1406(a)(1), proposed amendments to its regulation 7.0 relating to licensure renewal. Specifically, the amendments to 7.0 Expiration and Renewal would require licensees to provide the name of their insurer and their policy number when they attest to maintenance of their required liability insurance during the renewal process. The amendments would also require licensees to provide course names and approval numbers when they attest to completion of their required continuing education during the renewal process. Minor grammatical, typographic, or stylistic changes may also be included.

Pursuant to 29 **Del.C.** §10115, notice of the public hearing and a copy of the proposed regulatory changes was published in the *Delaware Register of Regulations*, Volume 10, Issue 9, page 998 on March 1, 2007. However, notice was not published in two (2) Delaware newspapers of general circulation, as required by 29 **Del.C.** §10115, so the public hearing could not be conducted on April 4, 2007 as originally scheduled. The public hearing has been rescheduled for September 5, 2007.

A public hearing will be held on the proposed regulatory changes on Wednesday, September 5, 2007 at 8:30 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Board care of Judy Letterman at the above address. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed changes or to make comments at the public hearing should contact Judy Letterman by calling (302) 744-4526.

The Board will consider promulgating the proposed regulations immediately following the public hearing.

DIVISION OF PROFESSIONAL REGULATION
3600 Board of Registration of Geologists
NOTICE OF PUBLIC HEARING

The Delaware Board of Geologists in accordance with 24 **Del.C.** §3606 has proposed a number of amendments its rules and regulations. The proposed amendments move current Rule 2.0 Code of Ethics and

renumber it as new Rule 10.0. A new Rule 2.0 Procedures for Licensure clarifies the application process and requirements for initial licensure and licensure by reciprocity. Rule 6.0 Continuing Education has been amended to further delineate the maximum allowable continuing education credit that may be claimed in the specific categories set forth in Rule 6.8. The amendments also specify the documentation required in order to receive continuing education credit. Existing Rule 8.0 Reciprocity has been deleted and incorporated into the new Rule 2.0 Procedures for Licensure. A new Rule 8.0 Voluntary Treatment Option for Chemically Dependent of Impaired Professionals has been added.

A public hearing will be held on August 3, 2007 at 10:15 a.m. in the second floor conference room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Geologists, 861 Silver Lake Blvd, Cannon Building, Suite 203, Dover, DE 19904. Persons wishing to submit written comments may forward these to the Board at the above address. The final date to receive written comments will be at the public hearing.

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

DEPARTMENT OF TRANSPORTATION**DIVISION OF PLANNING AND POLICY****NOTICE OF PUBLIC HEARING****Standards and Regulations for Subdivision Streets and State Highway Access**

The Delaware Department of Transportation through its Planning Division has developed revised regulations for access to State-maintained roads and for planning, design, construction, and acceptance for maintenance of subdivision streets. These regulations, Standards and Regulations for Subdivision Streets and State Highway Access, revise, update, and consolidate the Rules and Regulations for Subdivision Streets, enacted in December 1981, and the Standards and Regulations for Access to State Highways, enacted in August 1983. These regulations define the requirements which apply to:

- New subdivisions and land development
- Changed or expanded subdivisions and land development
- Any new access on to a State-maintained road
- Modifications to an existing access
- Assessment of the impacts of traffic
- Off-site improvements

A public hearing will be held on July 26, 2007 at the DeIDOT Administration Building in the Farmington/Felton Room from 4:00 pm until 7:00 pm.

The Department will take comments on the Regulations from July 1, 2007 through August 6, 2007.

Any requests for copies of the Regulations, or any questions or comments regarding these Regulations should be directed to:

Theodore Bishop, Assistant Director of Planning
Delaware Department of Transportation
PO Box 778
Dover, DE 19903
(302) 760-2122 (telephone)
(302) 739-2251 (fax)
theodore.bishop@state.de.us