
Delaware Register of Regulations

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Final

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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 March 16, 2009.

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

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

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

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

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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.

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evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its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on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The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

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

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

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.

When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
May 1	April 15	4:30 p.m.
June 1	May 15	4:30 p.m.
July 1	June 15	4:30 p.m.
August 1	July 15	4:30 p.m.
September 1	August 17	4:30 p.m.

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Public Service Commission	
3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standards Act (Opened August 23, 2005).....	12 DE Reg. 291 (Prop.)
	12 DE Reg. 1110 (Final)
Docket No. 49: The Creation of a Competitive Market for Real Electric Supply Service	12 DE Reg. 518 (Final)
Docket No. 61: Adoption of Rules to Establish an Intrastate Gas Pipeline Safety Compliance Program.....	12 DE Reg. 655 (Prop.)
DEPARTMENT OF TRANSPORTATION	
Office of the Secretary	
2101 Freedom of Information Act (FOIA).....	12 DE Reg. 245 (Final)
Division of Motor Vehicles	
2213 Emergency Vehicle Operators, Age of EVO Permit Holders.....	12 DE Reg. 777 (Prop.)
	12 DE Reg. 1114 (Final)
2221 Use of Translators.....	12 DE Reg. 77 (Final)
2222 School Bus Driver Qualifications and Endorsements.....	12 DE Reg. 196 (Prop.)
	12 DE Reg. 519 (Final)
Division of Transportation Solutions	
Revisions to the Delaware Manual on Uniform Traffic Control Devices, Parts 1, 7, 8, and 9.....	12 DE Reg. 79 (Final)
Revisions to the Delaware Manual on Uniform Traffic Control Devices, Parts 2, 3 and 6.....	12 DE Reg. 56 (Prop.)
	12 DE Reg. 358 (Final)
EXECUTIVE DEPARTMENT	
Delaware Economic Development Office	
454 Procedures Governing Delaware Tourism Grant Program.....	12 DE Reg. 661 (Prop.)
	12 DE Reg. 978 (Final)

STATE BOARD OF PENSION TRUSTEES

The Delaware Public Employees' Retirement System

State Employees' Pension Plan, State Police Pension Plan, State Judiciary
Pension Plan, County Municipal Employees' Pension Plan, and County and
Municipal Police/Firefighter Pension Plan..... 12 **DE Reg.** 359 (Final)

STATE EMPLOYEES BENEFIT COMMITTEE

2001 Group Health Care Insurance Eligibility and Coverage Rules 12 **DE Reg.** 986 (Final)

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.

DEPARTMENT OF AGRICULTURE HARNESS RACING COMMISSION

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

PUBLIC NOTICE

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to change its Rule 10. The Commission will hold a public hearing on the proposed rule changes on May 12, 2009. Written comments should be sent to Hugh J. Gallagher, Administrator of Harness Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901. Written comments will be accepted for thirty (30) days from the date of publication in the *Register of Regulations* on April 1, 2009.

The proposed changes are for the purpose of updating Rule 10 to reflect current policies, practices and procedures. Copies are published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml. A copy is also available for inspection at the Harness Racing Commission office.

501 Harness Racing Rules and Regulations

(Break in Continuity of Sections)

10.0 Due Process and Disciplinary Action

10.1 General Provisions

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

10.2 Proceedings by ~~State Steward~~ Presiding Judge or Judges

10.2.1 Rights of the Licensee

A person who is the subject of the disciplinary hearing conducted by the ~~State Steward~~ or judges is entitled to:

- 10.2.1.1 Proper notice of all charges;
- 10.2.1.2 Confront the evidence presented, including:
 - 10.2.1.2.1 the right to counsel at the person's expense;
 - 10.2.1.2.2 the right to examine all evidence to be presented against him;
 - 10.2.1.2.3 the right to present a defense;
 - 10.2.1.2.4 the right to call witnesses; and
 - 10.2.1.2.5 the right to cross examine witnesses.
- 10.2.1.3 Waive any of the above rights.
- 10.2.2 Complaints
 - 10.2.2.1 A complaint must be in writing and filed with the ~~State Steward~~ Presiding Judge or judges within 30 days after the action that is the subject of the complaint.
 - 10.2.2.2 On their own motion or on receipt of a complaint from an official or other person regarding the actions of a licensee, the ~~State Steward~~ Presiding Judge or judges may conduct an inquiry and disciplinary hearing regarding a licensee's actions.
- 10.2.3 Summary Suspension
 - 10.2.3.1 If the ~~State Steward or judges~~ Board of Judges determines that a licensee's actions, other than those of a licensed ~~a~~ Association, constitute an immediate danger to the public health, safety or welfare, the ~~State Steward or judges~~ Board of Judges the Commission Investigator, may summarily suspend the license pending a hearing.
 - 10.2.3.2 A licensee whose license has been summarily suspended is entitled to a hearing on the summary suspension not later than the third racing day after the license was summarily suspended. The licensee may waive his right to a hearing on the summary suspension within the three-day limit.
 - 10.2.3.3 The ~~State Steward or judges~~ Board of Judges shall conduct a hearing on a summary suspension in the same manner as other disciplinary hearings. At a hearing on a summary suspension, the sole issue is whether the licensee's license should remain suspended pending a final disciplinary hearing and ruling.
- 10.2.4 Notice
 - 10.2.4.1 Except as provided by these rules regarding summary suspensions, the ~~State Steward or judges~~ Board of Judges shall provide written notice at least 24 hours before the hearing to a person who is the subject of a disciplinary hearing. The person may waive his right to 24-hour notice by executing a written waiver.
 - 10.2.4.2 Notice given under this section must include:
 - 10.2.4.2.1 a statement of the time, place and nature of the hearing;
 - 10.2.4.2.2 a reference to the particular sections of the statutes or rules involved; and
 - 10.2.4.2.3 a short, plain description of the alleged conduct that has given rise to the disciplinary hearing.
 - 10.2.4.3 If possible, the ~~State Steward or his designee, or the judges~~ Board of Judges or their designee shall hand deliver the written notice of the disciplinary hearing to the person who is the subject of the hearing. If hand delivery is not possible, the ~~State Steward or judges~~ Board of Judges shall mail the notice to the person's last known address, as found in the Commission's licensing files, by regular mail and by certified mail, return receipt requested. If the disciplinary hearing involves an alleged medication violation that could result in the disqualification of a horse, the ~~State Steward~~ Board of Judges shall provide written or oral notice of the hearing to the owner, managing owner or lessee of the horse. Oral notice of any hearing shall suffice upon attestation by the ~~State Steward~~ Board of Judges that such notice was given the person who is the subject of the hearing.
 - 10.2.4.4 Nonappearance of a summoned party after adequate notice shall be construed as a waiver of the right to a hearing before the ~~State Steward or judges~~ Board of Judges. The ~~State Steward or judges~~ Board of Judges may suspend the license of a person who fails to

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appear at a disciplinary hearing after written or oral notice of the hearing has been sent or delivered in compliance with this subsection.

10.2.5 Continuances

10.2.5.1 Upon receipt of a notice, a person may request a continuance of the hearing.

10.2.5.2 The ~~State Steward or judges~~ Board of Judges may grant a continuance of any hearing for good cause shown.

10.2.5.3 The ~~State Steward or judges~~ Board of Judges may at any time order a continuance on their own motion.

10.2.6 Evidence

10.2.6.1 Each witness at a disciplinary hearing conducted by the ~~State Steward or judges~~ Board of Judges must be sworn by the ~~State Steward or~~ presiding judge.

10.2.6.2 The ~~State Steward or judges~~ Board of Judges shall allow a full presentation of evidence and are not bound by the technical rules of evidence. However, the ~~State Steward or judges~~ Board of Judges may disallow evidence that is irrelevant or unduly repetitive of other evidence. The ~~State Steward or judges~~ Board of Judges shall have the authority to determine, in their sole discretion, the weight and credibility of any evidence and/or testimony. The ~~State Steward or judges~~ Board of Judges may admit hearsay evidence if the ~~State Steward or judges~~ it determines the evidence is of a type that is commonly relied on by reasonably prudent people. The rules of privilege recognized by Delaware law apply in hearings before the ~~State Steward or judges~~ Board of Judges.

10.2.6.3 The burden of proof is on the person bringing the complaint to show, by a preponderance of the evidence, that the licensee has violated or is responsible for a violation of the Act or a Commission rule.

10.2.6.4 The ~~State Steward or judges~~ Board of Judges shall make a tape recording of a disciplinary hearing. A copy or a transcript of the recording may be made available at the expense of the requesting person.

10.2.7 Ruling

10.2.7.1 The issues at a disciplinary hearing shall be decided by ~~the State Steward or~~ by a majority vote of the Board of Judges.

10.2.7.2 A ruling by the ~~State Steward or judges~~ Board of Judges must be on a form prescribed by the Commission and include:

10.2.7.2.1 the full name, ~~social security number, year date of birth, last record address, and~~ license type and license number of the person who is the subject of the hearing;

10.2.7.2.2 a statement of the charges against the person, including a reference to the specific section of the Act or rules of the Commission that the licensee is found to have violated;

10.2.7.2.3 the date of the hearing and the date the ruling was issued;

10.2.7.2.4 the penalty imposed;

10.2.7.2.5 any changes in the order of finish or purse distribution;

10.2.7.2.6 other information required by the Commission; and

10.2.7.2.7 the right to appeal to the Commission.

10.2.7.3 A ruling must be signed by the ~~State Steward or~~ Presiding Judge on behalf of the Board of Judges. ~~by a majority of the judges, as the case may be.~~

10.2.7.4 Upon request, the ~~State Steward or his designee, or the judges~~ Board of Judges or their designee shall hand deliver or mail a copy of the ruling to the person who is the subject of the ruling. If hand delivery is not possible, the ~~State Steward or judges~~ Board of Judges shall mail the ruling to the person's last known address, as found in the Commission's licensing files, by regular mail. ~~and by certified mail, return receipt requested.~~ A copy of the ruling shall be sent to the Association of Racing Commissioners International, and if the ruling includes the disqualification of a horse, the ~~State Steward or judges~~ Board of

- Judges shall provide a copy of the ruling to the horsemen's bookkeeper, breed registry(ies) and other regulatory agencies, and shall notify the United States Trotting Association, in the manner provided by this subsection.
- 10.2.7.5 At the time the ~~State Steward or judges~~ Board of Judges informs a person who is the subject of the proceeding of the ruling, ~~the State Steward or judges~~ it shall inform the person of the person's right to appeal the ruling to the Commission.
- 10.2.7.6 All fines imposed by the ~~State Steward or judges~~ Board of Judges shall be paid to the Commission within ten (10) days after the ruling is issued, unless otherwise ordered.
- 10.2.8 Effect of Rulings
- 10.2.8.1 Rulings against a licensee apply to another person if continued participation in an activity by the other person would circumvent the intent of a ruling by permitting the person to serve, in essence, as a substitute for the ineligible licensee.
- 10.2.8.2 The transfer of a horse to avoid application of a Commission rule or ruling is prohibited.
- 10.2.8.3 The horses of a trainer issued a full suspension (or under appeal of a full suspension) shall not be transferred for the purposes of training to a spouse, family member, assistant, current employee/employer, or household member. All trainer and owner transfers of horses from parties under a full suspension (or parties under appeal of a full suspension) to other owners or trainers must be approved by the DHRC judges or the DHRC Administrator. (See also 5.2.1.6 - 5.3.3.6.)
- 10.2.9 Appeals
- 10.2.9.1 A person aggrieved by a ruling of the ~~State Steward, judges~~ Board of Judges, or the Administrator of the Breeder's Program may appeal to the Commission except as provided in subdivision 10.2.9.6 of this subsection. A person who fails to file an appeal by the deadline in the form required by this section waives the right to appeal. Appeals of decisions to deny or suspend registrations by the Administrator of the Breeder's Program may be appealed to the Delaware Harness Racing Commission within thirty days of the action by the Administrator of the Breeder's Program, subject to the same rules and procedures for handling appeals under these Rules. For purposes of appeals from decisions of the Administrator of the Breeder's Program, the Commission will take official notice of the rules and regulations enacted by the Delaware Standardbred Breeders' Fund.
- 10.2.9.2 An appeal under this section must be filed with the ~~State Steward~~ Presiding Judge not later than 48 hours after the publishing of the ruling. The appeal must be accompanied by a deposit in the amount of ~~\$250, \$400, or an amount as determined by the Commission from time to time~~, plus an amount to be determined from time to time by the Commission for the cost of the court reporter's fee's and attendance plus the costs for providing notice of the appeal. ~~Unless the Commission determines the appeal to be meritorious, either by reversing the decision of the State Steward or judges or by reducing the penalty imposed, the appeal deposit shall not be repaid to the appellant.~~ In no event shall the advance payment of the court reporters fee deposit for the appeal be refunded.
- 10.2.9.3 An appeal must be in writing on a form prescribed by the Commission. The appeal must include:
- 10.2.9.3.1 the name, address, telephone number and signature of the person making the appeal; and
- 10.2.9.3.2 a statement of the basis for the appeal.
- 10.2.9.4 On notification by the Commission that an appeal has been filed, the ~~State Steward or judges~~ Board of Judges shall forward to the Commission the record of the proceeding on which the appeal is based.
- 10.2.9.5 If a person against whom a fine has been assessed timely files an appeal of the ruling that assesses the fine, the person need not immediately pay the fine in accordance with these rules.

10.2.9.6 A notice of appeal filed with the Commission pursuant to these rules may be accompanied by a request for a stay pending a final decision by the Commission. In his discretion the ~~State Steward~~ Presiding Judge may approve such stay requests unless he determines that granting the stay would be adverse to the best interests of racing or inimical to the integrity of the sport. If the ~~State Steward~~ Presiding Judge denies a stay request, the appellant may submit a written request to the Commission, in which case the Chairman of the Commission in his discretion may grant or deny the request.

10.3 Proceedings by the Commission

10.3.1 Party Designations

10.3.1.1 A person who is the subject of a disciplinary hearing, who filed an appeal from a ~~State Steward's or judges'~~ Board of Judges's ruling, or who otherwise seeks relief from the Commission, is a party to that proceeding.

10.3.1.2 A party to a proceeding has the right to present a direct case, cross-examine each witness, submit legal arguments and otherwise participate fully in the proceeding.

10.3.1.3 A party summoned to appear at a hearing must appear unless he is excused by the Commission presiding officer. Parties may appear with counsel licensed to practice law in Delaware, or, with the Commission's approval, counsel licensed to practice law in another jurisdiction provided that such out-of-state counsel associates with a Delaware attorney.

10.3.1.4 A non-party to a proceeding who wishes to appear in a contested case pending before the Commission must prove that he has an effected interest sufficient to create standing in the case. The burden of proof is on the party asserting standing in such a contested case.

10.3.2 Notice

10.3.2.1 Not less than seven (7) days before the date set for a hearing, the Commission shall serve written or oral notice on each party of record to the proceeding. The person may waive his right to said notice by executing a written waiver. Oral notice shall suffice upon attestation by the ~~State Steward~~ Presiding Judge or other process server that he personally gave such notice to the person who is the subject of the hearing.

10.3.2.2 If hand delivery or oral notice by the ~~State Steward~~ Presiding Judge is not possible, the Commission shall mail the notice to the person's last known address, as found in the Commission's licensing files, by regular mail and by personal service or certified mail, return receipt requested.

10.3.2.3 A notice of the hearing must include:

10.3.2.3.1 a statement of time, place and nature of the hearing;

10.3.2.3.2 a reference to the particular sections of the statutes and rules involved; and

10.3.2.3.3 a short, plain statement of the matters asserted.

10.3.2.4 If the Commission determines that a material error has been made in a notice of hearing, or that a material change has been made in the nature of a proceeding after notice has been issued, the Commission shall issue a revised notice.

10.3.2.5 A party to a proceeding may move to postpone the proceeding. Unless waived by the Commission, the motion must be in writing, set forth the specific grounds on which it is sought and be filed with the Commission before the date set for hearing. If the person presiding over the proceeding grants the motion for postponement, the Commission shall cause new notice to be issued.

10.3.2.6 After a hearing has begun, the presiding officer may grant a continuance on oral or written motion, without issuing new notice, by announcing the date, time and place for reconvening the hearing before recessing the hearing.

10.3.3 Subpoenas

10.3.3.1 A member of the Commission, the ~~Director of Poultry and Animal Health~~ Administrator of Racing, the ~~State Steward or judges'~~ Board of Judges, the Commission Investigator, or the presiding officer of a Commission proceeding or other person authorized to perform duties

under the Act may require by subpoena the attendance of witnesses and the reproduction of books, records, papers, correspondence and other documents.

10.3.3.2 The presiding officer of a Commission proceeding or other person authorized by the Commission may administer an oath or affirmation to a witness appearing before the Commission or a person authorized by the Commission.

10.3.3.3 Each party is responsible for proper service of any subpoenas it requests and for the payment of witness fees and expenses as provided by Delaware law.

10.3.3.4 On written request by a party, the presiding officer may issue a subpoena addressed to a sheriff or any constable to require the attendance of witnesses and the production of books, records, papers or other objects as may be necessary and proper for the purposes of a proceeding. A motion for a subpoena to compel the production of books, records, papers or other objects shall be addressed to the appropriate person, shall be verified and shall specify the books, records, papers or other objects desired and the relevant and material facts to be proved by them.

10.3.4 Conferences

10.3.4.1 On written notice, the presiding officer may, on the officer's own motion or on the motion of a party, direct each party to appear at a specified time and place for a prehearing conference to formulate issues and consider any of the following:

10.3.4.1.1 simplifying issues;

10.3.4.1.2 amending the pleadings;

10.3.4.1.3 making admissions of fact or stipulations to avoid the unnecessary introduction of proof;

10.3.4.1.4 designating parties;

10.3.4.1.5 setting the order of procedure at a hearing;

10.3.4.1.6 identifying and limiting the number of witnesses;

10.3.4.1.7 resolving other matters that may expedite or simplify the disposition of the controversy, including settling issues in dispute; and

10.3.4.1.8 identifying provisions and mandates of statute or rules relating to the issues.

10.3.4.2 The presiding officer shall record the action taken at the prehearing conference unless the parties enter into a written agreement as to the action. The presiding officer may enter appropriate orders concerning prehearing discovery, stipulations of uncontested matters, presentation of evidence and scope of inquiry.

10.3.4.3 During a hearing, on written notice or notice stated into the record, the presiding officer may direct each party or the representative of each party to appear for a conference to consider any matter that may expedite the hearing and serve the interests of justice. The presiding officer shall prepare a written statement regarding the action taken at the conference and the statement must be signed by each party and made a part of the record.

10.3.5 Reporters and Transcripts

10.3.5.1 If necessary, the Commission shall engage a court reporter to make a stenographic record of a hearing. If there are multiple parties, the Commission may allocate the cost of the reporter and transcript among the parties.

10.3.5.2 If a person requests a transcript of the stenographic record, the Commission may assess the cost of preparing the transcript to the person.

10.3.5.3 A party may challenge an error made in transcribing a hearing by noting the error in writing and suggesting a correction not later than 10 days after the date the transcript is filed with the Commission. The party claiming errors shall serve a copy of the suggested corrections on each party of record, the court reporter and the presiding officer. If proposed corrections are not objected to before the tenth day after the date the corrections were filed with the Commission, the presiding officer may direct that the suggested corrections

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be made and the manner of making them. If the parties disagree on the suggested corrections, the presiding officer shall determine whether to change the record.

10.3.6 Nature of Hearings

- 10.3.6.1 An appeal from a decision of the ~~State Steward or judges~~ Board of Judges shall be de novo.
- 10.3.6.2 A hearing in a Commission proceeding is open to the public, provided, however, that witnesses may be sequestered.
- 10.3.6.3 Unless precluded by law or objected to by a party, the Commission may allow informal disposition of a proceeding without a hearing. Informal disposition includes disposition by stipulation, agreed settlement, consent order and default.

10.3.7 Presiding Officers

- 10.3.7.1 A member of the Commission, the ~~Director of Poultry and Animal Health~~ Administrator of Racing, or a Commission appointee may serve as the presiding officer for a Commission proceeding.
- 10.3.7.2 The presiding officer may:
 - 10.3.7.2.1 issue subpoenas to compel the attendance of witnesses and the production of papers and documents;
 - 10.3.7.2.2 administer oaths;
 - 10.3.7.2.3 receive evidence;
 - 10.3.7.2.4 rule on the admissibility of evidence;
 - 10.3.7.2.5 examine witnesses;
 - 10.3.7.2.6 set reasonable times within which a party may present evidence and within which a witness may testify;
 - 10.3.7.2.7 permit and limit oral argument;
 - 10.3.7.2.8 issue interim orders;
 - 10.3.7.2.9 recess a hearing from day to day and place to place;
 - 10.3.7.2.10 request briefs before or after the presiding officer files a report or proposal for decision;
 - 10.3.7.2.11 propose findings of fact and conclusions of law;
 - 10.3.7.2.12 propose orders and decisions; and
 - 10.3.7.2.13 perform other duties necessary to a fair and proper hearing.
- 10.3.7.3 A person serving as the presiding officer of a proceeding must be a disinterested party to the proceeding.

10.3.8 Order of Hearing

- 10.3.8.1 The presiding officer shall open the hearing, make a concise statement of its scope and purposes and announce that a record of the hearing is being made.
- 10.3.8.2 When a hearing has begun, a party or a party's representative may make statements off the record only as permitted by the presiding officer. If a discussion off the record is pertinent, the presiding officer shall summarize the discussion for the record.
- 10.3.8.3 Each appearance by a party, a party's representative or a person who may testify must be entered on the record.
- 10.3.8.4 The presiding officer shall receive motions and afford each party of record an opportunity to make an opening statement.
- 10.3.8.5 Except as otherwise provided by this subsection, the party with the burden of proof is entitled to open and close. The presiding officer shall designate who may open and close in a hearing on a proceeding if the proceeding was initiated by the Commission or if several proceedings are heard on a consolidated record.
- 10.3.8.6 After opening statements, the party with the burden of proof may proceed with the party's direct case. Each party may cross examine each witness.

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- 10.3.8.7 After the conclusion of the direct case of the party having the burden of proof, each other party may present their direct case and their witnesses will be subject to cross examination.
- 10.3.8.8 The members of the Commission and/or the presiding officer may examine any witnesses.
- 10.3.8.9 At the conclusion of all evidence and cross examination, the presiding officer shall allow closing statements.
- 10.3.8.10 Before issuing a decision, the Commission or the presiding officer may call on a party for further relevant and material evidence on a issue. The Commission or the presiding officer may not consider the evidence or allow it into the record without giving each party an opportunity to inspect and rebut the evidence.
- 10.3.9 Behavior
- 10.3.9.1 Each party, witness, attorney or other representative shall behave in all Commission proceedings with dignity, courtesy and respect for the Commission, the presiding officer and all other parties and participants.
- 10.3.9.2 An individual who violates this section may be excluded from a hearing by the presiding officer.
- 10.3.10 Evidence
- 10.3.10.1 All testimony must be given under oath administered by the presiding officer. The presiding officer may limit the number of witnesses and shall exclude all irrelevant, immaterial or unduly repetitious evidence.
- 10.3.10.2 The presiding officer is not bound by the Rules of Evidence, but the rules of privilege recognized by law in Delaware apply in Commission proceedings.
- 10.3.10.3 A party may object to offered evidence and the objection shall be noted in the record. A party, at the time an objection is made or sought, shall make known to the presiding officer the action the party desires. Formal exceptions to rulings by the presiding officer during a hearing are unnecessary.
- 10.3.10.4 When the presiding officer rules to exclude evidence, the party offering the evidence may make an offer of proof by dictating or submitting in writing the substance of the proposed evidence, before the closing of the hearing. The offer of proof preserves the point for review. The presiding officer may ask a witness or offered witness questions necessary to indicate that the witness would testify as represented in the offer of proof. An alleged error in sustaining an objection to questions asked on cross examination is preserved without making an offer of proof.
- 10.3.10.5 The presiding officer may take official notice of judicially cognizable facts and of facts generally recognized within the area of the Commission's specialized knowledge. The Commission shall notify each party of record before the final decision in a proceeding of each specific fact officially noticed, including any facts or other data in staff memoranda. A party must be given an opportunity to rebut the facts to be noticed.
- 10.3.10.6 The special skills and knowledge of the Commission, the Commission staff, and the officials of the Commission may be used in evaluating the evidence.
- 10.3.10.7 The presiding officer may receive documentary evidence in the form of copies or excerpts if the original is not readily available. On request, the presiding officer shall allow a party to compare the copy with the original. If many similar documents are offered in evidence, the presiding officer may limit the documents admitted to a number which are representative of the total number, or may require that the relevant data be abstracted from the documents and presented as an exhibit. If the presiding officer requires an abstract, the presiding officer shall allow each party or the party's representative to examine the documents from which the abstracts are made.
- 10.3.10.8 The presiding officer may require prepared testimony in a hearing if the presiding officer determines that it will expedite the hearing without substantially prejudicing the interests of a party. Prepared testimony consists of any document that is intended to be offered as

evidence and adopted as sworn testimony by a witness who prepared the document or supervised its preparation. A person who intends to offer prepared testimony at a hearing shall prefile the testimony with the Commission on the date set by the presiding officer and shall serve a copy of the prepared testimony on each party of record. The presiding officer may authorize the late filing of prepared testimony on a showing of extenuating circumstances. The prepared testimony of a witness may be incorporated into the record as if read or received as an exhibit, on the witness being sworn and identifying the writing as a true and accurate record of what the testimony would be if the witness were to testify orally. The witness is subject to clarifying questions and to cross examination and the prepared testimony is subject to a motion to strike either in whole or in part.

- 10.3.10.9 The party offering an exhibit shall tender the original of the exhibit to the presiding officer for identification. The party shall furnish one copy to the presiding officer and one copy to each party of record. A document received in evidence may not be withdrawn except with the permission of the presiding officer. If an exhibit has been offered, objected to and excluded and the party offering the exhibit withdraws the offer, the presiding officer shall return the exhibit to the party. If the party does not withdraw the offered exhibit, the exhibit shall be numbered for identification, endorsed by the presiding officer with the ruling on the exhibit and included in the record to preserve the exception.
- 10.3.10.10 The presiding officer may allow a party to offer an exhibit in evidence after the close of the hearing only on a showing of extenuating circumstances and a certificate of service on each party of record.
- 10.3.11 Findings of Fact and Conclusions of Law
- 10.3.11.1 The presiding officer may direct any party to draft and submit proposed findings of fact and conclusions of law or a proposal for decision. The presiding officer may limit the request for proposed findings to a particular issue of fact.
- 10.3.11.2 Proposed findings of fact submitted under this section must be supported by concise and explicit statements of underlying facts developed from the record with specific reference to where in the record the facts appear.
- 10.3.11.3 Only if the presiding officer requires the filing of proposed findings of fact or a proposal for decision is the Commission required to rule on the proposed findings of fact. If a party is permitted but not required to submit proposed findings or a proposal for decision, the Commission is not required to rule on the party's proposed findings.
- 10.3.12 Dismissal
- On its own motion or a motion by a party, the presiding officer may dismiss a proceeding, with or without prejudice, under conditions and for reasons that are just and reasonable, including:
- 10.3.12.1 failure to timely pay all required fees to the Commission;
- 10.3.12.2 unnecessary duplication of proceedings;
- 10.3.12.3 withdrawal;
- 10.3.12.4 moot questions or obsolete petitions; and
- 10.3.12.5 lack of jurisdiction.
- 10.3.13 Orders
- 10.3.13.1 Except as otherwise provided by these rules, the Commission shall issue a final order not later than thirty days after the conclusion of the hearing. A final order of the Commission must be in writing and be signed by a majority of the members of the Commission who voted in favor of the action taken by the Commission. A final order must comply with the requirements of §10128 of the Administrative Procedures Act, and include a brief summary of the evidence, findings of fact based upon the evidence, conclusions of law, and other conclusions required by the Act or by these Rules, and a concise statement of the Commission's determination or action on the matter.
- 10.3.13.2 The Commission staff shall mail or deliver a copy of the order to each party or the party's representative.

- 10.3.13.3 A final order of the Commission takes effect on the date the order is issued, unless otherwise stated in the order.
- 10.3.13.4 If the Commission finds that an imminent peril to the public health, safety or welfare requires an immediate final order in a proceeding, the Commission shall recite that finding in the order in addition to reciting that the order is final from the date issued. An order issued under this subsection is final and appealable from the date issued and a motion for rehearing is not a prerequisite to appeal.
- 10.3.14 Ex Parte Communications
- 10.3.14.1 No Commission member may discuss the merits of a matter which is pending before the Commission prior to a formal hearing, or between the hearing and announcement of the Commission's final decision.
- 10.3.14.2 The Administrative Procedure Act, Title 29 of the **Delaware Code**, Section 10129, pertaining to ex parte communications, is hereby incorporated by reference.
- 10.3.15 Appeals
- Within fifteen (15) days after service of a final adjudication or order of the Commission, or the imposing of a monetary fine, or of an order of the Commission refusing a petition for rehearing or reconsideration, or of an order following a rehearing or reconsideration, any party shall have the right to appeal therefrom to the Superior Court of the State of Delaware, in the manner provided by law and the Rules of that Court.
- 10.4 Rulings in Other Jurisdictions
- 10.4.1 Reciprocity
- The ~~State Steward or judges~~ Board of Judges shall honor rulings from other pari-mutuel jurisdictions regarding license suspensions, revocation or eligibility of horses.
- 10.4.2 Appeals of Reciprocal Rulings
- 10.4.2.1 Persons subject to rulings in other jurisdictions shall have the right to request a hearing before the Commission to show cause why such ruling should not be enforced in Delaware.
- 10.4.2.2 Any request for such hearing must clearly set forth in writing the reasons for the appeal.
- 10.5 Attorneys and Pro hac vice admission
- 10.5.1 Only active members of the Delaware Bar and attorneys admitted pro hac vice pursuant to Rule 10.5.2 may represent any person or otherwise provide legal advice or services at any location licensed by the Commission with respect to matters involving the judges or Commission. Representing a person or otherwise providing legal advice or services means providing any legal service for any other person, firm or corporation, with or without compensation, or providing professional legal advice or services where there is a client relationship of trust or reliance, including acting as an advocate in a representative capacity; drafting pleadings or other documents; or performing any act in such capacity in connection with a prospective or pending proceeding before the judges, any employee of the Commission or Commission.
- 10.5.2 Members of the bar of any other state, district or territory of the United States may be admitted to practice pro hac vice, in compliance with Delaware Supreme Court Rule 72. The out-of-state attorney must have the admission pro hac vice granted by the Commission prior to representing a person or otherwise providing legal advice or services as contemplated by these rules.
- 10.5.3 Admission pro hac vice under this rule is discretionary with the Commission. The Commission is not obligated to admit an applicant pro hac vice nor is the Commission bound by a prior decision to admit an applicant pro hac vice. Admission pro hac vice may be revoked by the Commission in accordance with Delaware Supreme Court Rule 62. Admission pro hac vice will be denied or, if granted, will be revoked if the Commission determines that the process is being used to circumvent the normal requirements for the admission of attorneys to the practice of law in Delaware. Absent good cause shown, the Commission has determined that more than one appearance within a 365-day period indicates that the non-Delaware attorney is engaging in a

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regular practice of law in Delaware and admission pro hac vice will be denied to prevent such situations.

10.5.4 An out-of-state attorney rendering services in Delaware in compliance with this rule or here for other reasons is not authorized by anything in this rule to hold himself or herself out, to non-lawyers who have not requested the out-of-state lawyer's presence, as available to assist in potential suits. Nothing in this rule authorizes out-of-state attorneys to solicit, advertise, or otherwise hold themselves out in publications directed solely to this state as available to assist in litigation in Delaware.

1 DE Reg. 507 (11/01/97)

2 DE Reg. 1243 (01/01/99)

5 DE Reg. 1903 (4/1/02)

12 DE Reg. 1074 (02/01/09)

***Please Note: As the rest of the sections were not amended, they are not being published. A complete set of the rules and regulations for the Harness Racing Commission is available at:**

[501 Harness Racing Rules and Regulations](#)

DEPARTMENT OF LABOR

DIVISION OF INDUSTRIAL AFFAIRS

OFFICE OF WORKERS' COMPENSATION

Statutory Authority: 19 Delaware Code, Section 2322B (19 Del.C. §2322B)

1341 Workers' Compensation Regulations

1342 Health Care Practice Guidelines

PUBLIC NOTICE

The Secretary of Labor, in accordance with 19 Del.C. §§2322B, C, E, and F, has proposed revisions to the rules and regulations relating to the Delaware Workers' Compensation Health Care Payment System. These proposals revise the Fee Schedule Instructions and Guidelines, Utilization Review, and Forms regulations; and add a 6th Practice Guideline, "Cervical", to the regulations.

A public hearing will be held before the Health Care Advisory Panel ("Panel") at 4:00 p.m. on May 4, 2009, in the Department of Labor Fox Valley Annex, 4425 N. Market Street, Wilmington, Delaware 19802 where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules may obtain a copy from John Kirk, Deputy Director, Division of Industrial Affairs, Department of Labor, P.O. Box 9954, 4425 N. Market Street, Wilmington, Delaware, 19809-9954. Persons wishing to submit written comments may forward these to the Panel at the above address. The final date to receive written comments will be at the public hearing.

The Panel will consider making a recommendation to the Secretary at the regularly scheduled meeting following the public hearing.

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

1341 Workers' Compensation Regulations:

[1341 Workers' Compensation Regulations](#)

PART F CERVICAL TREATMENT GUIDELINES:

[1342 Health Care Practice Guidelines](#)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

TANK MANAGEMENT BRANCH

Statutory Authority: 7 Delaware Code, Chapters 60 and 74 (7 Del.C. Ch. 60 & 74)
7 DE Admin. Code 1351

SAN # 2008-20 and 2008-23

1. Title of the Regulations:

1351 Delaware Regulations Governing Underground Storage Tank Systems

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

The Delaware Regulations Governing Underground Storage Tank Systems were first effective July 11, 1986. The most recent revision date is January 11, 2008. The DNREC is proposing changes to the UST Regulations to incorporate federal requirements, to add clarifying language, and to ensure the greatest protection of human health, safety and the environment in Delaware.

The changes to the Delaware UST Regulations are proposed for the following reasons:

"Addition of requirements for a Tank Operator training program are required by the Federal Energy Policy Act of 2005 (EPACT). The EPACT requires the state to promulgate regulations by August 8, 2009.

"Requirements prohibiting the installation of new USTs within specific distances of public, industrial and domestic wells have been added to ensure protection of drinking water supplies.

"Clarification language added to specific sections in response to public comment requesting such.

"Corrections to errors in January 11, 2008 edition of the UST Regulations

3. Possible Terms of the Agency Action:

None

4. Statutory Basis or Legal Authority to Act:

7 Del.C., Chapter 74, 7 Del. C., Chapter 60

5. Other Regulations that May be Affected by the Proposal:

N/A

6. Notice of Public Comment:

The DNREC will conduct a Public Hearing on Tuesday, April 21, 2009. The hearing is scheduled to begin at 7:00pm in the conference room at the DNREC office located at 391 Lukens Drive, New Castle, DE. The public and interested parties are invited to attend the hearing and to make comments orally or in writing at the hearing. Written comments not presented at the hearing should be addressed to Ms. Jill Williams Hall, DNREC/TMB, 391 Lukens Drive, New Castle, DE 19720 and must be received by the Department by the end of the comment period, as designated by the hearing officer at the hearing.

Copies of the proposed regulations are available online at <http://www.dnrec.delaware.gov/info/Pages/Rules.aspx>

Copies may be viewed during regular business hours at the following DNREC offices:

DNREC, 391 Lukens Drive, New Castle, DE

DNREC, R&R Building, 89 Kings Highway, Dover, DE

DNREC, Route 113, Sussex Suites, Unit #6, Georgetown, DE

7. Prepared by:

Jill Williams Hall, Planner IV, 395-2500, 3/6/09, jill.hall@state.de.us

Regulatory Flexibility Act Compliance

The purpose of the *Regulatory Flexibility Act*, 29 **Del.C.** Ch. 104 (RFA) is “to establish as a principle of regulatory policy that regulatory and reporting requirements fit the scale of those being regulated, that fewer simpler requirements be made of individuals and small businesses and that to achieve these ends agencies be empowered and encouraged to issue regulations which apply differently to individuals and small businesses than to larger businesses” 29 **Del.C.** 10402 (b). This purpose is served by each agency considering “whether it is lawful, feasible and desirable for the agency to exempt individuals or small businesses from the effect of the rule or regulation or whether the agency may or should promulgate a rule or regulation which sets less stringent standards for compliance by individuals and/or small businesses.” 29 **Del.C.** 10404(a).

To qualify for consideration under the RFA, all persons and business entities must first qualify as either an “individual” or a “small business” within the meaning of RFA. The majority of underground storage tank (USTs) systems subject to the Delaware *Regulations Governing Underground Storage Tank Systems* are owned by persons or business that do not meet the definition of individual or small business as defined in 29 **Del.C.** 10403.

1. *The nature of any reports and the estimated cost of their preparation by individuals and/or small business which would be required to comply with the new rule.*

Reporting requirements under the UST Regulations are typically simple paperwork submissions to ensure that the Department is kept abreast of situations where a threat to human health, safety or the environment exists as in the case of a release of a pollutant into the environment from an UST or when physical changes to the tank equipment occur. For the Department to provide protection of the environment and human health all releases must be reported to ensure that prompt and proper cleanup is completed. The cost to an individual or small business would be the cost of personnel to complete required paperwork. A small business with 3 USTs would spend approximately 6-8 man hours per month completing required reports. The cost to a business in completing reports is small but is essential to protecting the environment.

2. *The nature and estimated cost of other measures or investments that would be required by individuals and/or small businesses in complying with the rule.*

There may be no cost to individuals or small businesses to comply with new technical requirements in the UST Regulations, depending upon the equipment currently in place. The Department has however taken into account the impact the new regulations may have on small businesses or individuals and has provided for low cost options such as the use of statistical inventory reconciliation as an alternative to costly technological equipment for release detection and has given tank owners five years to comply with upgrade requirements to ensure individuals and small businesses have adequate time to plan for capital improvements.

The cost to individuals to comply with the new operator training requirements is estimated to be a one time cost of \$100.00. This is the estimated cost to attend the required operator training class.

3. *The nature and estimated costs of any legal, consulting and accounting services that would be required by individuals and/or small businesses in complying with this rule.*

There are no intrinsic legal or accounting services required to comply with the Regulations. To ensure adequate protection of human health, safety and the environment, qualified environmental consultants must be utilized when remediation of contamination is necessary. Other state statutes also require the use of professional engineers or professional geologists in certain circumstances when remediation of contamination is necessary.

4. *The ability of individuals and/or small businesses to absorb the costs estimated under questions 1, 2 and 3 of this form without suffering economic harm and without adversely affecting competition in the marketplace.*

The ability of individuals or small businesses to absorb the costs associated with compliance with the Regulations is somewhat unknown, as the Regulations allow tank owners a variety of choices to achieve

compliance. The tank owner may choose to invest in high cost technology or lower cost manual operations. The upgrades to existing systems are not required until 5 years after promulgation allowing tank owners adequate time to plan for capital improvements.

5. *The additional cost, if any, to the agency of administering or enforcing a rule which exempts or sets lesser standards for compliance by individuals and/or small businesses.*

The additional cost to the Department of administering or enforcing a rule which exempts or sets a lesser standard for compliance by individuals or small businesses would be significant as all federal UST grant funding would be lost, because the federal requirements require the state regulations to be at least as stringent as the federal requirements in order to receive federal funding. The federal requirements make no provision for lesser standards for individuals or small businesses. As a practical matter it would be virtually impossible to enforce such a rule as tank ownership changes frequently. The nature of the fuel dispensing business is such that an UST may change ownership several times in one year. Thus an UST would be subject to differing rules simply via a real estate transaction.

6. *The impact on the public interest of exempting or setting lesser standards of compliance for individuals and/or small businesses.*

The impact on the public interest in exempting or setting lesser standards of compliance for individuals or small businesses with the Regulations is potentially devastating in terms of environmental harm. The size and impact of a release of a pollutant from an UST has no correlation to the size of the tank owner. The harmful impact of a release from an UST owned by an individual as compared to an UST owned by a corporation is the same. Exempting tanks owned by individuals or small businesses would result in the potential for releases from those certain USTs to go undetected and unchecked. Significant harm to the environment, in particular the State's groundwater resources, would ensue. Releases from USTs have dropped significantly since the inception of the UST program. The reduction in releases correlates directly to the enforcement of the UST Regulations for all USTs, regardless of type of owner. Furthermore, an exemption would cause Delaware to be less stringent than the federal UST requirements and the Department would lose all federal UST grant funds. Without federal funding the Department could not support the staff necessary to ensure enforcement of the UST Regulations. In the absence of a regulatory program releases from USTs would increase dramatically resulting in pollution of public groundwater which is the source of 80% of the State's drinking water supply.

7. *What accommodations, if any, have been made in the regulations to address individual and/or small business concerns identified above?*

The Department has provided for lower cost options where feasible, such statistical inventory reconciliation as opposed to installation of higher cost technology. The Department has given tank owners five years to comply with upgrade requirements to allow businesses adequate time to plan for capital improvements.

Regulation Reference	Change
"Effective Date of Regulations" throughout Regulations	Date these Regulations became effective inserted = January 11, 2008
PART A	
Part A, Definitions, Class A, B, C Operators	Class A,B and C Operator definitions for Operator Training
Part A, Definitions, Containment Sump	Added "Piping" to Containment Sump definition to capture transition sumps in the definition
Part A, Definitions Heating Fuel UST System	Clarification added to define Heating Fuel UST as one connected directly to heat generating equipment

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Part A, Definitions, Domestic, Public and Industrial Wells	Added definition of Public well, Industrial well and Domestic well for new UST citing requirements
Part A, Definitions, Regulated Substance	Verbage in definition of "Petroleum" that was inadvertently deleted in Jan 2008 promulgation added.
Part A, Definitions -Secondary Containment	Deleted "primary containment"
Part A, Definitions, Tank	Clarification added to define a "tank" solely as the stationary storage vessel and not any of the Ancillary equipment
Part A, Definitions Pipe	Added "line" to mean the same as "pipe"
Part A, Definitions, UST System	means an Underground Storage Tank, connected underground product, vent and vapor recovery Piping and its associated Ancillary Equipment, and containment systems <i>and all appurtenances</i> . Appurtenances added to include equipment such as spill containment as part of the UST System.
Part A, Section 4.1.5.	change "tank fee" to "Tank registration fee" to mirror statute
Part A, Section 4.1.7.	"change in product stored" to defined term "Change in Substance Stored". Added Retrofit and Upgrade to list of changes to the UST System that require notification to the Dept.
Part A, Section 4.4.11.	Added Upgrade and Retrofit records to documentation that must be given to a new Owner
Part A, Section 4.6.10.	Correction of title of the State of Delaware Fire Regulations
Part A, Section 4.6.12., Installation Notification Requirements	changed 'tank' to 'UST System" for clarification
Part A, 5.1.3.3.	Added requirement that repair records be kept for the life of the UST system to comply with federal requirements
Part A, Section 10	Added Operator Training requirements as required by the federal Energy Policy Act
PART B	
Part B, §1.2.4. & §1.2.5.	For UST Systems installed after the revised 2008 Regulations are effective - Added minimum distance requirements from domestic, public and industrial wells to a new UST System to mirror the Delaware Regulations Governing the Construction and Use of Water Wells.
Part B, Section 1.2.3.3.	change "tank location" to "UST System location" for clarification

Part B, Section 1.4.3.3.	Containment sumps installed to meet secondary containment requirements must comply with the testing and maintenance requirements for containment sumps
Part B, Section 1.4.3.4.	Interstitial monitoring installed to meet secondary containment requirements must comply with the preventative maintenance requirements for interstitial monitoring in Section 1.9.4.4.
Part B, Section 1.9.1.3.	change "tank tightness test" to "UST System tightness test"
Part B, Section 1.9.3.1.1.	Changed "once a week" to "once every 7 calendar days" for clarification
Part B, Section 1.9.3.1.1.9.1.	Inventory reconciliation: Changed "once during each calendar month" to "at the end of each calendar month"
Part B, Section 1.9.3.1.1.9.4.	Automatic systems utilized for performing inventory procedures must comply with preventative maintenance program requirements in Section 1.9.5.3.
Part B, Section 1.9.3.3.	change "tank tightness test" to "UST System tightness test"
Part B, Section 1.9.4.2.	Change "once during each calendar month" to "once every 30 calendar days" for Interstitial monitoring testing when used for tank release detection to meet federal requirements
Part B, Section 1.9.4.3.	Added - interstitial monitoring equipment must be capable of producing a record of Release detection monitoring results.
Part B, Section 1.9.5.1.3.	Change "once during each calendar month" to "once every 30 calendar days" for ATG when used for tank release detection to meet federal requirements
Part B, Section 1.9.5.1.4.	Added - Records of ATG tests must be kept for the life of the UST System
Part B, Section 1.19.1.4.	Line Leak Detector Testing - Deleted "in accordance with manufacturer's test protocols" as not all manufacturer's have a test protocol. Added testing must be done in-line under normal operating conditions. Eliminates "bench testing" of LLD.
Part B, Section 1.19.2.3.	Added language to allow continuous interstitial monitoring of double wall piping in lieu of an annual piping tightness test. Inadvertently omitted in Jan 2008 draft.

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Part B, Section 1.20.3.	Added requirements for D/W Suction Piping systems to utilize to comply with release detection requirements
Part B, Section 1.21.8.	Added specific requirements for interstitial monitoring of double wall spill containment for clarification
Part B, Sections 1.24.2.8.	Added requirements: Before a repair can be made to a Sacrificial Anode CP system, results of the 2 most recent CP tests and release detection records must be submitted to the Dept.
Part B, Section 1.24.2.9.	Added: No internal assessment will be accepted for the purpose of determining the integrity of an UST System if the tank has an internal lining.
Part B, Section 1.25.6	Added: "Owners and Operators shall immediately remove water, Regulated Substance or debris that accumulates in any Containment Sump"
Part B, Section 1.27.3.	All sensors installed in a sump for the purpose of detecting a Release from the UST System shall be installed no more than 1" from the bottom of the sump.
Part B, Section 1.28.	Changed section to include Retrofit and Upgrade requirements in addition to Repair Requirements; added site assessment req. and record documentation
Part B, Section 1.28.2.	Cross referenced requirement to report abnormal operating conditions with Part E, Section 1.2.
Part B, Section 1.29.3.3	Added option to use modified inventory control procedures to comply with inventory control req. for Used Oil USTs.
Part B, Section 1.29.5.	Added requirements for modified inventory control for Used Oil USTs.
Part B, Section 1.30.4.	Added requirement for piping on emergency generator UST Systems that
Part B, Section 1.31	Routine Inspection: Changed 'once every calendar month' to "an interval no less frequently than once every 28-31 calendar days" to accommodate months with days ranging from 28-31 days
Part B, Section 1.32.3.3.	Deleted requirement that lined USTs be inspected as lining cannot be used to meet corrosion protection requirements.
Part B, Section 2.2.3.	change "Tank Facility" to "UST System Facility"

Part B, Section 2.4.2.3.	Change "once during each calendar month" to "once every 30 calendar days" for clarification
Part B, Section 2.9.3.1.1.	Changed "once a week" to "once every 7 calendar days" for clarification
Part B, Section 2.9.3.1.1.9.1.	Inventory reconciliation: Changed "once during each calendar month" to "at the end of each calendar month"
Part B, Section 2.9.3.1.1.9.4.	Added requirement that automatic systems utilized for performing inventory must comply with preventative maintenance requirements
Part B, Section 2.9.5.1.3.	Change "once during each calendar month" to "once every 30 calendar days" for ATG when used for tank release detection to meet federal requirements
Part B, Section 2.9.9.9.2. And 2.9.9.9.5.	change "Tank system" to "UST System"
Part B, Section 2.9.10.4.3.	Change "once during each calendar month" to "once every 30 calendar days" for clarification
Part B, Section 2.16.1.3.	Changed time frame for repair of cathodic protection systems on metallic piping from 30 to 60 days to be consistent with time frames for repair of cathodic protection on Tanks.
Part B, Section 2.16.1.5.	Clarification language added to define what "restore cathodic protection" requires
Part B, Section 2.20.1.4.	Line Leak Detector Testing - Deleted "in accordance with manufacturer's test protocols" as not all manufacturer's have a test protocol. Added testing must be done in-line under normal operating conditions. Eliminates "bench testing" of LLD.
Part B, Section 2.20.2.3.2.	Changed "automatic tank gauge" to "interstitial monitoring equipment" for clarification
Part B, Section 2.20.2.3.5.	Cross referenced with Section 2.26 for clarification
Part B, Section 2.21.3.	Added requirements for D/W Suction Piping systems to utilize to comply with release detection requirements
Part B, Section 2.22.7.	Added specific requirements for interstitial monitoring of double wall spill containment for clarification
Part B, Section 2.25.2.8.	Added requirements: Before a repair can be made to a Sacrificial Anode CP system, results of the 2 most recent CP tests and release detection records must be submitted to the Dept.

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Pat B, Section 2.25.2.9. and 2.25.3.9.	Added: No internal assesment will be accepted for the purpose of determining the integrity of an UST System if the tank has an internal lining.
Part B, Section 2.25.3.8.	Added requirement: Before a repair can be made to an impressed current CP system, results of the 2 most recent CP tests, rectifier reading records and release detection records must be submitted to the Dept.
Part B, Section 2.26.3.	Added: "Owners and Operators shall immediately remove water, Regulated Substance or debris that accumulates in any Containment Sump"
Part B, Section 2.28.1.	Added annual testing of sensors used for continuous IM monitoring of DW spill buckets when used instead of annual testing of spill containment
Part B, Section 2.28.2.	Added: All sensors installed in a sump for the purpose of detecting a Release from the UST System shall be installed no more than 1" from the bottom of the sump
Part B, Section 2.29.	Changed section to include Retrofit and Upgrade requirements in addition to Repair Requirements. Includes req. for soil sampling and documentation submittal to DNREC.
Part B, Section 2.29.2.	Cross referenced requirement to report abnormal operating conditions with Part E, Section 1.2.
Part B, Section 2.30.2.1.	Deleted "as prescribed in section 2.9. of this Part" as not all Used Oil Release detection methods are listed in section 2.9.
Part B, Section 2.30.2.3.	Changed heading to "Manual Tank Gauging Requirements for Used Oil USTs"
Part B, Section 2.30.6.1.3.	Deleted requirement that amount added to Used Oil be measured and recorded; added "2.30.6.1.3. The amount of Used Oil added shall be such that the UST is not more than ninety percent (90%) full"
Part B, Section 2.30.5.	Added requirements for modified inventory control for Used Oil USTs.
Part B, Section 2.30.6.1.	Correct section reference that is incorrect; Section 1.22. changed to Section 2.23.
Part B, Section 2.32.	Routine Inspection: Changed 'once every calendar month' to "an interval no less frequently than once every 28-31 calendar days" to accommodate months with days ranging from 28-31 days

Part B, Section 2.33.3.4.	If an internally lined tank is not inspected on the required schedule and subsequently fails an internal inspection test the tank must be removed or closed in place.
Part B, Section 2.34.2.3.	Added "Internal Lining only" to allowable upgrades for existing tanks. Inadvertently omitted in original
Part B, Section 3.2.4.	Routine inspections are required on an Out Of Service UST System if the system is not empty.
Part B, Section 3.3.1.	Modified requirements for USTs changing from out of service to in service, to require testing of the system only if the UST System has been out of service for 3 months or more
Part B, Section 3.3.1.1.	Added Section 1 to requirements to correct omission from Jan 2008 regulations
Part B, Section 3.3.1.2.	Deleted reference to Section 2.9.7. because this is only tank tightness testing and the requirement is for the entire UST System to be tightness tested as applicable.
Part B, Section 5.5.1.	5.5. "Owners and Operators shall comply with the requirements of Part F of these Regulations <i>until the UST System is permanently Removed or Closed In Place in accordance with these Regulations or does not store a Regulated Substance</i> and all requirements of Part E of these Regulations are completed." Italicized wording adding for clarification
PART C	
Part C, Section 1.2.3.3.	change "tank location" to "UST System location" for clarification
Part C, Section 1.2.4. and 1.2.5.	For UST Systems installed after the revised 2008 Regulations are effective - Added minimum distance requirements from domestic, public and industrial wells to a new UST System to mirror the Delaware Regulations Governing the Construction and Use of Water Wells.
Part C, Section 1.4.3.3.	Containment sumps installed to meet secondary containment requirements must comply with the testing and maintenance requirements for containment sumps

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Part C, Section 1.4.3.4.	Interstitial monitoring installed to meet secondary containment requirements must comply with the preventative maintenance program for interstitial monitoring in Section 1.9.4.3.
Part C, Section 1.9.3.1.1.6.4.	Added requirement that automatic systems utilized for performing inventory must comply with preventative maintenance requirements
Part C, Section 1.9.4.1.3.	Change "once during each calendar month" to "once every 30 calendar days" for ATG when used for tank release detection
Part C Section 1.19.1.4.	Deleted "in accordance with manufacturer's test protocols" as not all manufacturer's have a test protocol. Added testing must be done in-line under normal operating conditions. Eliminates "bench testing" of LLD.
Part C, Section 1.19.2.3.	Added language to allow continuous interstitial monitoring of double wall piping in lieu of an annual piping tightness test. Inadvertently omitted in Jan 2008 draft.
Part C, Section 1.20.3.	Added requirements for Double wall Suction Piping systems to utilize to comply with release detection requirements
Part C, Section 1.21.8.	Added specific requirements for interstitial monitoring of double wall spill containment for clarification
Part C, Sections 1.24.2.8.	Before a repair can be made to a Sacrificial Anode CP system, results of the 2 most recent CP tests and release detection records must be submitted to the Dept.
Part C, Section 1.24.2.9.	Added: No internal assesment will be accepted for the purpose of determining the integrity of an UST System if the tank has an internal lining.
Part C, Section 1.25.6.	Added: "Owners and Operators shall immediately remove water, Regulated Substance or debris that accumulates in any Containment Sump."
Part C, Section 1.26.3.	All sensors installed in a sump for the purpose of detecting a Release from the UST System shall be installed no more than 1" from the bottom of the sump.

Part C, Section 1.27.	Changed section to include Retrofit and Upgrade requirements in addition to Repair Requirements. Includes req. for soil sampling and documentation submittal to DNREC.
Part C, Section 1.27.2	Cross referenced requirement to report abnormal operating conditions with Part E, Section 1.2.
Part C, Section 1.28.	Routine Inspection: Changed 'once every calendar month' to "an interval no less frequently than once every 28-31 calendar days" to accommodate months with days ranging from 28-31 days
Part C, Section 1.29.3.3.	Deleted requirement that lined USTs be inspected as lining cannot be used to meet corrosion protection requirements.
Part C, Section 2.2.3.	change "Tank Facility" to "UST Facility"
Part C, Section 2.9.5.7.	Correct incorrect Section reference from 2.9.6.6. to 2.9.5.6.
Part C, Section 2.16.1.3.	Changed time frame for repair of cathodic protection systems on metallic piping from 30 to 60 days to be consistent with time frames for repair of cathodic protection on Tanks.
Part C, Section 2.16.1.5.	Clarification language added to define what 'restore cathodic protection' requires
Part C, Section 2.20.1.4.	Deleted "in accordance with manufacturer's test protocols" as not all manufacturer's have a test protocol. Added testing must be done in-line under normal operating conditions. Eliminates "bench testing" of LLD.
Part C, Section 2.20.2.3.5.	Cross referenced with Section 2.26. for clarification
Part C, Section 2.21.3.	Added requirements for Double wall Suction Piping systems to utilize to comply with release detection requirements
Part C, Section 2.22.7.	Added specific requirements for interstitial monitoring of double wall spill containment for clarification
Part C, Section 2.25.2.8.	Before a repair can be made to a Sacrificial Anode CP system, results of the 2 most recent CP tests and release detection records must be submitted to the Dept.
Part C, Section 2.25.2.9. and 2.25.3.9.	Added: No internal assesment will be accepted for the purpose of determing the integrity of an UST System if the tank has an internal lining.

PROPOSED REGULATIONS

Part C, Section 2.25.3.8.	Before a repair can be made to an impressed current CP system, results of the 2 most recent CP tests, rectifier reading records and release detection records must be submitted to the Dept.
Part C, Section 2.26.3.	Added: "Owners and Operators shall immediately remove water, Regulated Substance or debris that accumulates in any Containment Sump."
Part C, Section 2.27.1.	Added annual testing of sensors used for continuous IM monitoring of DW spill buckets when used instead of annual testing of spill containment
Part C, Section 2.27.2.	All sensors installed in a sump for the purpose of detecting a Release from the UST System shall be installed at the lowest point in the sump
Part C, Section 2.28.	Changed section to include Retrofit and Upgrade requirements in addition to Repair Requirements
Part C, Section 2.28.2.	Cross referenced requirement to report abnormal operating conditions with Part E, Section 1.2.
Part C, Section 2.29.	Routine Inspection: Changed 'once every calendar month' to "an interval no less frequently than once every 28-31 calendar days" to accommodate months with days ranging from 28-31 days
Part C, Section 2.31.3.4.	If an internally lined HF tank is not inspected on the required schedule and subsequently fails an internal inspection test the tank must be removed or closed in place.
Part C, Section 2.32.	Reworded for clarity and added "internal lining only" to allowable upgrades for existing tanks. Inadvertently omitted in original.
Part C, Section 3.2.3.	Section 3.2.3. is created by splitting 3.2.2. into 2 sections. The verbage is the same.
Part C, Section 3.2.4.	Routine inspections are required on an Out Of Service UST System if the system is not empty.
Part C Section 3.3.1.	Modified requirements for USTs changing from out of service to in service, to require testing of the system only if the UST System has been out of service for 3 months or more

Part C Section 3.3.1.1.	Added Section 1 to requirements to correct omission from Jan 2008 regulations
Part C, Section 3.3.1.2.	Deleted reference to Section 2.9.7. because this is only tank tightness testing and the requirement is for the entire UST System to be tightness tested as applicable.
PART D	
Part D, Section 1.2.3.3.	change "Tank Facility" to "UST System Facility"
Part D, Sections 1.2.4. and 1.2.5.	For UST Systems installed after the revised 2008 Regulations are effective - Added minimum distance requirements from domestic, public and industrial wells to a new UST System to mirror the Delaware Regulations Governing the Construction and Use of Water Wells.
Part D, Section 1.4.3.3.	Containment sumps installed to meet secondary containment requirements must comply with the testing and maintenance requirements for containment sumps
Part D, Section 1.4.3.4.	Interstitial monitoring installed to meet secondary containment requirements must comply with the preventative maintenance program for interstitial monitoring in Section 1.9.4.3.
Part D, Section 1.9.2.1.2.	Deleted ATG performing a tank tightness test as an option for Release Detection to comply with federal requirements which require interstitial monitoring
Part D, Section 1.9.3.1.1.	Changed "once a week" to "once every 7 calendar days" for clarification
Part D, Section 1.9.3.1.1.3.	Changed drop tube from 6 inches to 5.9 inches from tank bottom to be consistent with Part B and C
Part D, Section 1.9.3.1.1.6.4.	Inventory reconciliation: Changed "once during each calendar month" to "at the end of each calendar month"
Part D, Section 1.9.5.1.	Deleted ATG performing a tank tightness test as an option for Release Detection to comply with federal requirements which require interstitial monitoring
Part D, Section 1.9.5.1.2.	Change "once during each calendar month" to "once every 30 calendar days" for ATG when used for tank release detection to meet federal requirements

PROPOSED REGULATIONS

Part D, Section 1.19.1.4.	Deleted "in accordance with manufacturer's test protocols" as not all manufacturer's have a test protocol. Added testing must be done in-line under normal operating conditions. Eliminates "bench testing" of LLD.
Part D, Section 1.19.2.	Deleted option for annual piping tightness test for Hazardous Substance piping to comply with Federal requirements that require interstitial monitoring
Part D, Section 1.19.2.1.	Added requirements for continuous interstitial monitoring of pressurized Piping systems to comply with federal release detection requirements.
Part D, Section 1.19.3.1.3.	Change "once during each calendar month" to "once every 30 calendar days"
Part D, Section 1.20.3.	Added requirements for D/W Suction Piping systems to utilize to comply with release detection requirements
Part D, Section 1.21.8.	Added specific requirements for interstitial monitoring of double wall spill containment for clarification
Part D, Section 1.24.2.8.	Added: Before a repair can be made to an impressed current CP system, results of the 2 most recent CP tests, rectifier reading records and release detection records must be submitted to the Dept.
Part C, Section 1.24.2.9.	Added: No internal assesment will be accepted for the purpose of determining the integrity of an UST System if the tank has an internal lining.
Part D, Section 1.25.7.	Added: "Owners and Operators shall immediately remove water, Regulated Substance or debris that accumulates in any Containment Sump."
Part B, Section 1.27.3.	Added annual testing of sensors used for continuous IM monitoring of DW spill buckets when used instead of annual testing of spill containment
Part D, Section 1.27.4.	All sensors installed in a sump for the purpose of detecting a Release from the UST System shall be installed at the lowest point in the sump
Part D, Section 1.28.	Changed section to include Retrofit and Upgrade requirements in addition to Repair Requirements including addition of site assessment req and documentation submittal

Part D, Section 1.28.2.	Cross referenced requirement to report abnormal operating conditions with Part E, Section 1.2.
Part D, Section 1.29.	Routine Inspection: Changed 'once every calendar month' to "an interval no less frequently than once every 28-31 calendar days" to accommodate months with days ranging from 28-31 days
Part D, Section 1.30.3.4.	If an internally lined Hazardous Substance tank is not inspected on the required schedule and subsequently fails an internal inspection test the tank must be removed or closed in place.
Part D, Section 2.2.3.	Section 2.2.3. is created by splitting 2.2.2. into 2 sections. The verbage is the same.
Part D, Section 2.2.4.	Routine inspections are required on an Out Of Service UST System if the system is not empty.
Part D Section 2.3.1.	Modified requirements for USTs changing from out of service to in service, to require testing of the system only if the UST System has been out of service for 3 months or more
Part D, Section 2.3.1.2.	Deleted reference to Section 2.9.7. because this is only tank tightness testing and the requirement is for the entire UST System to be tightness tested as applicable.
Part D, Section 4.5.	4.5. "Owners and Operators shall comply with the requirements of Part F of these Regulations <i>until the UST System is permanently Removed or Closed In Place in accordance with these Regulations or does not store a Regulated Substance</i> and all requirements of Part E of these Regulations are completed." Italicized wording adding for clarification
PART E	
Part E, Section 1.1.1.2.	Changed to require notification of the DNREC hotline of an indicated release only when required to do by Chapter 60 statute and regulations
Part E, Section 1.1.1.1. and 1.3.2.1.	Deleted in-state hot line number. 800 number is now nationwide.

PROPOSED REGULATIONS

Part E, Section 1.1.1.3.	If the phone numbers listed in these Regulations are not valid it is the responsibility of the <i>Person discovering the Release (changed from Responsible Party)</i> to take all reasonable steps to ascertain a valid phone number.
Part E, Section 1.1.3.1.	Added Repair and Upgrade to situations where a site assessment is required.
Part E, Section 1.3.2.1., Section 1.4. and Section 1.5.	Corrected phone number for release reporting
Part E, Section 1.6. Public Notice Requirements for Confirmed Releases	Requires DNREC to inform the public of any confirmed release that requires cleanup; posting on the internet is an appropriate mechanism
Part E, Section 2.1.1. and 2.2.1.	Changed "Owner and Operator" to "Responsible Party"
Part E, Section 2.2.2.	Deleted section in Part E; included in Parts B, C and D in Repair, Retrofit and Upgrade requirements sections
Part E, Section 3.1.1.	Added situation where there is an Indicated Release to situations where the Dept can assume control.
Part E, Section 3.3.5.	Added req. that LCSM when updated must be submitted to the Dept.
Part E, Section 4.2.2.	Added path to go directly to a request for a NFA if the results of the investigation do not require remedial action.
Part E, Section 4.2.3.	Investigation reports must be organized in a report form in accordance with Department guidance
Part E, Section 4.4. and 5.4.	Site safety plans must be submitted only if the Department requests.
Part E, Section 6.1.	"Site Closure" changed to "No Further Action" throughout the Section
Part E, Section 6.1.3.	Request for NFA must be signed by a PG or PE when required by the Department.
PART F	
Part F, Section 1.11.	Added requirement that Owners/Operators send documentation of current FR mechanism to the Dept within 30 days of confirmation of a Release, as req. by Federal regulations
Part F, Section 1.12.	Any UST System that does not have current FR must immediately empty the UST.
Part F	All Appendices changed to Forms and each Form given a section number to conform with the Del Registrar Style Manual

PART H	
No Changes	

***Please Note:** Due to the size of the proposed regulation, it is not being published here. Each Part of the Regulation is a separate file and is available at:

Introductory document: [1351 Delaware Regulations Governing Underground Storage Tank Systems](#)

Part A: [General Requirements for all Underground Storage Tank Systems](#)

Part B: [Requirements for Installation, Operation and Maintenance of UST Systems Storing Regulated Substance Excluding Heating Fuel or Hazardous Substance](#)

Part C: [Requirements for Installation, Operation and Maintenance of UST Systems Storing Heating Fuel](#)

Part D: [Requirements for Installation, Operation and Maintenance of UST Systems Storing Hazardous Substances](#)

Part E: [Requirements for Reporting, Release Investigation, Remedial Action and Site Closure No Further Action Determinations for UST Systems](#)

Part F: [Financial Responsibility Requirements for UST Systems](#)

Part G: [Requirements for Contractor Certification](#)

Part H: [Regulations Governing Reimbursement for Petroleum Contamination Site Cleanup](#)

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(e)(2)(a) (7 **Del.C.** §903(e)(2)(a))
7 **DE Admin. Code** 3541; 3581

REGISTER NOTICE

SAN# 2009-06

1. Title of the Regulations:

Tidal Finfish Regulation 3541 Atlantic Sharks.

Tidal Finfish Regulation 3581 Spiny Dogfish; Closure Of Fishery

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

The Department of Natural Resources and Environmental Control will hold a public hearing regarding proposed modifications to Tidal Finfish Regulation 3541 concerning Atlantic sharks and a proposed amendment to Tidal Finfish Regulation 3581 concerning commercial fishing for spiny dogfish. The purpose of the proposed revisions are to bring Delaware into compliance with the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Atlantic Coastal Sharks and to liberalize commercial requirements in concert with the most recent revision (Addendum II) to the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Spiny Dogfish.

The Interstate Plan for Coastal Sharks largely mirrors requirements for shark fishing in federal waters. Specifically, all states from Virginia through New Jersey, including Delaware, must prohibit recreational and commercial landings of the following shark species from May 15 through July 15: silky, tiger, blacktip, spinner, bull, lemon, nurse, scalloped hammerhead, great hammerhead, and smooth hammerhead. Furthermore, Delaware and all other states must prohibit recreational and commercial landings of sandbar sharks year-round, except for those

commercial fishermen in possession of a valid sandbar shark research permit issued by the National Marine Fisheries Service (NMFS). Shore-bound anglers may harvest one shark not otherwise prohibited, including smooth dogfish sharks, per calendar day. Shore-bound anglers may also harvest one additional smooth dogfish shark per day. Recreational fishing vessels will be allowed to harvest and possess one shark not otherwise prohibited, including one smooth dogfish per trip, regardless of the number of people on board the vessel. In addition each recreational angler aboard a vessel may harvest and possess one bonnethead, one Atlantic sharpnose shark, and one smooth dogfish per person per trip. All sharks possessed by recreational fishermen must have the heads, tails, and fins attached naturally to the carcass prior to landing on shore. Commercial fishermen may eviscerate and remove the head of any shark reduced to possession, but the tail and fins must remain attached to the carcass. Other measures, including provisions on gill net fishing for sharks, are proposed to bring Delaware into compliance with shark fishing regulations in federal waters.

The coast-wide commercial quota for spiny dogfish has been liberalized to 12 million pounds per year, to be allocated among a Northern Region, Southern Region, and North Carolina. The Southern Region, which includes Delaware, is allocated 26% of the annual quota. When the quota in the Southern Region is projected to be reached, the commercial landing, harvest, and possession of spiny dogfish for commercial purposes will be prohibited for the remainder of the year. The daily landing limit for any Delaware commercial foodfishing holder shall be 3,000 pounds of spiny dogfish, except for those taking spiny dogfish from federal waters or for any Delaware fisherman selling spiny dogfish to a federally-permitted dealer, in which case federal possession and landing limits apply, including federal closures on the possession and landing of spiny dogfish. Any Delaware commercial fisherman in possession of a federal permit will have to abide by the most restrictive spiny dogfish landing limits, whether they are federal or state.

3. Possible Terms of the Agency Action:

Delaware is required to comply with the ASMFC plan for coastal sharks and with the latest addendum to the Interstate Fishery Management Plan for Spiny Dogfish. Failure to do so may result in total closure of these fisheries in Delaware by order of the Secretary of Commerce.

4. Statutory Basis or Legal Authority to Act:

§903(e) (2) (a), 7 Del.C. and §903(f) of 7 Del.C.

5. Other Regulations that may be Affected by the Proposal:

None

6. NOTICE OF PUBLIC COMMENT:

A public hearing on this regulation will be held in the Division of Soil and Water building at the western end of Pilottown Road in Lewes, DE at 6:30 PM on April 23, 2009. Comments for the hearing record should be addressed to Lisa Vest, Hearing Officer, Office of the Secretary, Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, De 19901 or by e-mail to lisa.vest@state.de.us by 4:30 PM April 28, 2009.

7. PREPARED BY:

Roy W. Miller (302) 739-9914, February 13, 2009

3540 Sharks

3541 Atlantic Sharks

(Penalty Section 7 Del.C. §936(b)(2))

1.0 Definitions:

“**Fillet**” shall mean to remove slices of fish flesh, of irregular size and shape, from the carcass by cuts made parallel to the backbone.

“**Land or Landing**” shall mean to put or cause to go on shore from a vessel.

“**Large mesh gill nets**” shall mean any gill net with mesh of five inches or more stretched measure.

“**Management Unit**” shall mean any of the Non-sandbar large coastal species, small coastal species, pelagic species, smooth dogfish (*Mustelus canus*), and prohibited species of sharks or parts thereof defined in this regulation.

“**Non-Sandbar Large Coastal Species**” shall mean any of the following species of sharks or parts thereof:

Great hammerhead, *Sphyrna mokarran*
Scalloped hammerhead, *Sphyrna lewini*
Smooth hammerhead, *Sphyrna zygaena*
White shark, *Carcharodon carcharias*
Nurse shark, *Ginglymostoma cirratum*
Blacktip shark, *Carcharhinus limbatus*
Bull shark, *Carcharhinus leucas*
Lemon shark, *Neqaprion brevirostris*
~~Sandbar shark, *Carcharhinus plumbeus*~~
Silky shark, *Carcharhinus falciformis*
Spinner shark, *Carcharhinus brevipinna*
Tiger shark, *Galeocerdo cuvieri*

“**Pelagic Species**” shall mean any of the following species of sharks or parts thereof:

Porbeagle shark, *Lamna nasus*
Shortfin mako, *Isurus oxyrinchus*
Blue shark, *Prionace glauca*
Oceanic whitetip shark, *Carcharhinus longimanus*
Thresher shark, *Alopias vulpinus*

“**Prohibited Species**” shall mean any of the following species of sharks or parts thereof:

Basking shark, *Cetorhinidae maximus*
White shark, *Carcharodon carcharias*
Bigeye sand tiger, *Odontaspis noronhai*
Sand tiger, *Odontaspis taurus*
Whale shark, *Rhincodon typus*
Bignose shark, *Carcharhinus altimus*
Caribbean reef shark, *Carcharhinus perezi*
Dusky shark, *Carcharhinus obscurus*
Galapagos shark, *Carcharhinus galapagensis*
Narrowtooth shark, *Carcharhinus brachyurus*
Night shark, *Carcharhinus signatus*
Atlantic angel shark, *Squatina dumerili*
Caribbean sharpnose shark, *Rhizoprionodon porosus*
Smalltail shark, *Carcharhinus porosus*
Bigeye sixgill shark, *Hexanchus vitulus*
Sevengill shark, *Hepttranchias perlo*
Sixgill shark, *Hexanchus griseus*
Longfin mako, *Isurus paucus*
Bigeye thresher, *Alopias superciliosus*

“**Sandbar shark**” shall mean *Carcharhinus plumbeus*

PROPOSED REGULATIONS

"Shore fishing" shall mean any fishing that does not take place on board a vessel. The terms "shore fishing" and "shore angler" are synonymous.

"**Small Coastal Species**" shall mean any of the following species of sharks or parts thereof:

Bonnethead, *Sphyrna tiburo*

Atlantic sharpnose shark, *Rhizoprionodon terraenovae*

Blacknose shark, *Carcharhinus acronotus*

Finetooth shark, *Carcharhinus isodon*

3 DE Reg. 1088 (2/1/00)

- 2.0 It shall be unlawful for any person to land, purchase, trade, barter, or possess or attempt to land, purchase, trade, barter, or possess a prohibited species.
- 3.0 It shall be unlawful for any person to possess the fins from any shark in the management unit prior to landing said shark unless said fins are naturally attached to the body of said shark.
- 4.0 It shall be unlawful for any person to fillet a shark in the management unit prior to landing said shark. A shark may be eviscerated ~~and the head removed~~ prior to landing said shark, but the head, tail, and fins must remain naturally attached to the carcass, except that commercial fishermen may eviscerate and remove the head of any shark reduced to possession, but the tail and fins must remain attached to the carcass.
- 5.0 It shall be unlawful to release any shark in the management unit in a manner that will not ensure said sharks maximum probability of survival.
- 6.0 It shall be unlawful for the operator of any vessel without a commercial food fishing license to have on board said vessel more than one non-prohibited shark per trip from among those species in the management unit, regardless of the number of people on board the vessel. In addition each recreational angler fishing from a vessel may harvest and possess one bonnethead, one Atlantic sharpnose, and one smooth dogfish shark per trip in the management unit except that two Atlantic sharpnose sharks also may be on board in addition to the one shark in the management unit.

1 DE Reg. 345 (10/1/97)

3 DE Reg. 1088 (2/1/00)

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

- 7.0 It shall be unlawful for any person who has been issued a valid commercial food fishing license while on board any vessel to possess any ~~large coastal shark, any small coastal shark or any pelagic shark~~ in non-prohibited shark from among those species in the management unit during the remainder of any period after the effective date a commercial quota for that group of sharks has been reached in said period or is projected to be reached in said period by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration and the U.S. Department of Commerce.
- 8.0 It shall be unlawful for any person to engage in a directed commercial fishery for a prohibited species.
- 9.0 It shall be unlawful for the operator of any vessel without a commercial foodfishing license to have on board said vessel any ~~large coastal shark, any pelagic shark or any small coastal shark~~ non-prohibited shark from among those species in the management unit that measures less than 54 inches, fork length (tip of snout to indentation between dorsal and ventral tail lobes), with the exception of Atlantic sharpnose, blacknose, finetooth, bonnethead, and smooth dogfish sharks, for which no minimum size limit applies.

3 DE Reg. 1088 (2/1/00)

1 DE Reg. 850 (1/1/98)

1 DE Reg. 1005 (2/1/98)

- 10.0 It shall be unlawful for any ~~person~~ shore angler without a commercial foodfishing license to take and reduce to possession any ~~large coastal shark, any small coastal shark or any pelagic shark~~ non-prohibited shark from among those species in the management unit less than 54 inches, with the exception of Atlantic sharpnose, blacknose, finetooth, bonnethead, and smooth dogfish sharks, for which no size limit applies.

11.0 It shall be unlawful for any ~~person~~ shore angler without a commercial foodfishing license to take and reduce to possession more than one ~~large coastal shark, small coastal shark or pelagic shark~~ ~~non-prohibited shark from among those species in the management unit~~ per day (a day being 24 hours). Recreational shore anglers may also harvest one additional bonnethead, one additional Atlantic sharpnose, and one additional smooth dogfish per day.

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

12.0 It shall be unlawful for any recreational or commercial fisherman to possess silky, tiger, blacktip, spinner, bull, lemon, nurse, scalloped hammerhead, great hammerhead, and smooth hammerhead sharks from May 15 through July 15, regardless of where the shark was caught. Fishermen who catch any of these species in federal waters may not transport them through Delaware state waters during the aforementioned closed season.

13.0 It shall be unlawful for any recreational or commercial fisherman to land or possess any sandbar sharks, except for a commercial fisherman in possession of a valid sandbar shark research permit issued by the National Marine Fisheries Service. There must be a qualified observer aboard any vessel that lands and possesses sandbar sharks fishing under the auspices of a valid federal research permit.

14.0 It shall be unlawful for any Delaware recreational or commercial fisherman to land or possess any species of shark in state waters that is illegal to catch or land or possess in federal waters.

15.0 The Department may grant anyone permission to take and possess sharks that would otherwise be illegal to take and possess when used for display and/or research purposes. Applicants will need a current State of Delaware scientific collecting permit. Applicants must annually report the number, weight, species, location caught, and gear used for each shark collected for research or display purposes, and the annual disposition of said sharks throughout the life of each shark so taken. The Division reserves the right to place limits on or deny any request to take prohibited species of sharks under the auspices of a scientific collecting permit.

16.0 It shall be unlawful for any commercial fisherman to possess or land sharks while using any single large mesh gill net that exceeds 2,735 yards in length in Delaware jurisdictional waters, and it shall be unlawful for any commercial fisherman to possess or land sharks from large mesh gill nets that have been untended for more than two hours at a time in Delaware jurisdictional waters.

3580 Spiny Dogfish

3581 Spiny Dogfish; Closure of Fishery

(Penalty Section 7 Del.C. §936(b)(2))

1.0 It shall be unlawful for any commercial fisherman to harvest, land or possess any spiny dogfish, *Squalus acanthias*, in Delaware except in those sizes, seasons, and quantities permitted in accordance with the most recent version of the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Spiny Dogfish as amended, or federal law administered by the National Marine Fisheries Service, whichever is more restrictive. It shall be unlawful for any commercial fisherman to harvest, land or possess any spiny dogfish after the Atlantic States Marine Fisheries Commission approved allocation for the region which includes Delaware has been reached during any given year. It shall be unlawful to commercially harvest, land or possess spiny dogfish taken from federal waters during any time when adjoining federal waters are closed to the taking of spiny dogfish. It shall be unlawful for any commercial fisherman to take, land or possess more than 3,000 pounds of spiny dogfish per day from Delaware waters, with a day being defined as 24 hours. Further, it shall be unlawful for any Delaware commercial fisherman to be in possession of spiny dogfish taken from federal waters in excess of the federal daily landing limit. It shall be unlawful for any person to possess the fins from any spiny dogfish prior to landing said spiny dogfish unless said fins are naturally attached to the body of said spiny dogfish. All spiny dogfish landed in Delaware for commercial purposes must be reported through the normal state reporting system.

4 DE Reg 1859 (5/1/01)

10 DE Reg. 1724 (05/01/07)

DIVISION OF SOIL AND WATER CONSERVATION

Statutory Authority: 7 Delaware Code, Chapter 42 (7 Del.C., Ch. 42)

REGISTER NOTICE**SAN #2006-15****1. Title of the Regulations:**

5103 Delaware Dam Safety Regulations

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

Develop and promulgate Delaware's Dam Safety Regulations. The regulations will affect only public dam owners of certain dams. The regulations will establish standards for dam inspection, development of emergency action plans, operations and maintenance of dams and the overall responsibility of public dam owners and agencies.

3. Possible Terms of the Agency Actions:

There is no sunset date for the Regulation

4. Statutory Basis or Legal Authority to Act:

Title 7 Chapter 42

5. Other Regulations That May Be Affected:

N/A

6. Notice of Public Comment:

A final hearing has been scheduled for April 27th at 4:00 PM in the DNREC Auditorium located at the Richardson and Robbins Building 89 Kings Highway, Dover, DE 19901.

7. Prepared By:

Frank M. Piorko

Phone (302) 739-4411 E-mail Frank.Piorko@state.de.us

Regulatory Flexibility Act Compliance

1. The nature of any reports and the estimated cost of their preparation by individuals and/or small business which would be required to comply with the new rule:

None. The proposed regulation does not regulate private dams

2. The nature and estimated costs of other measures or investments that would be required by individuals and/or small businesses in complying with the rule:

None. The proposed regulation does not regulate private dams

3. The nature and estimated cost of any legal, consulting and accounting services which individuals and/or small businesses would incur in complying with the rule:

None. The proposed regulation does not regulate private dams

4 The ability of individuals and/or small businesses to absorb the costs estimated under questions 1, 2 and 3 of this form without suffering economic harm and without adversely affecting competition in the marketplace:

N/A

5. The additional cost, if any, to the agency of administering or enforcing a rule which exempts or sets lesser standards for compliance by individuals and/or small business:

N/A

6. The impact on the public interest of exempting or setting lesser standards of compliance for individuals and/or small businesses.

N/A

7. What accommodations, if any, have been made in the regulations to address individual or small business concerns identified above?

N/A

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

[5103 Delaware Dam Safety Regulations](#)

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

3700 BOARD OF SPEECH/LANGUAGE PATHOLOGISTS, AUDIOLOGISTS AND HEARING AID DISPENSERS

Statutory Authority: 24 Delaware Code, Section 3706(a)(1) (24 **Del.C.** §3706(a)(1))
24 **DE Admin. Code** 3700

PUBLIC NOTICE

Pursuant to 24 **Del.C.** §3706(a)(1), the Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers has proposed revisions to its rules and regulations.

A public hearing will be held on May 13, 2009 at 2:15 p.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 Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers, 861 Silver Lake Boulevard, Dover, Delaware 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 proposes several amendments to Rule 8.0, which addresses the continuing education requirements for licensees. First, Rule 8.2.2 is amended to increase the number of required continuing education hours for each of the three professions regulated by the Board. Single-licensed and dual-licensed individuals will be required to complete 30 continuing education hours every 2 years and triple-licensed individuals will be required to complete 45 hours. If approved, this change will go into effect for the license renewal period beginning August 1, 2009 and ending July 31, 2011.

Rule 8.2.2.6 is amended to clarify that an extension of time within which to complete continuing education or a waiver of the continuing education requirements may be granted upon a showing of hardship, but such request must be submitted prior to expiration of the license.

The Rules pertaining to online renewal and attestation have been revised for greater clarity. Rules 8.2.6, 8.2.7, 8.2.8, 8.2.9 and 8.2.10 have been added to provide a detailed explanation of the continuing education audit process. Finally, Rule 8.2.11 expressly gives the Board the authority to conduct hearings and impose the full range

of sanctions available under 24 Del.C. §3716 when licensees fail to comply with the continuing education requirements.

The proposed amendments strengthen continuing education standards and give the Board express authority to sanction licensees who do not comply with those standards. Therefore, the proposed revisions will serve to protect the public from unsafe practices and enhance practitioner competence.

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

3700 Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers

(Break in Continuity of Sections)

8.0 Continuing Education For All Licensees:

8.1 Philosophy

- 8.1.1 Continuing education is required by the Board to maintain professional licensure in the fields of Speech/Language Pathology, Audiology and Hearing Aid Dispensing. Continuing education requirements arise from an awareness that these fields are in a continual state of transition due to the introduction of new philosophies and the refinement of already existing knowledge. Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers should continually strive to update their clinical skills in an effort to deliver high quality services.
- 8.1.2 The Board is keenly aware of existing educational opportunities in Delaware and neighboring states and has established regulations which will provide continuing education credit as effortlessly as possible while assuring quality instruction. Credit will be given for participation in a variety of activities that increase knowledge and enhance professional growth.
- 8.1.3 These regulations recognize the financial and time limitations of Delaware's professionals while assuring continued appropriate services to those individuals who require them.

8.2 Continuing Education Criteria

- 8.2.1 One continuing education contact hour (CE) is defined as 60 minutes of attendance/participation in an approved continuing education activity unless otherwise stated. (Therefore, credits and continuing education units (CEUs) CEUs issued by various organizations must be translated. e.g., 1.0 ASHA CEU = 10 CE's)
- 8.2.2 ~~CE Time Frame: CE requirements must be completed in each license renewal period. Licensees have until the renewal deadline, July 31st in odd-numbered years, to complete the required CEs.~~
- 8.2.32 The required number of CEs varies with the date of issuance of license, certification and/or professional status, ~~as outlined below:~~ Effective as of the license renewal period beginning August 1, 2009, licensees must meet the following CE requirements:
 - 8.2.32.1 New License: There is no CE requirement for a license issued for less than one year. If a license would cover more than one year, but less than 2 years, the licensee is required to obtain ~~40~~ 15 CEs or one-half of the required total hours.
 - 8.2.32.2 Single License: Individuals with a license in only one (1) area of specialty must obtain a minimum of ~~20~~ 30 CEs each two-year license renewal period.
 - 8.2.32.3 Dual License: Individuals with licenses in two (2) areas of specialty must obtain a minimum of ~~20~~ 30 CEs during each two-year license renewal period, with ~~40~~ 15 CEs obtained in each specialty area. One course may be split between specialty areas to fulfill multiple CE requirements. Content must be shown to be relevant to those areas.
 - 8.2.32.4 Triple License: Individuals with licenses in three (3) areas of specialty must obtain a minimum of ~~30~~ 45 CEs during each two-year license renewal period, with 10 CEs obtained in each specialty area. One course may be split between specialty areas to fulfill multiple CE requirements. Content must be shown to be relevant to those areas.

- 8.2.32.5 Temporary License: All CE requirements will be waived for temporary licensees; however, individuals are encouraged to participate in continuing education activities during their CFY period.
- 8.2.32.6 ~~Extenuating Circumstances: The Board may consider a waiver of CE requirements or acceptance of partial fulfillment based on the Board's review of a written request with supporting documentation. Extenuating circumstances may include, but are not limited to, disability, illness, extended absence from the jurisdiction, and exceptional family responsibilities. Hardship. An applicant for license renewal may be granted an extension of time in which to complete CE hours or a total or partial waiver of CE requirements upon a showing of hardship. Hardship may include, but is not limited to, disability, illness, extended absence from the country and exceptional family responsibilities. No extension of time or waiver shall be granted unless the licensee submits a written request to the Board prior to the expiration of the license.~~
- 8.2.43 CE courses must focus on the enhancement of clinical skills and professional growth as defined below.
- 8.2.43.1 Clinical Skills: conferences, workshops, courses, etc., that expand a licensee's scope of practice by enhancing skills in the areas of prevention, assessment, diagnosis, and treatment of the client (minimum of 44 20 CEs per licensure renewal period).
- 8.2.43.2 Professional Growth: conferences, workshops, courses, etc., that may not directly impact on clinical services to the population being served but are of interest to the licensee and will allow the licensee the opportunity to stay abreast of current trends in the profession or related fields of interest (maximum of 6 10 CEs per licensure renewal period).
- ~~8.2.5 Verification of attendance may be required. Therefore, all licensees should retain documentation of their attendance at all CE activities.~~
- 8.2.64 All CE activities must be approved by the Board. A licensee or CE course sponsor may request advance approval from the Board by submitting a completed Board Approval form. Approval may be requested after the conclusion of a course, but there is no guarantee the course will be approved.
- ~~8.2.7 The Board will monitor CE compliance with a random, post renewal audit system. Licensees will be selected randomly for audit and notified by mail after the renewal deadline.~~
- 8.2.5 CE is required for license renewal and shall be completed by July 31 of odd-numbered years.
- 8.2.5.1 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Rule 8.0
- 8.2.5.2 Attestation may be completed online. In the alternative, paper renewal documents that contain the attestation of completion can be submitted.
- 8.2.6 Random audits will be performed by the Board to ensure compliance with the CE requirements. The Board will determine the percentage of licensees to be audited.
- 8.2.6.1 The Board will notify licensees within sixty (60) days after July 31 of each biennial renewal period that they have been selected for audit.
- 8.2.6.2 Licensees selected for random audit shall be required to submit verification within ten (10) days of receipt of notification of selection for audit.
- 8.2.7 Verification shall include such information necessary for the Board to assess whether the course or other activity meets the CE requirements in Section 8.0. While course brochures may be used to verify CE hours, they are not considered to be acceptable proof for use of verification of course attendance. Verification must include, but is not limited to, the following information:
- 8.2.7.1 Date of CE course;
- 8.2.7.2 Instructor of CE course;
- 8.2.7.3 Sponsor of CE course;
- 8.2.7.4 Title of CE course; and
- 8.2.7.5 Number of hours of CE course.

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- 8.2.8 In response to the audit, audiologists and hearing aid dispensers shall submit documentation of calibration of electronic equipment used to assess hearing, as set forth in Rule 7.0.
- 8.2.9 Licensees who are not audited shall retain their CE documentation for three (3) years after renewal.
- 8.2.10 Licensees who renew their license under the late renewal provision shall be audited for CE completion (and equipment calibration, if applicable). These licensees shall submit documents that evidence satisfactory completion of their CE requirements (and annual equipment calibration pursuant to regulation 7.0, if applicable) for the prior licensure period.
- 8.2.11 The Board shall review all documentation submitted by licensees pursuant to the CE audit. If the Board determines that the licensee has met the CE requirements, his or her license shall remain in effect. If the Board determines that the licensee has not met the CE requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. The hearing will be conducted to determine if there are any extenuating circumstances justifying the noncompliance with the CE requirements. Unjustified noncompliance with the CE requirements set forth in these rules and regulations shall constitute a violation of 24 Del.C. §3715(a)(7) and the licensee may be subject to one or more of the disciplinary sanctions set forth in 24 Del.C. §3716.
- 8.3 CE Courses/Activities
- 8.3.1 CE activities sponsored by accredited professional organizations, provided the topics are relevant to the improvement of the licensee's clinical skills or professional growth as defined in Rule 8.2.4. Agenda of sessions is required for approval of convention activities.
- 8.3.2 A licensee may receive up to three (3) CE's for training obtained from a colleague who, after attending a professional conference, gives a formal presentation of the information from the conference after developing an agenda and outline.
- 8.3.3 University/College coursework for academic credit in the field of Speech/ Language Pathology, Audiology, or Hearing Aid Dispensing. A course description must be submitted to the Board for approval. (1 undergraduate credit = minimum of 3 CE's; 1 graduate credit = minimum of 5 CE's)
- 8.3.4 Professional presentations. A presentation summary must be submitted to the Board for approval. Credit may be given for a presentation only once during a licensure period. (1 hour of presentation = 3 CE's)
- 8.3.5 Professional publication in related specialty journals. A reprint of the publication must be submitted to the Board for approval.
- 8.3.6 Other continuing education may be approved by the Board with documentation of content.
- 8.3.7 Excluded are any job related duties in the workplace such as staff meetings, CPR, etc.
- 8.4 Licensee Responsibilities
- 8.4.1 All licensees shall:
- 8.4.1.1 Complete the required CE by July 31st of each renewal period.
- 8.4.1.2 Prove completion of the CE requirement. Proof of CE requirement completion is satisfied with an attestation of completion by the licensee during the renewal process. Attestation may be completed electronically if the renewal is accomplished online at dpr.delaware.gov. A paper renewal that contains the attestation of completion is also acceptable.
- 8.4.1.3 Provide documentation of having attended approved CE activities as required. Licensees who are audited shall submit documents that evidence satisfactory completion of their CE requirements for the prior licensure period. Licensees who are not audited shall retain their documentation for three (3) years after renewal.
- ~~8.4.2 Licensees who renew their license under the late renewal provision shall be audited for CE completion (and equipment calibration, if applicable). These licensees shall submit documents that evidence satisfactory completion of their CE requirements (and annual equipment calibration pursuant to regulation 7.1, if applicable) for the prior licensure period.~~
- 10 DE Reg. 1830 (06/01/07)**
11 DE Reg. 814 (12/01/07)

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

[3700 Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers](#)

PUBLIC SERVICE COMMISSION

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

PUBLIC NOTICE

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

ORDER NO. 7518

This 6th day of January, 2009, the Commission determines and Orders the following:

1. The “Electric Utility Retail Customer Supply Act of 2006” (“the Act”) directs Delmarva Power & Light Company (“DP&L”) to file an “Integrated Resource Plan” (“IRP”) with the Commission, the State Energy Office, the Controller General, and the Director of the Office of Management and Budget (collectively “the State Agencies”).¹ The Act requires DP&L to systematically evaluate all available supply options (including procurement, generation, transmission, conservation, and load management) over a ten-year planning period.² The Act further directs DP&L to craft an IRP comprised of the appropriate mix of such resources that will be utilized to meet the needs of its Standard Offer Service (“SOS”) customers at the lowest reasonable cost, while supporting or improving the reliability of electric service to all customers in Delaware.³

2. The Act further provides for Delmarva to consider the economic and environmental value of resources that utilize new or innovative baseload technologies, resources that provide short- or long-term environmental benefits to the citizens of the State, facilities that have existing fuel and transmission infrastructure, facilities that utilize existing brownfield or industrial sites, resources that promote fuel diversity, resources that support or improve reliability, and resources that encourage price stability

3. The Act confers on the Commission the authority to “promulgate any rules and regulations it deems necessary to accomplish the development of IRPs by DP&L.”⁴

4. As of this date, DP&L has filed its initial IRP and three updates. In Order No. 7122 (Jan. 23, 2007), the Commission opened PSC Docket No. 07-20 to perform its oversight and review of the IRP. By Order No. 7623 (Aug. 21, 2007), the Commission opened this proceeding to consider the development of rules and regulations to accomplish integrated resource planning for DP&L’s SOS customers. The Commission directed Staff to prepare proposed rules, regulations, or other needed documents (“the Draft Regulations”) for the Commission’s review.

5. Staff circulated initial Draft Regulations to the parties in PSC Docket No. 07-20 (“the IRP parties”) and the State Agencies on August 31, 2007. The IRP parties and the State Agencies filed comments on Staff’s initial drafts

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

2. *Id.*

3. See 26 **Del.C.** §§ 1001, 1007(c)(1)(as amended by 75 Del. Laws. Ch. 242 § 6 (2006)).

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

on October 12, 2007. Following comment from the IRP Parties and State Agencies, Staff submitted revised Draft Regulations on November 14, 2007.

6. In Order No. 7318 (Dec. 4, 2007), the Commission approved the Draft Regulations, initiated the formal rulemaking procedure dictated by the Administrative Procedures Act, and directed written comments on the Draft Regulations to be filed by February 1, 2008.¹ On March 3, 2008, Staff further revised the Draft Regulations ("Revised Draft Regulations") to incorporate its analysis of the comments submitted through February 1, 2008. On March 12, 2008, a duly-noticed evidentiary hearing was held to consider the Revised Draft Regulations.

7. On October 24, 2008, the Hearing Examiner submitted her proposed findings and recommendations regarding the Revised Draft Regulations (the "Hearing Examiner's Report") (hereafter "HER at ____"). The HER focused on the issues that remained in dispute following the lengthy evidentiary hearing: (1) the definition of "acknowledgment" in Sections 1.7, 2.0, and 9.3; (2) the definition of "environmental benefit" in Section 2.0; (3) the definition of "external costs" in Section 6.0;² and (4) Delmarva's role in developing demand-side management programs in light of the establishment of the Sustainable Energy Utility ("SEU").³

8. The Hearing Examiner recommended that the Commission adopt Staff's proposed Revised Draft Regulations with two revisions. First, to avoid confusion between the terms "acknowledgement" and "approval," the Hearing Examiner recommended that the following language be inserted into Section 1.7:

Approval or disapproval of an IRP must be made by the Commission after, at a minimum, Staff's analysis of and public comment on the proposed IRP.

(HER at ¶ 26). The Hearing Examiner rejected the Clean Air Council's position that the term "acknowledgement" is consistent with Commission approval after evidentiary hearings because use of the term "approval" materially changes the meaning of the Revised Draft Regulations. (HER at ¶ 15). The Hearing Examiner reasoned that an extensive rewrite of the Revised Draft Regulations was not warranted simply to clarify the treatment of an initial filing vis-à-vis a filing that had been subject to evidentiary hearings. *Id.* Second, the Hearing Examiner recommended changing the definition of price stability from variation in the "real" price paid by SOS customers over the planning period to "actual" price to make the definition more "concrete and identifiable." (HER at ¶¶ 19, 26).

9. The Clean Air Council and Professor Jeremy Firestone filed written exceptions to the Hearing Examiner's report, and Green Delaware "generally agreed" with those exceptions. (Dec. 2, 2008 Tr. at 187:5-6). In its exceptions, the Clean Air Council argued that substituting the term "approval" for "acknowledgement" would not require an extensive rewrite of the Revised Draft Regulations because the term was only used in three subsections. (Clean Air Council Brief on Exceptions at 5) (hereafter "CAC Br. at ____"). The Clean Air Council contended that the IRP should be subject to a full contested proceeding prior to Commission acknowledgment. *Id.* In response, Staff argued that use of the term "approval" would inappropriately impute ratemaking treatment to the components of the IRP filing prior to the time a rate case was filed. (Dec. 2, 2008 Tr. at 200:9-22).

10. Additionally, the Clean Air Council and Dr. Firestone argued that health costs should be specifically delineated as "environmental costs" under Section 6.1.3 because analysis thereof was integral to the evaluation of resource options pursuant to 26 Del. C. § 1007(c). (Firestone Brief on Exceptions at ¶ 7) (hereafter "Firestone Br. at ____"); CAC Br. at 7-9). Both Dr. Firestone and the Clean Air Council further asserted that it was not feasible for the

1. The Sustainable Energy Utility Task Force, Jeremy Firestone ("Dr. Firestone"), Bluewater Wind LLC, Delmarva Power & Light Company ("DP&L"), the Delaware Energy Office, and the Clean Air Council all filed written comments regarding the Draft Regulations. In addition, Green Delaware participated in the proceedings.

2. With regard to the definition of plan development in Sections 2.0 and 6.1.3, the Hearing Examiner accepted Staff's argument that the broad language of both sections encompassed health and environmental effects, and that DP&L or the public could provide analyses of health costs to the Commission for consideration in evaluating the IRP. (HER at ¶ 22). The Hearing Examiner observed that inclusion of a "laundry list" could discourage utilities from considering other unenumerated factors (Mar. 12, 2008 Tr. at 101:21).

3. The Hearing Examiner adopted Staff's position that although the SEU has specific jurisdiction to develop energy efficiency programs, DP&L may propose energy efficiency programs in its IRP. (HER at ¶ 24).

public to evaluate and analyze the health effects of the IRP components. *Id.* Staff argued that the regulations governing the IRP should be flexible and that other state agencies, such as the Department of Natural Resources and Environmental Control (“DNREC”), had more expertise in determining the potential health costs of an IRP program than the Commission. (Dec. 2, 2008 Tr. at 199-200).

11. Dr. Firestone further objected to the Hearing Examiner’s recommended change of the definition of price stability from “real” to “actual” price. He argued that this change materially altered the definition because the term “real price” has an economic meaning – it is adjusted for the effects of inflation. (Firestone Br. at ¶ 11). Staff agreed with the Hearing Examiner that calculation of “real” price can be nebulous and, although recognizing that using an “actual” price might not include the effects of inflation, believed that it was a more certain starting place than the “real” price. (Dec. 2, 2008 Tr. at 198:12-18; 201:18-24 – 202:1-6).

12. Dr. Firestone next contended that the term “efficient” should be deleted from Section 1.1 because it was redundant of the term “cost effective.” (Firestone Br. at ¶ 10). In response, Staff argued that the term “efficient” encompassed more than merely economic efficiency, and both terms were used in several places throughout the EURCSA. (Dec. 2, 2008 Tr. at 196-197).

13. Finally, Dr. Firestone challenged the effective date of the Revised Draft Regulations. He urged the Commission to apply the rules and regulations retroactively to both the 2006 and 2008 IRPs. (Firestone Br. at ¶ 9). Staff pointed out that a regulation may not be applied retroactively unless the legislature provides for such retroactive application in the regulation’s governing statute, which was not the case here. (Dec. 2, 2008 Tr. at 195:17-196:8). Moreover, Staff observed that DP&L had indicated on the record that it would comply with the regulations in its current filings. (*Id.* at 196:12-23).

14. The Commission convened on December 2, 2008 to hear oral argument and deliberate on the Hearing Examiner’s findings and recommendations regarding the Revised Draft Regulations. After hearing such oral argument and conducting its deliberations in public, we hereby find as follows.

15. We adopt the Hearing Examiner’s and Staff’s positions that “health costs” should not be included as a specific externality for consideration in the proposed regulations. DNREC and the Delaware Energy Office have an interest in environmental and health costs, and interveners and the public can look to these agencies on these issues. Furthermore, we are not convinced that the public cannot calculate the potential impact of this externality on an IRP; Dr. Firestone’s participation in this docket and the information he has submitted demonstrates that interested members of the public can indeed calculate (or submit information that calculates) the impact of including an externality such as health costs in an IRP. In this regard, we observe that while the externality of health costs may be important to some people, there are other externalities that are important to other people. If health costs are specifically included as an externality but others are not, it suggests that we do not intend for those other externalities to be considered and addressed. That is not the case: we intend for the regulations to cast as broad a net as possible with respect to externalities to be considered and addressed. (5-0).

16. Although we acknowledge and appreciate the efforts of Staff and the parties in preparing the Revised Draft Regulations, our deliberations at the December 2, 2008 meeting and our questioning of the parties demonstrate that we believe that several important issues have not been adequately addressed in the Revised Draft Regulations. Specifically, we reject the Hearing Examiner’s recommendation with respect to the distinction between “acknowledgement” and “approval” as used in the Revised Draft Regulations. As a review of the transcript of our deliberations demonstrates, this issue caused us great concern. We were advised that the difference between “approval” and “acknowledgement” as set forth in these Revised Draft Regulations was designed to address a distinction this Commission first drew in IRP cases arising in the mid 1990s as a way to prevent a utility whose IRP had been “approved” from later contending, in a rate case filed subsequent to Commission approval of an IRP, that the generation assets included in that IRP had also been approved for ratemaking purposes. However, we believe that that concept is not clear in the Revised Draft Regulations, and direct Staff to revisit this particular issue to clarify the difference between “acknowledgement” and “approval,” or indeed to determine whether the distinction is warranted. (5-0).

17. We also direct Staff to consider the following issues in redrafting the proposed regulations:

- Incorporation of the role of the SEU vis-à-vis this Commission in the regulations governing demand-side management;
- Whether the Examiner’s modification of Section 2.0, “Price Stability,” to provide for the “actual” price as opposed to the “real” price, is appropriate;

- How confidential information in the IRP should be treated;
- Whether other state agencies, such as DNREC and the Office of Management and Budget, should be included in the IRP review process and, if so, in what manner;
- The impact and effect of DP&L's hedging policy on its IRP;
- The potential impact of federal climate change legislation on the IRP;
- Whether Staff should consider the input of agencies other than DNREC, or the input of the public, in assessing the "environmental benefits" of the IRP as defined in Section 2.0; and
- Whether DP&L's assessment of any transmission enhancements should be included.

(5-0).

18. We hereby direct Staff to revise the Revised Draft Regulations to address the issues outlined in Paragraphs 16 and 17, and to circulate those revisions to the IRP Parties and the interveners in this docket. All revised regulations shall be subject to the provisions of the Administrative Procedures Act with respect to notice and publication. See 29 Del. C. §§ 10115, 10118.

19. We further designate a different Hearing Examiner to preside over this docket going forward.

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

1. That, pursuant to 26 Del. C. § 502 and 29 Del. C. ch. 101, Mark C. Lawrence is assigned as the Hearing Examiner for this docket. Hearing Examiner Lawrence shall conduct such procedures and hearings as may be necessary to construct a record sufficient for the Commission to investigate the proposed rules and regulations. Hearing Examiner Lawrence shall conduct such procedures and hearings in accordance with the notice and other procedural requisites imposed by State law and those required under the Administrative Procedures Act.

2. That this docket is remanded to Hearing Examiner Lawrence to schedule and conduct such evidentiary hearings as may be necessary to resolve the issues delineated in Paragraphs 16 and 17 above, and to thereafter submit his recommendations with the Commission. Dates and times for serving comments regarding, and responding to Staff's proposed revisions addressing, the issues identified in Paragraph 17 above shall be included in said procedural schedule. Hearing Examiner Lawrence is specifically delegated the authority to determine the form and manner of any further public notice in this matter. James McC. Geddes, Esquire, shall continue as Rate Counsel in this matter.

3. That Staff is directed to revise the Revised Draft Regulations to address the issues identified in Paragraphs 16 and 17 above and circulate those revisions to the parties, and that Staff follow the procedures outlined in Section 10118 of the Administrative Procedures Act with respect to these newly-revised draft regulations.

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

BY ORDER OF THE COMMISSION:

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

ATTEST:

Karen J. Nickerson, Secretary

Notice of Seeking Comments from Public Concerning Regulations Proposed by Public Service Commission Staff

In Order No. 7263 (Aug. 21, 2007), the Delaware Public Service Commission (“PSC” or the “Commission”) opened this docket to consider promulgating rules to govern Delmarva Power & Light Company’s (“DP&L”) development of Integrated Resource Plans (“IRPs”) for its Standard Offer Service (“SOS”) customers, as authorized by the Electric Utility Retail Customer Supply Act of 2006 (“the Act”).¹ Pursuant to that Order, the Commission Staff drafted proposed IRP rules after consulting with the parties in DP&L’s ongoing IRP docket (PSC Dckt. No. 07-20) and with the three (3) state agencies then involved in DP&L’s IRP process.² On November 14, 2007, Staff submitted draft rules entitled “Integrated Resource Planning Regulations.”

In PSC Order No. 7318 (Dec. 4, 2007), the Commission accepted Staff’s draft IRP rules and initiated the formal rule-making procedure dictated by the Administrative Procedures Act (“APA”).³ Thereafter, the Commission directed publication in the Delaware Register (among other places) of Staff’s proposed IRP Rules and directed a Hearing Examiner to conduct proceedings regarding the proposed IRP rules.

After holding a duly-noticed public evidentiary hearing, the Hearing Examiner issued Findings and Recommendations (Sept. 12, 2008). The Hearing Examiner recommended Commission approval of Staff’s proposed IRP Rules, as described in the Hearing Examiner’s Report.

In PSC Order No. 7518 (Jan. 6, 2009), however, the Commission did not approve Staff’s proposed IRP Rules. The Commission asked Staff to clarify certain aspects of the Regulations and to issue revised Regulations. Staff has now issued its revised Regulations.

The Commission now solicits comments from the Public regarding Staff’s revised Regulations.

Written comments must be filed with the Delaware Public Service Commission, 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, DE, 19904 no later than May 6, 2009. The PSC will utilize the comments received to evaluate Staff’s revised Regulations.

All prior filings in this Docket can be reviewed at the PSC’s office at the address listed above. Anyone who plans to submit comments should also review PSC Order No. 7518 (Jan. 6, 2009).

If you have questions, you may contact the Commission in person, by writing, by telephone (including text telephone), and by Internet e-mail. You may call the Commission at 1-800-282-8574 (toll-free in Delaware) or you may call (302) 736-7500 (voice or text telephone). You may also send questions or request further information by Internet e-mail addressed to pamela.knotts@state.de.us. If you have a disability and wish to participate in, or to review the materials in these proceedings, please contact the Commission to discuss any auxiliary aids or services which you might need to help you.

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

1.0 General

- 1.1 The reliability of electric service and the security of energy supply are of great importance to the Delaware Public Service Commission (“Commission”), because they are essential services to the citizens of Delaware. This regulation, in support of 26 Del.C. §1007, sets forth the minimum Delmarva Power and Light (“DP&L” or “Company”) Integrated Resource Plan (“IRP” or “the Plan”) requirements needed to ensure a cost effective, price stable, reliable, efficient and environmentally sound energy supply for all Standard Offer Service (“SOS”) customers.
- 1.2 Nothing in this regulation relieves DP&L from compliance with any requirement set forth under any other regulation, statute, or order. Compliance with this regulation meets the minimum IRP

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

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

3. See 29 Del.C. § 10111, et. seq.

PROPOSED REGULATIONS

- requirements. Compliance with this regulation does not imply plan approval or automatic cost recovery.
- 1.3 In accord with 26 Del.C. §1007, DP&L, as the Standard Offer Service Supplier, shall file an IRP on December 1st, 2006 and on the anniversary date of the first filing date every other year thereafter (i.e. 2008, 2010 et seq.). The Company may request and the Commission may change the filing date for good cause shown. These regulations shall apply to all IRPs filed pursuant to 26 Del.C. §1007. These regulations shall not apply to an IRP docket opened prior to the effective date of these regulations.
- 1.4 The IRP shall be filed in compliance with normal Commission policies and practices.
- 1.5 The plan shall identify the year of the filing, the individuals responsible for its preparation and those individuals who shall be available to respond to inquires during the Commission's review of the plan.
- 1.6 Because an IRP may contain Trade secrets and commercial or financial information, the Company may request that information, required under this regulation, be classified as confidential, proprietary and/or privileged material. The Company must explain how the material deemed confidential, if disclosed, will cause substantial harm to the competitive position of the Company or other party. The Company must attest that such information is not subject to inspection by the public or other parties without execution of an appropriate proprietary agreement. In requesting such treatment of information the Company is also obligated to file an additional copy of the information, excluding the confidential or proprietary information. The Commission, in accordance with Rule 11, Rules of Practice and Procedure of the Delaware Public Service Commission, effective May 10, 1999, shall treat such information as "confidential, not for public release" upon receipt of a properly filed request. Any dispute over the confidential treatment of information shall be resolved by the Commission, designated Presiding Officer or Hearing Examiner. Confidential utility documents shall be presented under separate seal.
- 1.7 Commission Recognition of a filed IRP implies only that the plan is in compliance with the administrative requirements of this regulation and the Electric Utility Retail Customer Supply Act of 2006 ("Act"), 26 Del.C. § 1001-1012. The recognition or ratification of an IRP does not confer or imply Commission approval unless so stated by an Order of the Commission. Approval or disapproval of an IRP must be made by the Commission after, at a minimum, Staff's analysis of and public comment on the proposed IRP. Any specific ratemaking treatment for the plan or any portions thereof is neither directly nor indirectly guaranteed by virtue of the recognition or ratification.
- 1.8 The utility shall provide whatever detail and commentary necessary to demonstrate that it has met or exceeded the planning requirements as set forth in this regulation. An effort shall be made to ensure that the IRP is clearly stated and can be readily comprehended by the Commission, State Agencies, and other interested parties. The IRP shall include an Executive Summary.
- 1.9 Compliance with this regulation is a minimum standard for IRPs. Company needs to exercise its professional judgment based on its systems and customer needs. The Company shall include all information that assists the reader to fully understand the IRP concept and the Company's plans to meet SOS energy needs.
- 1.10 This regulation requires the maintenance and retention of supply resource planning data and the reporting of plan achievements on an annual basis starting in 2009 to the Commission, Governor and General Assembly. The Company shall retain such data, consistent with Federal data retention guidelines and make it available for further review as necessary.
- 1.11 The Company shall submit a total of 14 copies of its IRP - eight (8) copies to the Commission, two (2) copies to the Controller General's office, two (2) copies to the Office of Management and Budget, and two (2) copies to the Energy Office/DNREC. The Commission may request up to six (6) additional copies of combined and common filings as may be necessary for review.
- 1.12 These Integrated Resource Planning Regulations shall be effective for IRP dockets opened after the effective date of these regulations and may be reviewed, revised, or extended as necessary to ensure continued compliance with 26 Del.C. § 1001-1012 and to ensure adequate SOS energy supply.
- 1.13 Failure of the Company to file an IRP or to provide progress reports as required may subject the Company to the penalty and remedial provisions of the Delaware statute (26 Del.C. § 1019).

2.0 Definitions

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

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

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

“**Commission**” means the Delaware Public Service Commission.

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

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

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

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

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

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

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

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

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

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

“**Environmental Benefit**” means the positive environmental impact of environmental services, practices or other ecological influences attained by specific actions, minus the negative environmental impacts caused by those actions. Staff will give due consideration to input from DNREC, interveners and public comment.

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

1. 26 Del.C. § 1001(5).

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

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

“**Integrated Resource Plan (IRP)**” means the planning process of an Electric Distribution Company that systematically evaluates all available options, including but not limited to: generation, Supply Contracts, transmission and Demand-Side Management programs during the planning period to ensure that the electric distribution Company acquires sufficient and reliable resources over time that meet their customers’ needs at a minimal cost.¹

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

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

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

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

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

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

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

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

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

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

- Adequacy is the ability of the electric system to supply the aggregate electrical demand and energy requirements of customers at all times, taking into account scheduled and reasonably expected unscheduled outages of system elements.
- Security is the ability of the electric system to withstand sudden disturbances such as electric short circuits or unanticipated loss of system elements.²
- As applied to distribution facilities, Reliability is further described as the degree to which safe, proper and adequate electric service is supplied to customers without interruption.

“**Resource Portfolio**” see “Portfolio”

1. 26 Del.C. § 1001(13).

2. NERC definition - NERC’s Reliability Assessment 2001–2010, dated October 16, 2001.

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

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

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

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

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

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

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

3.0 General Requirements

- 3.1 Consistent with the requirements of 26 Del.C. §1007 and this regulation, the Company shall file an IRP every two years, starting on December 1 of the first even-numbered year after the effective date of these regulations, that adheres to the following general principals:
- 3.1.1 The IRP shall provide a framework for comparing a comprehensive resource mix of supply- and demand-side and Transmission Service resource costs and attributes.
 - 3.1.2 The IRP shall utilize a Resource Portfolio in achieving the objectives of the IRP, shall incorporate a Portfolio approach to securing resources and incorporating an analysis of risk versus certainty into the planning process, or absent such a Portfolio approach, the rationale supporting the exclusion.
 - 3.1.3 The IRP process shall provide for regulatory, stakeholder and public input.
 - 3.1.4 The IRP shall include provisions for the IRP to be modified from time to time, as may be necessary to conform with any subsequent legislative or regulatory directives.
- 3.2 The IRP shall include the following minimum requirements:
- 3.2.1 An executive summary with a short description of the utility, its customers, service territory, current facilities, planning objectives, notable areas of departure in the new IRP from the old, citing specific location within the IRP where the new aspects shall be found, Load Forecast, recommended Resource Portfolio and action plan.
 - 3.2.2 Established Plan Objectives in quantitative and qualitative terms by which the plan achievements may be measured and shall not be biased against any particular option. Measures must be ascribed to each objective. The Company must include a summary of the overall process, and models used in developing the IRP.
 - 3.2.3 A description of the load forecast, the assumptions used or implicit in creating the forecast, the range of forecast examined, and the forecast selected for the filing period.
 - 3.2.4 A listing of all the options considered to meet the load forecast, identification of those chosen for further evaluation and possible inclusion in the plan, and a discussion of the rationale for such selections including any key assumptions. This planning information shall include a 10-year planning horizon, starting with the year immediately following the filing year (i.e. filing year of 2010 shall include planning information for years 2011 through 2020).
 - 3.2.5 A description of the Scenario Analysis used to integrate the options into a single resource plan or individual scenario for further review and analysis, to include a listing of the various scenarios considered and any key assumptions.

PROPOSED REGULATIONS

- 3.2.6 A description of the process used to develop the proposed IRP, including the assumptions and analysis leading up to the decision and the application of the valuation criteria as specified in section 5.0.
- 3.2.7 An analysis of the risk and sensitivity of the proposed IRP in comparison to other options also considered.
- 3.2.8 Action plans for implementation of the IRP, for no less than five (5) years, starting with the year immediately following the filing year.

4.0 Load Forecast

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

5.0 Resource Portfolio Options

- 5.1 The Company shall include a description of the overall process and the analytical techniques it used to identify its proposed options. The Company shall not rely exclusively on any particular resource or purchase procurement process.
- 5.2 The Company shall identify and evaluate all reasonable generation, Supply Contracts, both short- and long-term procurement and demand- side and demand response management strategies, even if a particular strategy is ultimately not recommended by the Company. The IRP must show an investigation of all reasonable opportunities for a more diverse supply at the lowest reasonable cost. Company should provide its hedging guidelines. If there are any changes from the existing hedging policy, Company should so state. Any cost evaluation should state whether real or nominal costs were used. It shall contain a description of each option and an evaluation that considers the economic and environmental value of the following:
 - 5.2.1 Resources that utilize New or Innovative Baseload Technologies;
 - 5.2.2 Resources that provide short or long term Environmental Benefits to the citizens of this State;
 - 5.2.3 Facilities that have existing fuel and transmission infrastructure;
 - 5.2.4 Facilities that utilize existing brownfield or industrial sites;
 - 5.2.5 Resources that promote Fuel Diversity;
 - 5.2.6 Resources or facilities that support or improve Reliability; or
 - 5.2.7 Resources that encourage Price Stability.
- 5.3 The Company shall provide a description of the options recommended for inclusion in the proposed plan, including a description of the mechanism or process used for valuing each option. Such valuation shall also include consideration for the life expectancy of the resource, if the resource provides capacity and/or energy, any improvements to system Reliability, the dispatchability of the source, any lead time requirements, the flexibility of the resource, the Generation Attributes of the resource, the

efficiency of the resource, and the opportunities for customers' participation. The valuation shall assess the probability of securing the options according to modeling information used, including any key assumptions. The Company shall provide the estimated energy and capacity impacts for each option and the rationale behind the estimate.

- 5.4 Where Transmission Service is identified as a planning option, the Company shall describe the transmission enhancement, the location, and provide PJM's assessment of the impact of the proposed transmission asset when available. The IRP shall reflect the current projects included in PJM's Regional Transmission Expansion Plan.
- 5.5 At least 30 percent of the resource mix shall be acquired through the regional Wholesale Electricity Market via a bid procurement or auction process held by DP&L. (Docket No. 04-391.)
- 5.6 The Company shall also include discussion of known plans to reduce existing physical, contractual or service related Portfolio resources during the IRP planning period.
- 5.7 The Company shall evaluate all technically feasible and cost effective DR improvements. Where non-Company evaluations of DSM and Conservation are available through the Sustainable Energy Utility ("SEU") (or other organization as requested by the Commission), the Company shall summarize the results and actions taken. The Company may contract with the SEU (whose primary function is to develop end-user markets for energy efficiency services and customer-sited renewable energy, and to facilitate private sector implementation of the SEU's market development plans) to provide services to accomplish the SEU's Demand Side management plans. Any Company proposed DSM program rejected by the SEU may be included in the IRP. Where DR programs are new, the Company shall summarize the anticipated benefits with respect to load reductions and provide supporting material to justify the new program.
- 5.8 The Company shall assess the Resource Portfolio options against the set of Plan Objectives and criteria.

6.0 Plan Development

- 6.1 The Company shall conduct an Integrated Resource Evaluation in formulating its potential plans for supply and demand-side resource scenarios. The Company shall describe the mechanism or process by which the Load Forecast and options have been blended into the various IRP scenarios. In integrating its supply and demand-side resources, the Company shall:
- 6.1.1 Provide a discussion of how the Company might alter the recommended plan in the future if the key planning assumptions used to develop the recommended plan in the future turn out to be different than what was assumed in preparing the recommended plan.
- 6.1.2 Evaluate the cost-effectiveness of the options from the perspectives of the utility and the different classes of ratepayers.
- 6.1.3 Estimate a range of external costs which may be intangible, in order to show how explicit consideration of them might affect selection of options. The utility shall attempt to quantify the magnitude of the externalities, for example, in terms of the amount of emissions released and dollar estimates of the costs of such externalities.
- 6.1.4 Evaluate the financial, competitive, Reliability, and operational risks associated with the options recommended by the IRP and how these risks may be mitigated over the 10 year planning period. Each candidate plan shall include a discussion of the likelihood of the occurrence of such risks.
- 6.1.5 For the options included in the proposed plan identified in the IRP, the IRP shall include an analysis of the fuel risk associated with the proposed Resource Portfolio and how such fuel risk will be mitigated when the proposed plan is implemented.
- 6.1.6 Perform sensitivity analyses on each of the candidate plans to include variations in key assumptions and to assess the likelihood of planned outcomes. The sensitivity analyses should include among other analyses the impact of proposed regulations related to climate change.
- 6.2 The Company shall forward a copy of the IRP to DNREC and seek input into externalities, including but not limited to, health effects.

6.3 In developing candidate plans, special attention shall be given to ensuring consistency between the IRP and typical rate-making processes. While the ultimate consumer price associated with the plan is important, the stability of rates and other factors as described in Section 5.2 need to be considered in any candidate plan selection.

7.0 Proposed Plan Selection.

7.1 The Company shall select and file the proposed IRP which it believes is the most consistent with the criteria set forth in 26 Del.C. §1007. The Company shall describe the rationale behind its selection, including any modeling or methodology used as the basis for selection of the proposed plan.

7.2 In filing the proposed IRP, the Company shall provide at a minimum a five (5) year forecast of supply rates by customer class that would be anticipated based on the IRP planning assumptions and recommended procurement strategy.

8.0 Implementation Plan

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

8.1.1 Actions to be taken in the first two (2) years and outline actions anticipated in the last three (3) years.

8.1.2 For IRP's filed on or after December 1, 2010, a status report of the specific actions contained in the previous action plan, including what risk assumptions were made and what actually occurred.

8.1.3 Schedule of key activities related to the plan implementation.

9.0 Review and Comment

9.1 As part of the process commencing in 2009 and continuing on an annual basis, the Company shall submit a report to the Commission, the Governor and the General Assembly detailing their progress in implementing their IRPs.

9.2 The Commission, interested State Agencies, interested parties and the general public shall be provided an opportunity for review and comment on the Company's IRP filings. The Commission shall seek input from DNREC (assuming DNREC has intervened) on the issue of externalities due to emissions, as the result of the proposed IRP.

9.3 Subsequent to the IRP recognition and after input from the public and other parties, the Commission may ratify the filing of the Company's IRP and its compliance with these regulations. Ratification that the IRP complies with the statute shall not guarantee a particular ratemaking treatment of future resource acquisitions. To the extent that the Commission determines that the IRP is not compliant with the statute or is unlikely to meet the goals of the statute, the Company shall revise its IRP to meet these requirements. Rate treatment shall be addressed in rate or other proceedings as filed by the utility or as initiated by the Commission.

9.4 The Integrated Resource Plan may be used as a factor in rate cases to evaluate the performance of the utility. Reports provided under this regulation are subject to annual review and audit by the Commission and interested State Agencies. The Company must maintain sufficient records to permit a review and confirmation of material contained in all required reports.

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 AGRICULTURE
HARNESS RACING COMMISSION**

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

ORDER

Pursuant to 29 **Del.C.** § 10118 and 3 **Del.C.** §10005, the Delaware Harness Racing Commission issues this Order adopting proposed amendments to the Commission's Rules. Following notice and a public hearing on February 10, 2009, the Commission makes the following findings and conclusions:

Summary of the Evidence

The Commission posted public notice of the proposed amendments to DHRC Rule 9 in the January 1, 2009 *Register of Regulations* (Volume 12, Issue 7) and for two consecutive weeks in January in *The News Journal* and *Delaware State News*. The Commission proposed to update Rule 9.

The Commission received no written comments. The Commission held a public hearing on February 10, 2009, in which no public comments were made.

Findings of Fact and Conclusions

The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission's Rules.

After considering the rule changes as proposed, the Commission hereby adopts the rule changes as proposed. The Commission believes that these rule changes will allow the Delaware Harness Racing Commission rules to more accurately reflect current policy and procedures.

The effective date of this Order will be ten (10) days from the publication of this Order in the Register of Regulations on April 1, 2009.

IT IS SO ORDERED this 10th day of March, 2009.

Beverly H. (Beth) Steele, Chairman
Robert (Breezy) Brown, Commissioner
George P. Staats, Commissioner
Mary Ann Lambertson, Commissioner
Kenneth Williamson, Commissioner

501 Harness Racing Rules and Regulations

*Please note that no changes were made to the regulation as originally proposed and published in the January 2009 issue of the *Register* at page 864 (12 DE Reg. 864). Therefore, the final regulation is not being republished. A copy of the final regulation is available at

[501 Harness Racing Rules and Regulations](#)

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 122(b) and 14 Delaware Code, Chapter 16
(14 **Del.C.** §122(b) & 14 **Del. C.** Ch. 16))
14 **DE Admin. Code** 746

Regulatory Implementing Order

746 Criminal Background Check for Student Teaching

I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 **DE Admin. Code** 746 Criminal Background Check for Student Teaching to change the date for which criminal background checks are required for student teachers in Delaware public schools. The date is being changed because current state law does not enable the Delaware's State Bureau of Identification to submit a request for a federal background check (28 CFR 50.12A and 28 CFR 20.33A3). The Department will pursue a legislative change to accommodate the federal requirement. The Department continues to work with the district personnel directors, Delaware's higher education institutions, the State Police and State Bureau of Identification to ensure consistent implementation of this new requirement.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on Wednesday, February 4, 2009, in the form hereto attached as *Exhibit "A"*. No comments were received.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 746 Criminal Background Check for Student Teaching in order change the date to pursue a legislative change to accommodate the federal requirement.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 746 Criminal Background Check for Student Teaching. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 746 Criminal Background Check for Student Teaching attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122, 14 **DE Admin. Code** 746 Criminal Background Check for Student Teaching hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** 746 Criminal Background Check for Student Teaching amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 746 Criminal Background Check for Student Teaching in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on March 15, 2009. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 15th day of March 2009.

Lillian M. Lowery, Ed. D., Secretary of Education

Approved this 15th day of March 2009

746 Criminal Background Check for Student Teaching

*Please note that no changes were made to the regulation as originally proposed and published in the February 2009 issue of the *Register* at page 1025 (12 DE Reg. 1025). Therefore, the final regulation is not being republished. A copy of the final regulation is available at

[746 Criminal Background Check for Student Teaching](#)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) 14 **Del.C.** §1205(b)
14 **DE Admin. Code** 1513

REGULATORY IMPLEMENTING ORDER**1513 Denial of Licenses****I. Summary of the Evidence and Information Submitted**

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1513 Denial of Licenses. This

regulation sets forth the criteria for the denial of Delaware educator licensure, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation due to recent changes in the **DE Admin. Code**.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on Monday February 2, 2009 in the form hereto attached as Exhibit "A". The notice invited written comments. No comments were received.

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute.

III. Decision to Amend the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1513 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 5TH DAY OF MARCH, 2009

Kathleen Thomas, Chair
 Samtra Devard
 Karen Gordon
 Lori Hudson
 Jill Lewandowski
 Gretchen Pikus
 Karen Schilling-Ross
 Carol Vukelich

Joanne Christian
 Marilyn Dollard
 Cristy Greaves
 David Kohan
 Wendy Murray
 Whitney Price
 Michael Thomas
 Cathy Zimmerman

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Lillian Lowery Ed.D., Secretary of Education

IT IS SO ORDERED THIS 19TH DAY OF MARCH, 2009

STATE BOARD OF EDUCATION

Richard M. Farmer, Jr., Vice President

G. Patrick Heffernan

Jorge L. Melendez
Dennis J. Savage

Barbara Rutt
Terry M. Whittaker, Ed.D.

1513 Denial of Licenses

1.0 Content

This regulation shall apply to the denial of an Initial License, Continuing License or Advanced License for educators pursuant to 14 **Del.C.** §1210, 1211, 1212, 1213, 1214, and 1217; and to the denial of a Standard or Emergency Certificate pursuant to 14 **Del.C.** §§1220 and 1221.

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

9 DE Reg. 138 (7/1/05)

2.0 Definitions

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

"Advanced License" means a license issued as part of the three tiered licensure system set forth in 14 **Del.C.** §1213 and §1214.

"Continuing License" means a license issued as part of the three tiered licensure system set forth in 14 **Del.C.** §1211 and §1212.

"Department" means the Delaware Department of Education.

"Educator" ~~means a public school employee who holds a license issued under the provisions of 14 **Del.C.** Ch. 12, and includes teachers and administrators, and as otherwise defined by the Standards Board and the State Board, pursuant to 14 **Del.C.** §1203, but does not include substitute teachers~~ **[means a person licensed and certified by the State under 14 **Del.C.**, Chapter 12, to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board and approved by the State Board. For purposes of 14 **Del.C.** Chapter 12, the term 'educator' does not include substitute teachers].**

"Good Moral Character" means conduct which is consistent with the rules and principles of morality expected of an educator.

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

"Initial License" means a license issued as part of the three tiered licensure system set forth in 14 **Del.C.** §1210.

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

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

"Standards Board" means the Professional Standards Board established pursuant to 14 **Del.C.** §1205.

"State" means the State of Delaware.

"Unfit" means lack of good moral character, misconduct in office, incompetence, a pattern of ineffective teaching, wilful neglect of duty, disloyalty or falsification of credentials, or any conduct that would be grounds for revocation of an educator's license.

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

9 DE Reg. 138 (7/1/05)

3.0 Failure to Meet Licensure Requirements

~~The Department may refuse to issue an Initial License, Continuing License, Advanced License or a Standard or Emergency Certificate to an applicant upon a finding that the applicant fails to meet the statutory or regulatory requirements for a license or certificate.~~

The Department may refuse to issue an Initial License, Continuing License, Advanced License or a Standard or Emergency Certificate and deny an applicant's request for a license for failure to meet the statutory or regulatory qualifications for a license.

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

9 DE Reg. 138 (7/1/05)

4.0 ~~Finding that Applicant is Unfit~~ Denial of Unfit Applicants

~~Upon a finding that an applicant is unfit to be licensed or certified in the State, the Department may refuse to issue an Initial License, Continuing License or an Advanced License or a Standard or Emergency Certificate to an applicant who otherwise meets the requirements set forth in 14 DE Admin. Code 1510, 1511, 1512, 1515 and 1516.~~

4.1 The Department may refuse to issue an Initial License, Continuing License, Advanced License or a Standard or Emergency Certificate and deny a license to an applicant who otherwise meets the requirements for a license because the applicant is unfit.

4.2 The Department may refuse to issue an Initial License, Continuing License, Advanced License or a Standard or Emergency Certificate and deny a license to an applicant who otherwise meets the requirements for a license because the applicant has engaged in any misconduct or conduct that would be a basis for revocation under 14 DE Admin. Code 1514 Revocation, Limitation or Suspension of Licenses.

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

9 DE Reg. 138 (7/1/05)

65.0 Right to Hearing, Burden of Proof, and Procedures

5.1 ~~The Secretary shall give written notice to the applicant of the denial and the reasons therefore. The Department shall not take action to deny a license under this section without providing the applicant with written notice of the reasons for denial and with an opportunity for a full and fair hearing before the Standards Board.~~

5.2 The notice of denial shall be sent by certified mail, return receipt requested to the applicant's last known mailing address and shall give notice that a full and fair hearing may be requested before the Standards Board within ten (10) days.

5.2.1 The applicant shall report any address changes to the Department and the Standards Board.

~~6.4~~ 5.3 An applicant who is denied an Initial, Continuing, or Advanced License or a Standard or Emergency Certificate may appeal the decision, and is entitled to a full and fair hearing before the Standards Board.

5.3.1 The applicant's request for a hearing before the Standards Board shall be received by the Standards Board's Executive Director within twenty (20) calendar days of the date the denial notice was mailed.

5.4 In any hearing before the Standards Board to challenge action taken under this regulation, the Standards Board shall have the power to administer oaths, order the taking of depositions, issue subpoenas and compel attendance of witnesses and the production of books, accounts, papers, records, documents and testimony.

5.5 Unless otherwise provided for in this Section, the burden of proof in a license denial action shall be on applicant to show by a preponderance of the evidence that he or she should not be denied a license because he or she meets the qualification for licensure pursuant to the applicable laws and regulations.

5.5.1 Provided however, if the denial of the license is on the basis that the applicant is unfit or otherwise committed conduct or misconduct that would be the basis for revocation of a license, the Department shall specify the particular conduct and circumstances giving rise to the denial.

5.5.1.1 Prior to a hearing for a license denial under Section 4.0, the Department shall provide full disclosure of the basis of the denial.

5.5.2 Whenever the basis for an action described within this regulation is a guilty plea, a plea of nolo contendere with respect to, or a conviction of a crime, a copy of the record of the plea, nolo contendere or conviction certified by the Clerk of the Court entering the plea, nolo contendere or conviction shall be conclusive evidence thereof.

~~6.4~~ 5.6 Hearings shall be conducted in accordance with the Standard Board's Hearing Procedures and Rules.

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

9 DE Reg. 138 (7/1/05)

56.0 Revocation in Another State

Notwithstanding any other provisions stated herein or in 14 **DE Admin. Code** 1510, 1511, and 1512, no license or certificate shall be issued to an applicant for an Initial, Continuing or Advanced License or Standard or Emergency Certificate if:

56.1 There is legal evidence that the applicant is not of good moral character; or

56.2 The applicant has had a certificate or license revoked in another state for immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials.

9 DE Reg. 138 (7/1/05)

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 1205(b) 14 **Del.C.** §1205(b)
14 **DE Admin. Code** 1514

REGULATORY IMPLEMENTING ORDER

1514 Revocation of Licenses and Certificates

I. Summary of the Evidence and Information Submitted

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1514 Revocation of Licenses and Certificates. This regulation sets forth the criteria for the revocation, limitation or suspension of Delaware educator licenses, pursuant to 14 **Del.C.** §1220(a). It is necessary to amend this regulation due to recent changes in the **DE Admin. Code**. The amended title will read 1514 Revocation, Limitation or Suspension of Licenses.

Notice of the proposed amendment of the regulation was published in the *News Journal* and the *Delaware State News* on Monday February 2, 2009 in the form hereto attached as Exhibit "A". The notice invited written comments. No comments were received.

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute.

III. Decision to Amend the Regulation

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1514 of the *Administrative Code of Regulations* of the Department of Education.

V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 5TH DAY OF MARCH, 2009

Kathleen Thomas, Chair
 Samtra Devard
 Karen Gordon
 Lori Hudson
 Jill Lewandowski
 Gretchen Pikus
 Karen Schilling-Ross
 Carol Vukelich

Joanne Christian
 Marilyn Dollard
 Cristy Greaves
 David Kohan
 Wendy Murray
 Whitney Price
 Michael Thomas
 Cathy Zimmerman

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Lillian Lowery Ed.D., Secretary of Education

IT IS SO ORDERED THIS 19TH DAY OF MARCH, 2009

STATE BOARD OF EDUCATION

Richard M. Farmer, Jr., Vice President
 Jorge L. Melendez
 Dennis J. Savage

G. Patrick Heffernan
 Barbara Rutt
 Terry M. Whittaker, Ed.D.

1514 Revocation, Limitation, or Suspension of Licenses and Certificates

1.0 Content

This regulation shall apply to the revocation of an Initial License, Continuing License or Advanced License; or a Limited Standard, Standard or Professional Status Certificate issued prior to August 31, 2003 for educators, pursuant to 14 **Del.C.** §1218.

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

~~7-DE Reg. 627 (11/1/03)~~

2-0 Definitions

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

~~"Advanced License" means a license issued as part of the three tiered licensure system set forth in 14 Del.C. §1213 and 1214.~~

~~"Continuing License" means a license issued as part of the three tiered license system set forth in 14 Del.C. §1211 and 1212.~~

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

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

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

~~"Initial License" means a license issued as part of the three tiered licensure system set forth in 14 Del.C. §1210.~~

~~"License Holder" or "Licensee" means any individual who holds an Initial License, Continuing License or Advanced License, and until a Continuing License is issued, a limited standard, standard, or Professional Status certificate.~~

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

~~"Standards Board" means the Professional Standards Board established pursuant to 14 Del.C. §1205.~~

~~"State" means the State of Delaware.~~

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

~~7-DE Reg. 627 (11/1/03)~~

~~9-DE Reg. 542 (10/1/05)~~

3-0 Revocation of License or Certificate

An Initial, Continuing or Advanced License; or a Limited Standard, Standard, or Professional Status Certificate issued prior to August 31, 2003 may be revoked upon the dismissal of the license holder for immorality, misconduct in office, incompetency, willful neglect of duty or disloyalty, or upon the license holder's resignation or retirement pending dismissal for immorality, provided that clear and convincing evidence establishes the underlying misconduct, and must be revoked upon a finding that the license or certificate holder made a materially false or misleading statement in his or her license or certificate application.

3-1 Revocation Requested by a School District or Charter School

3-1.1 When any license or certificate holder is dismissed by a school board, or board of directors, or other employing authority for immorality, the board making such a determination pursuant to Title 14 of the ~~Delaware Code~~ shall, upon final decision, give written notice to the Secretary.

3-1.2 When any license or certificate holder is dismissed by a school board or board of directors or other employing authority for misconduct in office, incompetence, willful neglect of duty or disloyalty, the board making such a determination pursuant to Title 14 of the ~~Delaware Code~~ may, upon final decision, give written notice to the Secretary of its desire to request the revocation of that individual's license.

- ~~3.1.3 When a license or certificate holder employed by a school board or board of directors or other employing authority resigns employment or retires pending dismissal for immorality, the board shall, upon accepting the resignation or retirement, give written notice to the Secretary.~~
- ~~3.1.4 Upon receipt of written notification from the school board or board of directors or other employing authority, the Secretary shall give written notice to the license or certificate holder of the intended revocation and the reasons therefore. The notice of revocation shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Standards Board within thirty (30) days. Hearings shall be conducted in accordance with the Standard Board's Hearing Procedures and Rules.~~
- ~~3.1.5 If the licensee fails to request a formal hearing before the Standards Board within thirty (30) days of the notice of revocation, the Secretary shall send written notification by certified mail to the individual revoking his/her license.~~

~~3.2 Revocation by the Secretary of Education~~

- ~~3.2.1 The Secretary may initiate proceedings to revoke a license or certificate holder's license or certificate when she/he has good reason to believe that clear and convincing evidence establishes that any of the following circumstances exist:~~
- ~~3.2.1.1 The license or certificate holder has been convicted of a crime which is evidence of immorality;~~
- ~~3.2.1.2 The license or certificate holder who is not employed by a public school district or charter school or other employing authority has resigned his/her employment or retired pending dismissal for immorality; or~~
- ~~3.2.1.3 The license or certificate holder has had a certificate or license revoked in another state for immorality, misconduct in office, incompetency, willful neglect of duty or disloyalty or falsification of credentials.~~
- ~~3.2.2 The Secretary shall give written notice to the license or certificate holder of the intended revocation and the reasons therefor. The notice of revocation shall be sent by certified mail and shall give notice that a full and fair hearing may be requested before the Standards Board within thirty (30) days. Hearings shall be conducted in accordance with the Standard Board's Hearing Procedures and Rules.~~
- ~~3.2.3 If the licensee fails to request a formal hearing before the Standards Board within thirty (30) days of the notice of revocation, the Secretary shall send written notification by certified mail to the individual revoking his/her license or certificate.~~

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

~~7-DE Reg. 627 (11/1/03)~~

~~9-DE Reg. 553 (10/1/05)~~

~~4.0 Duty of License or Certificate Holder to Report~~

- ~~4.1 Notwithstanding any other provisions stated herein, a license or certificate holder shall send written notification to the Secretary within thirty (30) days of the happening of any of the following events:~~
- ~~4.1.1 The license or certificate holder is dismissed by a school board, board of directors, or other employing authority for immorality;~~
- ~~4.1.2 The license or certificate holder resigns employment or retires pending dismissal for immorality;~~
- ~~4.1.3 The license or certificate holder is convicted of a crime which is evidence of immorality; or~~
- ~~4.1.4 The license or certificate holder has had a certificate or license revoked in another state for immorality, misconduct in office, incompetency, willful neglect of duty, disloyalty or falsification of credentials.~~
- ~~4.2 The failure of the license or certificate holder to report any of the above events to the Secretary of Education shall be grounds for revoking a license or certificate provided that clear and convincing evidence establishes the underlying misconduct.~~

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

~~7-DE Reg. 627 (11/1/03)~~

~~9-DE Reg. 542 (10/1/05)~~

5.0 **Right to Hearing**

~~When a license or certificate is revoked, all certificates held by the license or certificate holder shall be revoked. Educators are entitled to a full and fair hearing before the Professional Standards Board. Hearings shall be conducted in accordance with the Standards Board's Hearing Procedures and Rules.~~

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

~~7-DE Reg. 627 (11/1/03)~~

~~9-DE Reg. 542 (10/1/05)~~

1.0 **Content**

~~This regulation shall apply to the revocation, limitation, or suspension of an Initial License, Continuing License or Advanced License issued pursuant to 14 Del.C. Ch. 12; or a Limited Standard, Standard or Professional Status Certificate issued prior to August 31, 2003 for educators, pursuant to 14 Del.C. §1218.~~

2.0 **Definitions**

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

~~"**Advanced License**" means a license issued as part of the three-tiered licensure system set forth in 14 Del.C. §1213 and §1214.~~

~~"**Continuing License**" means a license issued as part of the three-tiered license system set forth in 14 Del.C. §1211 and §1212.~~

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

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

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

~~"**Initial License**" means a license issued as part of the three-tiered licensure system set forth in 14 Del.C. §1210.~~

~~"**License Holder**" or "**Licensee**" means any individual who holds an Initial License, Continuing License or Advanced License, and until a Continuing License is issued, a Limited Standard, Standard, or Professional Status Certificate.~~

~~"**Nolo Contendere**" means a plea by the defendant in a criminal prosecution that without admitting guilt subjects him to conviction but does not preclude him from denying the truth of the charges in a collateral proceeding.~~

~~"**Nollo Prosequi**" means an entry on the record of a legal action denoting that the prosecutor or plaintiff will proceed no further in his action or suit either as a whole or as to some count or as to one or more of several defendants.~~

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

~~"**Standards Board**" means the Professional Standards Board established pursuant to 14 Del.C. §1205.~~

~~"**State**" means the State of Delaware.~~

3.0 Revocation of License**3.1 Discretionary Revocations**

The Secretary may revoke an Initial, Continuing or Advanced License that has been issued, for the following causes if the license holder:

- 3.1.1 Obtained or attempted to obtain or renew a license or certificate by fraudulent means or through misrepresentation of material facts; or
- 3.1.2 Falsified official school records, documents, statistics or reports; or
- 3.1.3 Knowingly violated any of the provisions of the Student Testing Program set forth in 14 **Del.C.** §172; or
- 3.1.4 Plead guilty or nolo contendere with respect to, or is convicted of, any crime against a child constituting a misdemeanor, except for Unlawful Sexual Conduct in the Third Degree; or
- 3.1.5 Plead guilty or nolo contendere with respect to, or is convicted of, possession of a controlled substance or a counterfeit controlled substance classified as such in 16 **Del.C.** Chapter 47, Schedule I, II, III, IV, or V; or
- 3.1.6 Was terminated or dismissed for immorality, incompetence, misconduct in office, willful neglect of duty, disloyalty or misconduct involving any cause for suspension or revocation of a license; or
- 3.1.7 Resigned or retired pending dismissal for immorality, provided that clear and convincing evidence establishe[ds] the underlying misconduct occurred; or
- 3.1.8 Had a license or certificate revoked or voluntarily surrendered in another jurisdiction for cause which would be grounds for revocation; or
- 3.1.9 Failed to comply with any of the mandatory notice provisions of this regulation.
- 3.1.10 Failed to comply with any of the statutory or regulatory requirements for maintaining a license.

3.2 Mandatory Revocations

The Secretary shall revoke a license if the license holder:

- 3.2.1 Pleads guilty or nolo contendere with respect to, or is convicted of:
 - 3.2.1.1 Any crime constituting the manufacture, delivery, possession with intent to manufacture or deliver a controlled substance or a counterfeit controlled substance classified as such in of 16 **Del.C.** Chapter 47, Schedule I, II, III, IV or V; or
 - 3.2.1.2 Any crime constituting a violent felony as defined in 11 **Del.C.** §4201(c); or
 - 3.2.1.3 Any crime against a child constituting a felony, or Unlawful Sexual Contact in the Third Degree; or
 - 3.2.1.4 Any crime constituting a felony sexual offense; or
 - 3.2.1.5 Any crime constituting a felony offense against public administration involving bribery, improper influence or abuse of office; or
- 3.2.2 Is terminated or dismissed for a sexual offense against a child; or
- 3.2.3 Resigns or retires after official notice of allegations of a sexual offense against a child, provided that clear and convincing evidence establishes the underlying misconduct occurred.

4.0 Limitation of Licenses

- [4.1] The Secretary may limit an Initial, Continuing or Advanced License that has been issued, for any of the grounds for revocation.
- [4.2] **If any of the causes listed in Sections 3, 4, 5, or 6 are determined, the Secretary or the Standards Board after a hearing, may put limitations on a license that may include but are not limited to:**
 - 4.2.1 **Restrictions on the ages of students with whom the license holder may work; or**
 - 4.2.2 **Additional supervision requirements; or**
 - 4.2.3 **Education, counseling or psychiatric examination requirements.]**

5.0 Suspension of Licenses

- 5.1 The Secretary may suspend an Initial, Continuing or Advanced License that has been issued, for any of the grounds for revocation.
- 5.2 A license may be suspended for a period of time not to exceed five (5) years.
 - 5.2.2 The license may be reinstated by the Secretary, upon written request, with verification that all requirements for license renewal have been satisfied.
 - 5.2.3 If the license expired during the period of suspension, the holder of the former license may reapply for the same tier license that was suspended but shall meet the license requirements that are in effect at the time of the application for the license.

6.0 Automatic Suspension after Arrest or Indictment

- [6.1] The Secretary may automatically suspend any license without a prior hearing if the license holder is arrested or indicted by a Grand Jury for a violent felony as defined in 11 Del.C. §4201(c). A suspension under this subsection is effective on the date of the arrest or Grand Jury indictment.

6.2 Temporary Order

- 6.2.1 For a suspension under this sub section, the Secretary shall issue a written temporary order of suspension to the license holder at his or her last known address.
 - 6.2.1.1 The chief school officer or head of school, on behalf of the local board of education or charter school board of directors, shall report to the Secretary the name and last known address of any license holder employed by the district or charter school who it knows to have been arrested or indicted by a Grand Jury for a violent felony as defined in 11 Del.C. §4201(c).
 - 6.2.1.2 An order of suspension under this Section shall remain in effect until the final order of the Secretary or the Standards Board becomes effective.

6.3 Expedited Hearing

- 6.3.1 A license holder whose license has been suspended pursuant to this Section may request an expedited hearing before the Standards Board within 20 calendar days from the date the notice of the Secretary's decision to temporarily suspend the license holder's license was mailed. The request shall be sent to the Standards Board's Executive Director.
- 6.3.2 In the event that the license holder requests an expedited hearing, the Standards Board shall convene a hearing within 90 calendar days of the receipt of such a request.
- 6.3.3 The order of suspension is temporary pending resolution of the criminal charges. Therefore, an expedited hearing under this subsection shall be limited to whether the license holder had been arrested or indicted for a violent felony.

6.4 Revocation after Conviction

- 6.4.1 If the license holder pleads guilty or nolo contendere with respect to, or is convicted of, a violent felony as defined in 11 Del.C. §4201(c), the Secretary shall proceed with revocation.

6.5 Resolution of Charges without Conviction

- 6.5.1 If the license holder is found not guilty of the underlying criminal charges, a nollo prosequi is entered on the record by the State, or the charges are otherwise dismissed by the Court, the license holder may file a written request for license reinstatement, including documentation of the final status of the judicial proceeding, and their license shall be reinstated if still valid.
- 6.5.2 If the license expired during the period of suspension, the holder of the former license may reapply for the same tier license that was suspended, but shall meet the license requirements that are in effect at the time of the application for license.
- 6.5.3 The Secretary may however, continue to pursue revocation under any alternative ground including but not limited to termination of employment for immorality, incompetence, misconduct in office, willful neglect of duty, disloyalty, or misconduct; or resignation or retirement pending dismissal for immorality under the standards provided herein.

7.0 Substantially Comparable Conduct

The Secretary may take any action under this regulation on the basis of substantially comparable conduct occurring in a jurisdiction outside this State or occurring before a person applies for or receives any license.

8.0 Mandatory Notification Requirements**8.1 License Holder**

8.1.1 Any license holder who has pled guilty or nolo contendere to, or has been convicted of, a crime in a court of law which would constitute grounds for revocation, limitation or suspension of license under this regulation or has been arrested or indicted by a Grand Jury for a violent felony as defined in 11 Del.C. §4201(c), shall notify the Secretary of such action in writing within twenty (20) calendar days of such conviction, arrest or indictment, whether or not a sentence has been imposed. Failure to do so shall be grounds on which the Secretary may revoke, limit or suspend the holder's license.

8.1.2 Any license holder who has surrendered an educator license or any professional license or certificate or who has had such a license or certificate revoked, limited or suspended in any jurisdiction or by any agency shall notify the Secretary of such action in writing within thirty (30) calendar days of such action. Failure to do so shall be grounds on which the Secretary may revoke, limit or suspend the holder's license.

8.2 Chief School Officer, Head of School, Local Board or Charter School Board of Directors Responsibilities

8.2.1 The chief school officer or head of school, on behalf of the local board of education or charter school board of directors, shall report to the Secretary the name and last known address of any license holder who is dismissed, resigns, retires or is otherwise separated from employment with that district or charter school after having received notice of misconduct that constitutes grounds for revocation or suspension this regulation.

8.2.1.1 Such report shall be made within fifteen (15) calendar days of the dismissal, resignation, retirement or other separation from employment and is required notwithstanding any termination agreement to the contrary that the local board of education or charter school board of directors may enter into with the license holder.

8.2.1.2 The reasons for the license holder's dismissal, resignation, retirement or other separation from employment with the district or charter school shall also be provided along with all evidence that was reviewed by or is in the possession of the district or charter school relating to the dismissal, resignation, retirement or other separation from employment.

8.2.1.3 The Department shall give written notice to any license holder of any notification received under this subsection to the license holder's last known address. Such notification shall be made with fifteen (15) calendar days of receipt of the district or charter school's report to the Department of misconduct under this Section.

8.2.1.4 The obligation to report also applies when a chief school officer or head of school acquires relevant information after a license holder's dismissal, resignation, retirement or other separation from employment.

8.2.2 The chief school officer or head of school, on behalf of the local board of education or charter school board of directors, shall report to the Secretary the name and last known address of any license holder employed by the district or charter school who it knows to have been arrested or indicted by a Grand Jury for a violent felony as defined in 11 Del.C. §4201(c).

8.2.3 All information obtained from the chief school officer or head of school shall be confidential and shall not be considered public records under Delaware's Freedom of Information Act.

8.2.4 Failure to make the mandatory reports shall be grounds on which the Secretary may limit, suspend or revoke the chief school officer's or head of school's license.

8.3 Notice of Action

The Secretary shall not take action against a person under Sections 3, 4 or 5 without providing the person with written notice of the charges and with an opportunity for a full and fair hearing before the Standards Board.

8.3.1 Notice shall be sent to the person's last known address.

8.3.2 The license holder shall have thirty (30) calendar days from the date the notice of the charges was mailed to make a written request for a hearing.

8.3.3 If no written request for a hearing is received by the Standards Board within thirty (30) calendar days of receipt of notification, the license holder's license shall be deemed to be revoked, limited or suspended and the holder shall be so notified.

8.3.4 Notice of the revocation, limitation, suspension or reinstatement of a license shall be made by the Secretary, or his or her designee, to all chief state school officers of the other states and territories of the United States.

8.4 All communications between a license holder and the Department or Standards Board provided for in this Section shall be by certified mail, with a return receipt requested.

9.0 Investigations

9.1 The Secretary may investigate any information received about a person that reasonably appears to be the basis for action under this regulation.

9.1.1 The Secretary shall not investigate anonymous complaints.

9.1.2 The Department shall give written notice within a reasonable period of time to a license holder of any investigation initiated hereunder to the license holder's last known address.

9.1.3 All information obtained during an investigation is confidential and shall not be considered public records under Delaware's Freedom of Information Act.

9.1.4 The Secretary shall review the results of each investigation conducted pursuant to this regulation and shall determine whether the results warrant initiating action under this regulation.

10.0 License Reinstatement

10.1 Subject to the limitation contained herein, an individual whose license has been revoked under Section 3.1 Discretionary Revocation of this regulation may petition the Secretary for reinstatement of the license no sooner than five (5) years from the date of revocation. The individual shall submit to the Secretary a written petition showing credible evidence, by affidavit or otherwise, of the factors set forth in subsection 10.1.1.

10.1.1 The Secretary shall consider all of the following criteria in evaluating a petition for reinstatement and shall only grant such a petition if it is in the best interest of the public schools of the State of Delaware:

10.1.1.1 The nature and circumstances of the individual's original misconduct;

10.1.1.2 The individual's subsequent conduct and rehabilitation;

10.1.1.3 The individual's present character; and

10.1.1.4 The individual's present qualifications and competence to engage in the practice of instruction, administration or other related professional support services.

10.1.2 A former license holder is entitled to a full and fair hearing before the Standards Board to challenge a denial of reinstatement pursuant to this subsection.

10.2 A license revoked under Section 3.2 Mandatory Revocations or suspended under Section 6.0 of this regulation may not be reinstated under this subsection.

10.2.1 A license suspended under Section 6.0 may only be reinstated pursuant to that section.

10.2.2 A license revoked under Section 3.2 Mandatory Revocation may only be reinstated under Section 10.3.

10.3 If a decision of license revocation, limitation or suspension is solely based on the conviction of a crime enumerated within this regulation, and if the plea or conviction is overturned and there is no subsequent proceeding leading to a plea or conviction, the individual whose license is revoked, limited

or suspended may file a written request for reinstatement, including documentation of the final status of the judicial proceeding, and the license shall be reinstated.

10.3.1 The Secretary may continue to pursue revocation under an alternative basis.

1[21].0 [~~License Limitations~~] Standards Board Hearings and Procedures

41.1 ~~If any of the causes listed in Sections 3, 4, 5, or 6 are determined, the Secretary or the Standards Board after a hearing, may put limitations on a license that may include but are not limited to:~~

~~41.1.1 Restrictions on the ages of students with whom the license holder may work; or~~

~~41.1.2 Additional supervision requirements; or~~

~~41.1.3 Education, counseling or psychiatric examination requirements.]~~

1[21].1 In any hearing before the Standards Board to challenge action taken under this regulation, the Standards Board shall have the power to administer oaths, order the taking of depositions, issue subpoenas and compel attendance of witnesses and the production of books, accounts, papers, records, documents and testimony.

1[21].2 Unless otherwise provided for in this Section, the burden of proof in a license disciplinary action shall be on the agency taking official action to establish by preponderance of the evidence that the license holder has engaged in misconduct as defined by Sections 3, 4 and 5 or otherwise has failed to comply with the applicable laws and regulations relating to the retention of the license.

1[21].3 Whenever the basis for an action described within this regulation is a guilty plea, a plea of nolo contendere with respect to, or a conviction of a crime, a copy of the record of the plea, nolo contendere or conviction certified by the Clerk of the Court entering the plea, nolo contendere or conviction shall be conclusive evidence thereof.

1[21].4 After a hearing, the Standards Board may take any action and impose any limitation or suspension that could have been taken by the Secretary.

1[21].5 Hearings shall be conducted in accordance with the Standard Board's Hearing Procedures and Rules.

1[32].0 Resolution by Consent Agreement

The Secretary may enter into a written consent agreement with a person against whom action is being taken under this regulation.

1[43].0 Certification

All Standard Certificates issued to the license holder shall also be revoked upon the revocation of the license.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

DSSM: 15120.2 Financial Eligibility and 16230.1.2 Self-Employment Income

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend several sections in the Division of Social Services Manual (DSSM) regarding the self-employment standard deduction to determine eligibility. The Department's proceedings to amend its regulations

were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the February 2009 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 4, 2009 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The proposed changes described below amends policies in the Division of Social Services Manual (DSSM) to comply with the CMS-approved Medicaid state plan amendment regarding the use of a self-employment standard deduction to determine eligibility.

Statutory Authority

Section 1902(r)(2) of the Social Security Act, *More Liberal Methods of Treating Income*

Summary of Proposal

Title XIX Medicaid State Plan, SPA #411, regarding self-employment income, was approved on March 9, 2006 and effective October 1, 2005. Policy addressing actual self-employment expenses was inadvertently omitted in the final regulation as published in the Delaware Register at 9 DE Reg. 567 (October 1, 2005 issue). The Centers for Medicare & Medicaid Services (CMS) approved SPA #411 provided agency policy indicates that actual expenses are used if the application of the standard deduction results in a finding of ineligibility.

DSSM 15120.2, *Financial Eligibility*; DSSM 16230.1.2, *Self-Employment Income*: The proposed rule will amend existing rules to reflect the policy of the state plan to allow actual self-employment expenses to be used when the application of the self-employment standard deduction results in a finding of ineligibility.

There will be no change in practice or procedure as staff has been applying this policy about actual self-employment expenses.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. DMMA has considered each comment and responds as follows:

Unfortunately, the rationale for the regulation and the actual regulatory text do not match. The GACEC and SCPD would like to share our observations.

The Summary of Proposal section (at p. 1044) recites that DMMA inadvertently omitted a CMS-approved provision in the regulation adopted on October, 2005. CMS had approved an exception to the general flat rate approach to self-employment expenses. Specifically, "actual expenses are used if application of the standard deduction results in a finding of ineligibility." At 1044.

Consistent with the "Summary of Comments Received with Agency Response" from the October, 2005 regulation, the State Council for Persons with Disabilities (SCPD) had unsuccessfully objected to a no-exceptions approach to the standard, percentage-based deduction. However, consistent with the DMMA regulation adopted in July, 2006, DMMA reconsidered and added an exception to allow actual expenses. Therefore, there is no need to correct the October, 2005 omission since it was fixed in July, 2006.

However, the text of the current proposed regulation defines what qualifies as "actual self-employment expenses". The regulation contains a list of disallowed expenses which are generally allowed by the IRS, including: 1) purchase of capital equipment; 2) payments on the principal of loans for capital assets or durable goods; and 3) depreciation. Unless precluded by CMS regulation or policy, the Council recommends that IRS deductions be allowed. If DMMA is dis-inclined to allow all IRS deductions, Council recommends that the three expenses listed

above not be excluded. They are seemingly common, legitimate expenses of a business and would include purchases of computers, printers, and other common necessities of a business.

To the extent the underlined text in the Register accurately reflects the proposed revision, the Council recommends adoption of a less restrictive approach to self-employment deductions.

Agency Response: DMMA acknowledges that the July, 2006 final regulation included the CMS approved State Plan Amendment adding the exception to allow the application of actual self-employment expenses. The February, 2009 proposed regulation defines allowable actual self-employment expenses. DMMA must apply the financial methodologies of the cash assistance program that is most closely related to the individual's status. The list of disallowed self-employment expenses is prescribed at 45 CFR 233.20(a)(6)(v)(B). No change will be made to the regulation as a result of this comment.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding actual self-employment expenses to be used when the application of the self-employment standard deduction results in a finding of ineligibility is adopted and shall be final effective April 10, 2009.

Rita M. Landgraf, Secretary, DHSS

***Please note that no changes were made to the regulation as originally proposed and published in the February 2009 issue of the Register at page 1044 (12 DE Reg. 1044). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

[DSSM 15120.2 Financial Eligibility and 16230.1.2 Self Employment Income](#)

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

DSSM: 16500.1 Eligibility Requirements

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the existing rules in the Division of Social Services Manual (DSSM) regarding the eligibility requirements for Family Planning. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the February 2009 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 4, 2009 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The purpose of this proposal is to amend the existing rules in the Division of Social Services Manual (DSSM) regarding the eligibility requirements for Family Planning.

Statutory Authority

Social Security Act §1115, *Demonstration Projects*

Background

Family Planning is a category of eligibility created under the Section 1115 Demonstration Waiver that was approved by CMS on May 17, 1995. Family Planning services are extended 24 months to women who lose Medicaid (categorical or expanded population) for non-fraudulent reasons.

The intention is to promote the reduction of unintended pregnancies, low birth weight infants, fetal death, and improve women's health and strengthen family functioning by spacing children and tracking related gynecological problems and sexually transmitted diseases. Coverage for this group of eligibles became effective January 1, 1996.

Summary of Proposal

In the latest renewal of the Demonstration Waiver under Section 1115 of the Social Security Act, CMS required a reduction of the income standard from 300% Federal Poverty Level (FPL) to 200% FPL and requires the woman to be uninsured. The waiver renewal was effective January 1, 2007.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The State Council for Persons with Disabilities (SCPD) offered the following observations summarized below. DMMA has considered the comment and responds as follows.

Council did not identify any concerns with the proposed regulation as published and has the following observations.

Consistent with the preface to the proposed regulations, DMMA received CMS approval of its 1115 Demonstration Waiver in 1995 resulting in the Diamond State Health Plan. As part of the initial waiver, CMS approved a "Family Planning" benefit which extends Medicaid coverage for 24 months to women of child-bearing age who have otherwise become ineligible for Medicaid for non-fraudulent reasons. The intent of the extension is to promote reduction of unintended pregnancies, low birth weight infants, etc. CMS has approved renewal of the waiver with two limitations. First, eligibility is limited to women without comprehensive health insurance. Second, for second year eligibility, the countable family income cap is reduced from 300% of the Federal Poverty level to 200% of the Federal Poverty level.

Agency Response: DMMA thanks the Council for their concurrence.

FINDINGS OF FACT:

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual regarding the eligibility requirements for Family Planning is adopted and shall be final effective April 10, 2009.

Date of Signature

Rita M. Landgraf, Secretary, DHSS

***Please note that no changes were made to the regulation as originally proposed and published in the February 2009 issue of the *Register* at page 1047 (12 DE Reg. 1047). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

[DSSM 16500.1 Eligibility Requirements](#)

FINAL REGULATIONS

DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

DSSM: 20320 Ownership of Real Property by Institutionalized Individuals

The following regulatory action is exempt from the Administrative Procedures Act in accordance with 29 **Delaware Code**, Ch 101, §10113(b)(4), which exempts from the procedural requirements of the Administrative Procedures Act (APA) regulations for nonsubstantive changes in existing regulations to alter style or form or to correct technical errors.

Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Long Term Care. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10113 and its authority as prescribed by 31 **Delaware Code** Section 512.

Nature of the Exempt Regulation

Citation

29 **Del.C.** §10113, *Adoption of Regulations; Exemptions*

Summary of Proposed Changes

DSSM 20320, *Ownership of Real Property by Institutionalized Individuals*: For clarity and understanding, minor housekeeping change is being made to subject titles and policy text from **Lifetime Rights** to **Life Estate** under DSSM 20320.1, *Types of Ownership* at 20320.1.5 and under DSSM 20320.2, *Eligibility Factors of Types of Ownership* at 20320.2.2.

Findings of Fact

The Department finds that these changes are exempt from the procedural requirements of the Administrative Procedures Act (Title 29 Chapter 101).

THEREFORE, IT IS ORDERED, that the proposed revision regarding housekeeping changes to the policies of the Long Term Care Program related to ownership of real property by institutionalized individuals be adopted informally as an exempt regulation and shall become effective April 10, 2009.

March 13, 2009

Rita M. Landgraf, Secretary, DHSS

DMMA EXEMPT REGULATION #09-11

REVISIONS:

20320 Ownership of Real Property by Institutionalized Individuals

Real property is land, including houses or immovable objects attached permanently to the land. The terms real estate, realty, and real property are used synonymously with one another and designate real property in which an individual has ownership rights and interests. When an applicant/recipient of Medicaid institutional services is the owner of real property, the following procedure and eligibility rules apply.

20320.1 Types of Ownership

20320.1.1 Fee Simple

20320.1.2 Tenancy in Common

20320.1.3 Tenancy in the Entirety

20320.1.4 Joint Tenancy

20320.1.5 ~~Lifetime Rights~~ Life Estate

20320.1.1 Fee Simple

In fee simple ownership, the owner is completely free of conditions imposed by others.

20320.1.2 Tenancy in Common

In tenancy in common ownership, each owner has a part interest in the property and each portion can be sold separately.

20320.1.3 Tenancy in the Entirety

Tenancy by the entirety only applies to married couples. If a husband and wife are sole owners of a property and the deed does not specify type of ownership, there is a precedent in Delaware law that allows the presumption that ownership is "tenancy by the entirety". These terms refer to property owned by a husband and wife where each member has ownership interest in the whole property which is indivisible. Ownership by the entirety can only be dissolved by death or divorce.

20320.1.4 Joint Tenancy

In the case of joint tenancy each owner has an equal interest in the whole property and each equal part can be sold with the agreement of the co-owners.

20320.1.5 ~~Lifetime Rights~~ Life Estate

In the case of lifetime rights the individual may live in or use the property during their lifetime, but has no ownership rights. The individual merely has the right to live in the property.

20320.2 Eligibility Factors of Types of Ownership

20320.2.1 Joint Owners

20320.2.2 ~~Lifetime Rights~~ Life Estate

20320.2.1 Joint Owners

20320.2.1.1 Tenancy by the Entirety

20320.2.1.2 Joint Tenancy

20320.2.1.3 Principal Place of Residence

20320.2.1.1 Tenancy by the Entirety

If ownership is a tenancy by the entirety and both spouses are still living the property will not be considered a resource. If the ownership is in fee simple or tenancy by the entirety with one spouse deceased, the entire equity value of the property is considered a resource according to sections 20320.3, 20320.4, and 20320.5.

20320.2.1.2 Joint Tenancy

In the case of joint tenancy where the co-owners do not agree to sell, the property will not be considered a resource. A statement from the co-owner(s) indicating refusal to sell must be placed in the case record. The refusal to sell creates a legal bar so the property is excluded as a resource. DSS/Medicaid does not require the individual to sue the co-owner to accomplish sale or access.

If ownership is joint tenancy (where the co-owners agree to sell) or tenancy in common, the applicant/recipient's share in the equity must be treated as a resource according to sections 20320.3, 20320.4, and 20320.5.

20320.2.1.3 Principal Place of Residence

If the property is the principal place of residence for the joint owner(s) and it would cause undue hardship (loss of housing) to sell the jointly owned property it can be disregarded.

20320.2.2 Life Estates

Life Estate is an ownership interest in real property. The right of ownership exists for the lifetime of an individual(s). Upon the death of the individual(s) the ownership passes to the "remainderman." A life estate may be sold or otherwise transferred. As per the Deficit Reduction Act of 2005 (DRA), effective 4/1/06, a life estate in a home property may be an excluded resource provided the purchaser resides in the home for a period of at least 1 year after the date of purchase and continues to live in the property.

DIVISION OF SOCIAL SERVICES

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

ORDER**DSSM: Food Supplement Program 9008 Residency****Nature of the Proceedings**

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to provide information of public interest with respect to the Food Supplement Program regarding *Residency*. The Department's proceedings were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of public comment pursuant to 29 **Delaware Code** Section 10115 in the February 2009 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 4, 2009 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposal

The purpose of this regulatory action is to amend the Division of Social Services Manual (DSSM) regarding residency in the Food Supplement Program.

Statutory Authority

7 CFR §273.3, *Residency*

Summary of Proposed Change

DSSM 9008, *Residency*: The proposed rule is amended to be easier to read and understand. The changes clarify that residents can leave the state and remain eligible for food benefits during temporary absences when they intend to return to the state.

Summary of Comments Received with Agency Response and Explanation of Changes

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. DSS has considered each comment and responds as follows.

In general, the standards appear to conform to the federal regulation, 7 C.F.R. 273.3. However, the GACEC and the SCPD have two recommendations for amendments.

First, the current regulation reads as follows:

Households will file applications for participation in specified office locations according to zip codes. However, an application filed at any office within the State will be considered filed the same day.

The proposed regulation reads as follows:

Individuals will file applications for benefits at local offices based on zip codes. Any office will accept an application and consider it filed the same day.

The proposed regulation could be interpreted as meaning only an application filed in the correct "zip code" office will be accepted and considered filed the same day. The use of the word "however" in the current regulation clarifies that the acceptance of an application in any office in the state is an exception to the first sentence. For clarity, it would be preferable to adopt the same approach in the new regulation. This would result in the following sentence: "However, any office will accept an application and consider it filed the same day."

Agency Response: DSS agrees with the need for clarity. The word "However" has been inserted in the final order regulation.

Second, the "Temporary Absences Out of State" section authorizes continued eligibility of benefits in multiple contexts. However, "hospitalizations that will exceed 30 days" are categorically disqualified from benefits continuation. This is objectionable. A household could take a 5+ week vacation, or a member could have a 5+ week absence to care for a sick family member without disqualification. It is unusual to impose a more restrictive standard on an individual who requires out-of-state hospitalization (e.g. for rehabilitation at Bryn Mawr Hospital for a traumatic brain injury or for intensive burn treatment at Chester-Crozier). It may also conflict with the ADA and State Equal Accommodations Act to apply more constrictive eligibility standards to persons with disabilities. Apart from military deployment, someone can be temporarily absent from the State with no 30-day cap for any reason except hospitalization. Council could not locate any such differentiation in the federal regulations.

Agency Response: The reason that hospitalizations are exempt from the *temporary absences out of state* rule is that per DSSM 9015 residents of an institution (for example, hospitals, prisons and nursing homes), where the institution provides them with the majority of their meals as part of the normal services, are not eligible.

Findings of Fact

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Food Supplement Program policies regarding *Residency* is adopted and shall be final effective April 10, 2009.

March 13, 2009
Rita M. Landgraf, Secretary, DHSS

**DSS FINAL ORDER REGULATION #09-12
REVISION**

9008 Residency

[7 CFR 273.3]

~~A household shall live in the State in which it files an application for participation. Households will file applications for participation in specified office locations according to zip codes. However, an application filed at any office within the State will be considered filed the same day. No individual may participate as a member of more than one household or in more than one project area, in any month, unless an individual is a resident of a shelter for battered women and children, and was a member of a household containing the person who had abused him or her. Residents of shelters for battered women and children will be handled in accordance with DSSM 9080. Do not impose any durational residency requirements. A fixed residence is not required. Nor will residency require an intent to reside permanently in the State or project area. Persons in a project area solely for vacation purposes will not be considered residents. Migrant campsites satisfy the residency requirement.~~

~~When a household moves within the State, DSS will transfer the household's casefile to the new office and continue the household's certification without reapplication. The current office shall act on changes in household circumstances resulting from the move before transferring the casefile to the new office.~~

~~Individuals must live in Delaware to get food benefits from this state.~~

Filing Applications in Local Offices

~~Individuals will file applications for benefits at local offices based on zip codes. [However, **Aa**]ny office will accept an application and consider it filed the same day.~~

No Duplication of Benefits

~~An individual cannot participate as a member of more than one household in any month. There is an exception for individuals who are residents of shelters for battered women and children. Refer to DSSM 9080 for the rules for residents of shelters for battered women and children.~~

No Durational Requirements

~~There is no requirement for an individual to live in Delaware for any specific length of time. A fixed residence is not required. Residency rules do not require intent to reside permanently in Delaware. Migrant campsites meet the residency requirements.~~

Non-Residents

~~Individuals vacationing in Delaware are not considered as residents of this state.~~

Moving Within the State

~~When a household moves within the state, DSS will transfer the household's case file to the new office. The household's certification period continues without having to reapply. The current office will act on changes in household circumstances resulting from the move before transferring the case file to the new office.~~

Temporary Absences Out of State

Households that temporarily leave the state, maintain their Delaware residency and intend to return can continue to receive benefits. This includes, but is not limited to, households on vacation or taking care of a sick family member in another state. This does not include households that leave for military deployment or hospitalizations that will exceed 30 days.

Homeless Households

Homeless individual means an individual who lacks a fixed and regular nighttime residence or an individual whose primary nighttime residence is:

- A supervised shelter designed to provide temporary accommodations (such as a welfare hotel or congregate shelter);
- A halfway house or similar institution that provides temporary residence for individuals intended to be institutionalized (applied to individuals released from institutions who still need supervision, not prisoners considered to be detained under a Federal or State law while in a halfway house);
- A temporary accommodation in the residence of another individual if the accommodation is for no more than 90 days.
- The 90-day period starts at application or when the household reports a change.
- The 90-day period starts over when a household moves from one residence to another.
- If a homeless household leaves, for whatever reason, and returns to the same residence, the 90-day period will start over again.
- If a household has a break in receiving food benefits, the 90-day period will not start over if the household remains in the same residence. The 90-day period will start over if the household moved to another residence.

DIVISION OF SOCIAL SERVICES

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

ORDER

FOOD SUPPLEMENT PROGRAM

Anticipating Expenses, Calculating Net Income and Benefit Levels and Mass Changes

Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend Food Supplement Program policies in the Division of Social Services Manual (DSSM) regarding *Anticipating Expenses, Calculating Net Income and Benefit Level and Mass Changes*. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the February 2009 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 4, 2009 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposed Changes

The proposed changes described below amend Food Supplement Program policies in the Division of Social Services Manual (DSSM) regarding *Anticipating Expenses, Calculating Net Income and Benefit Levels, and Mass Changes*.

Statutory Authority

- 7 CFR §273.2, *Office operations and application processing*;
- 7 CFR §273.10(d)(4), *Anticipating expenses*;
- 7 CFR §273.10(e), *Calculating net income and benefit levels*; and,
- 7 CFR §273.12(e), *Mass changes*

Summary of Proposed Changes

DSSM 9064.4, 9065, and 9086: The Division of Social Services (DSS) is removing previously overlooked language related to the dependent care cap.

Summary of Comments Received with Agency Response

The Delaware Developmental Disabilities Council (DDDC), the Governor's Advisory Council for Exceptional Citizens (GACEC) and, the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. DSS has considered each comment and responds as follows.

The DDDC, GACEC and the SCPD **endorse** the proposed regulation.

Consistent with the WorkWorld summary, Congress amended federal law last year to modify the dependent care deduction for the Food Supplement program:

(S)ection 4103 contains a provision which eliminates the cap on the deduction for dependent care expenses (previously \$175 or \$200 per month, depending on the dependent's age) and allows families eligible for the deduction to deduct the entire amount of dependent care expenses when calculating eligibility and benefit levels. This provision takes effect October 1, 2008.

Before October 1, 2008, dependent care costs were deductible up to the following maximums:

- \$200 per dependent child if the dependent child was under age 2; or
- \$175 per dependent child or incapacitated/dependent adult if the dependent was age two or older.

As noted in the preface to the proposed DSS regulation, DSS wishes to remove "previously overlooked language related to the dependent care cap." The revisions are essentially a "housekeeping" measure and repeal the references to the dependent care distinctions based on a child's age. Council supports this revision.

Agency Response: DSS thanks the Councils for their endorsement.

Findings of Fact

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

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) as it relates to the Food Supplement Program regarding *Anticipating Expenses, Calculating Net Income and Benefit Level and Mass Changes* is adopted and shall be final effective April 10, 2009.

March 13, 2009

Rita M. Landgraf, Secretary, DHSS

DSS FINAL REGULATIONS #09-14**REVISIONS:****9064.4 Anticipating Expenses**

[[7 CFR] 273.10(d)(4)]

Calculate household expenses based on the expenses a household expects to be billed for during the certification period.

Anticipation of the household expenses will be based on the most recent month's bills, unless the household is reasonably certain a change will occur. When the household is not claiming the utility standard, anticipate changes during the certification period based on last year's bills from the same period updated by overall price increases; or, if only the most recent bill is available, utility cost increases or decreases over the months of the certification period may be based on utility company estimates for the type of dwelling and utilities used by the household. Do not average past expenses, such as utility bills for the last several months as a method of anticipating utility costs for the certification period.

At certification and recertification, the household shall report and verify all medical expenses. The household's monthly medical deduction for the certification period shall be based on the information reported and verified by the household, and any anticipated changes in the household's medical expenses that can be reasonably expected to occur during the certification period. Reasonably anticipated changes are based on available information about the recipient's medical condition, public or private insurance coverage, and current verified medical expenses. The household shall not be required to file reports about its medical expenses during the certification period. If the household voluntarily reports a change in its medical expenses, DSS shall verify the change in accordance with DSSM 9038 and act on the change in accordance with DSSM 9085.

~~If a child in the household reaches his or her second birthday during the certification period, the maximum dependent care deduction shall be adjusted to the lower deduction in accordance with this section not later than the household's next regularly scheduled recertification.~~

(Break in Continuity of Sections)

9065 Calculating Net Income and Benefit Levels

[[7 CFR] 273.10(e)]

To determine a household's net monthly income:

A. Add the gross monthly income earned by all household members and the total monthly unearned income of all household members, minus income exclusions, to determine the household's total gross income. Net losses from the self employment income of a farmer will be offset in accordance with DSSM 9074.

B. Multiply the total gross monthly earned income by 20 percent and subtract the amount (or multiply the total gross monthly earned income by 80 percent) and add that to the total monthly unearned income, minus income exclusions.

C. Subtract the standard deduction, as specified in DSSM 9060(A).

D. If the household is entitled to a medical deduction as provided in DSSM 9060 (C), subtract that portion of the allowable medical costs that exceeds \$35.

E. Subtract monthly dependent care expenses paid, if any, ~~up to the maximum amount allowed for each dependent based on the age of the dependent,~~ as specified in DSSM 9060(D).

F. Subtract monthly legally obligated child support payments made to children living outside of the household.

If the household is entitled to an excess shelter deduction, compute the household's excess shelter deduction in accordance with the next paragraph (G).

G. Total the allowable shelter expenses to determine shelter costs. Subtract from total shelter costs 50 percent of the adjusted income (the household's monthly income after all the above deductions have been subtracted). The remaining amount, if any, is the excess shelter cost. If there is no excess shelter cost, the net monthly income has been determined. If there is excess shelter cost, compute the shelter deduction in sub paragraph (H) of this section.

H. Subtract from the adjusted income in sub paragraph (F) of this section the excess shelter cost up to the maximum amount allowed unless the household is entitled to the full amount of its excess shelter expenses. Households not subject to the excess shelter deduction limitation will have the full amount exceeding 50 percent of their income after other applicable deductions subtracted. The household's net monthly income has been determined.

Individual shelter and, where applicable, medical costs will be totaled and then rounded to the nearest dollar (i.e., \$.01 \$.49, round down and \$.50 \$.99 round up) before continuing on with the benefit calculation. The income conversion procedures in DSSM 9064 will also apply to medical and shelter expenses billed on a weekly or biweekly basis.

In calculating net monthly income, round down each calculation that ends in 1 through 49 cents and round up for calculations that end in 50 through 99 cents. For example, gross weekly wages would be converted to the monthly amount and then rounded to the nearest dollar prior to the computation of the earned income deduction. Cents will be rounded from this calculation before being subtracted from the earned income.

(Break in Continuity of Sections)

9086 Mass Changes

[[7 CFR] 273.12(e)]

Certain changes are initiated by the State or Federal government which may affect the entire caseload or significant portions of the caseload. These changes include adjustments to income eligibility standards and the shelter/~~dependent care~~ deduction; adjustments to the maximum food stamp allotment and standard deduction; annual and seasonal adjustments to utility standards, periodic cost of living adjustments to RSDI, SSI, and other Federal benefits; periodic adjustments to TANF, RCA or GA payments; and other changes in the eligibility and benefit criteria based on legislative or regulatory changes.

See Administrative Notice:

A-15-99 October 1999 Cost of Living Adjustments

**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 1141

Secretary's Order No. 2009-A-0008***State of Delaware Regulations Governing the Control of Air Pollution: 1141 Limiting Emissions of Volatile Organic Compounds From Consumer and Commercial Products Section 2.0 (Consumer Products) and Section 4.0 (Adhesives & Sealants)***

Date of Issuance: March 16, 2009

Effective Date of the Amendment: April 11, 2009

I. Background:

A public hearing was held on Wednesday, January 28, 2009, at 6:00 p.m. at the DNREC Priscilla Building conference room, 156 S. State Street, Delaware, to receive public comment on the proposed amendment to existing Delaware Regulation 1141, "Limiting Emissions of Volatile Organic Compounds From Consumer and Commercial Products": Section 2.0 (Consumer Products) and Section 4.0 (Adhesives & Sealants). The purpose of this amendment is to reduce volatile organic compounds (VOCs) from some commercial and consumer products sold, distributed, manufactured or used in Delaware. VOCs and other compounds can react in the lower atmosphere during hot, sunny days to form ground-level ozone. High levels of ground-level ozone can damage lung tissue, aggravate respiratory conditions and make people more susceptible to respiratory infections. Children are especially vulnerable to ozone's harmful effects.

Currently, Delaware does not meet federal ground-level ozone air quality standards. Delaware is one of twelve Northeast states (and the District of Columbia) that are part of the Ozone Transport Commission created under the federal Clean Air Act, which works to develop and implement solutions to the ground-level ozone problem in the Northeast and Mid-Atlantic regions. This proposed amendment to Delaware Regulation No. 1141 is based on the recently developed Ozone Transport Commission model rules, which in turn were based on similar California rules that have been in existence since 1998. The amendment, once promulgated, will reduce VOC emissions in Delaware and will become part of DNREC's plan to attain the 8-hour ground-level ozone National Ambient Air Quality Standard (NAAQS) by 2010.

The proposed amendment to Regulation No. 1141 revises existing Section 2.0 by adding the sale, distribution, and manufacture of 23 additional consumer products and product types to the 89 products already in the original rule, which became effective in Delaware in 2005. These products include personal hygiene and grooming, home cleaning, and cleaning of electrical and electronic equipment. If adopted, Section 2.0 of this amendment would reduce such VOC emissions in Delaware by up to 220 tons per year.

Additionally, a new section to existing Regulation 1141, entitled Section 4.0, "Adhesives and Sealants" is proposed at this time. This new section would establish VOC limits for commercially-used adhesive and sealant products, including 25 adhesives, 4 adhesive primers, 5 sealants and 3 sealant primers. The products are primarily used in home construction, carpet and roof installation, auto repair, and tire retreading operations. If adopted, Section 4.0 is projected to reduce VOC emissions by approximately 365 tons per year.

Various members of the public attended this hearing on January 28, 2009 to offer public comment with regard to the aforementioned amendments to Delaware's existing Regulation 1141, and those comments were thoroughly addressed by the Department during this regulatory promulgation. Proper notice of the hearing was provided as required by law.

After the hearing, the Hearing Officer prepared her report and recommendation in the form of a Hearing Officer's Memorandum to the Secretary dated February 10, 2009, and that Report in its entirety is expressly incorporated herein by reference.

II. Findings:

The Department has provided a reasoned analysis and a sound conclusion with regard to this proposed regulatory action, as reflected in the Hearing Officer's Memorandum of February 10, 2009, which again is attached and expressly incorporated into this Order in its entirety. Moreover, the following findings and conclusions are entered at this time:

1. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
3. The Department held a public hearing in a manner required by the law and regulations;
4. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and has determined it to be lawful, feasible and desirable, and that the revisions as proposed should be applied to all Delaware citizens and members of the regulated community equally in order to provide increased public health to Delaware's citizens, as well as to provide greater consistency between current state air toxics standards and the recently promulgated federal standard on which this proposed amendment is based;
5. Promulgation of this proposed amendment would update Delaware's requirements to be consistent with the federal requirements, and is one of several regional measures being adopted to aid in the attainment and maintenance of the eight-hour ozone NAAQS by 2010;
6. The Department anticipates that the revisions to Section 2.0 (Consumer Products) will result in 220 tons per year VOC reduction in the State of Delaware, and that the addition of Section 4.0 (Adhesives & Sealants) will result in a reduction of approximately 365 tons per year VOC reduction as well;
7. The Department's Response Document dated February 9, 2009, provides a thorough, accurate and balanced summary of the record, and is expressly incorporated herein for that purpose.
8. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
9. The Department's proposed regulatory amendments to Delaware's existing Regulation 1141, as published in the January 1, 2009 *Delaware Register of Regulations* and as revised and set forth within Attachment "B" hereto, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and
10. The Department shall submit the proposed regulation as a final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and shall provide written notice to the persons affected by the Order.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Memorandum dated February 10, 2009, and expressly incorporated herein, it is hereby ordered that the proposed amendments to existing Delaware Regulation No. 1141, "Limiting Emissions of Volatile Organic Compounds From Consumer and Commercial Products": Section 2.0 (Consumer Products) and Section 4.0 (Adhesives & Sealants), be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of the aforementioned amendments to existing State of Delaware Regulation 1141 will bring Delaware into compliance with Federal standards by updating Delaware's requirements, where appropriate, to be consistent with the same, and will also result in better public health standards for Delaware's citizens. Moreover,

this promulgation will reduce VOC emissions in Delaware and will become part of the State of Delaware's plan to attain the 8-hour ground-level ozone National Ambient Air Quality Standard (NAAQS) by 2010.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 Del.C., Ch. 60.

David S. Small, Acting Secretary

1141 Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products

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

[**1141 Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products**](#)

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
3100 BOARD OF FUNERAL SERVICES

Statutory Authority: 24 Delaware Code, Section 3105(a)(1) (24 Del.C. 3105(a)(1))
24 **DE Admin. Code** 3100

ORDER

The Board of Funeral Services ("the 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 profession under its purview. The Board was further established to maintain minimum standards of practitioner competence in the delivery of services to the public. The Board is authorized, by 24 **Del.C.** §3105(a)(1), to make, adopt, amend and repeal regulations as necessary to effectuate those objectives.

Pursuant to 24 **Del.C.** §3105(a)(1), the Board has proposed revisions to Rule 9.0, which addresses continuing education requirements. Rule 9.2.1 is amended to specify that licensed funeral directors who are 65 or older are exempt from the continuing education requirements. This amendment serves to implement and clarify the language set forth at 24 **Del.C.** §3105(a)(10). Section 3105(a)(10) states that the Board has the authority to establish continuing education standards for practitioners *under 65*. (emphasis supplied).

Rule 9.3.1 is amended to include language to the effect that the Board has the power to waive continuing education requirements based on economic hardship. This provision is explicitly stated in 24 **Del.C.** §3105(a)(10). Rule 9.3.1 is further amended to clarify that any request for a waiver of the continuing education requirements must be made no later than 60 days prior to the license renewal date.

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 12, Issue 5 on November 1, 2008.

Summary of the Evidence and Information Submitted

A public hearing on the proposed rule revisions was held on December 3, 2008. At the hearing, Mr. Duwayne Casini, President of the Delaware Funeral Directors Association, stated that he supported the change the rules clarifying that licensees over 65 are exempt from the continuing education requirements. No written comments were received.

Findings of Fact

The proposed amendments to the rules and regulations serve to clarify provisions set forth in the relevant statutory provisions. Thus, the revisions are necessary to implement the legislative intent underlying the Board's licensing law.

Decision and Effective Date

The Board hereby adopts the proposed amendments to the rules and regulations to be effective 10 days following final publication of this Order in the *Register of Regulations*.

Text and Citation

The text of the revised rules and regulations remains as published in the Delaware *Register of Regulations*, Volume 12, Issue 5 on November 1, 2008.

IT IS SO ORDERED this 20th day of February 2009 by the Board of Funeral Services.

Charles Arcaro

Marceline Knox

Rose Pritchett

Austin Grice, Jr.

3100 Board of Funeral Services

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

[3100 Board of Funeral Services](#)

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

**EXECUTIVE ORDER
NUMBER THREE**

March 13, 2009

TO: Heads of All State Departments and Agencies
RE: Creation of the Governor's Stimulus Solutions Group

WHEREAS, the economies of the State of Delaware and the United States suffered extraordinary setbacks in 2008, including frozen credit markets, declining home values, substantial job losses, and continued weaknesses in the financial, manufacturing and automotive industries, and many of these challenges are expected to continue throughout 2009; and

WHEREAS, there are now more Delawareans out of work than at any time in recent history; and

WHEREAS, the State of Delaware's budget is currently estimated to reflect a deficit of \$606 million in fiscal year 2010, and that deficit may grow if Delaware's economy faces further challenges; and

WHEREAS, on February 17, 2009, President Barack Obama helped address these challenges by signing into law the American Recovery and Reinvestment Act of 2009, P.L. 111-5, which will provide approximately \$787 billion in federal supplemental appropriations and tax cuts to stimulate the economy and promote job creation; and

WHEREAS, the American Recovery and Reinvestment Act of 2009 has created substantial opportunities for the State of Delaware to leverage federal stimulus financing to promote responsible growth, job creation, infrastructure improvement, and energy efficiency; and

WHEREAS, the State of Delaware is committed to the transparent and responsible use of the federal stimulus financing, to keeping the public informed about how State agencies are employing stimulus financing to grow Delaware's economy and put Delawareans back to work, and to utilizing the internet to make federal stimulus information freely and widely available;

NOW, THEREFORE, I, JACK A. MARKELL, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby DECLARE and ORDER that:

1. The Governor's Stimulus Solutions Group is hereby established and its members are hereby charged with responsibility for advising the Governor on the efficient, expedient, transparent and responsible use of federal stimulus financing allocated to the State of Delaware and its component agencies pursuant to the American Recovery and Reinvestment Act of 2009, P.L. 111-5 (the "Act").

2. The Governor's Stimulus Solutions Group shall consist of the Lieutenant Governor, the Secretary of the Department of Transportation, the Secretary of the Department of Labor, the Secretary of the Department of Natural Resources and Environmental Control, the Secretary of Education, the Director of the Delaware Economic Development Office, the Director of the Delaware State Housing Authority, and the Director of the Office of Management and Budget, or the designees of such persons, a representative of the Office of the Governor, and such other persons from the public or private sector as the Governor may appoint and who shall serve at the pleasure of the Governor.

3. Members of the Governor's Stimulus Solutions Group shall:

(a) Advise the Governor and the Executive Branch with respect to the use of federal financing allocated pursuant to the Act and compliance with the Act by State agencies;

(b) Assist State agencies in the review of grant programs available under the Act and in developing criteria and procedures for competitive grant programs;

(c) Counsel the Governor and the Executive Branch with respect to the achievement of transparency in the use of federal financing provided by the Act and consideration of any proposed federal or state legislation affecting the State's use of financing under the Act;

(d) Assist State agencies in their efforts to reach out to Delawareans regarding the use of services, tax credits, and other programs financed by the Act;

(e) In conjunction with the Department of Technology and Information and the Government Information Center, provide support and input for the website at recovery.delaware.gov, including assistance with developing a listing of capital projects and other programs financed in whole or in part by the Act, contracts awarded for such projects and programs, the number of jobs created by those projects and programs, and any other information required by the Act;

(f) Comply at all times with the State Employees', Officers' and Officials' Code of Conduct, as set forth in Title 29, Chapter 58, of the Delaware Code, and Executive Order No. 1; and

(g) Undertake such additional tasks relating to the Act as required from time to time by the Governor.

4. The Honorable Matthew Denn, Lieutenant Governor, shall serve as Chairperson of the Governor's Stimulus Solutions Group. The Chairperson shall:

(a) Direct and coordinate the efforts of the members of the Governor's Stimulus Solutions Group;

(b) Serve as the Implementation Czar for oversight of the federal stimulus financing provided by the Act, and undertake such additional responsibilities related to that role as requested by the President of the United States, the Vice President of the United States, or the U.S. Office of Management and Budget;

(c) Appoint a member or members of the Governor's Stimulus Solutions Group to act as liaisons to the General Assembly, school districts, institutions of higher education, and county and local governments regarding federal financing under the Act;

(d) Appoint a member of the Governor's Stimulus Solutions Group to act as a liaison to Delaware's private sector, including non-profits, in the utilization and administration of federal financing under the Act, and provide appropriate assistance to the private sector, including non-profits, in Delaware with securing federal financing under the Act;

(e) In conjunction with the State of Delaware Office of Management and Budget, retain accounting, audit, consulting, legal or other professional services as appropriate in support of the mission of the Governor's Stimulus Solutions Group; and

(f) Provide on or before February 1, 2010 to the Governor and the General Assembly a report summarizing Delaware's use of the federal stimulus funds to date, accounting for amounts that have been or will be expended by State agencies pursuant to the Act, and addressing the Act's impact on Delaware's economy and job creation in Delaware.

5. All State officers and employees who serve on the Governor's Stimulus Solutions Group will make such staff and resources available from their respective organizations to the Stimulus Solutions Group as needed to achieve its goals. All State agencies shall cooperate in providing assistance to the Governor's Stimulus Solutions Group as requested by the Stimulus Solutions Group with the approval of the Governor.

6. Any State agency anticipating that it will receive or apply for federal stimulus financing pursuant to the Act shall coordinate such efforts with the Governor's Stimulus Solutions Group and, after the receipt of such financing, shall work with the Governor's Stimulus Solutions Group to ensure that such financing is responsibly expended and accounted for in a manner that is consistent with state and federal law. Nothing in this executive order shall prohibit county governments, local governments, school districts, institutions of higher education or any entity other than a State agency from seeking federal stimulus financing under the Act.

7. The Governor's Stimulus Solutions Group shall be terminated on December 31, 2010, if not reconstituted by further executive order.

Jack A. Markell,
Governor

DEPARTMENT OF AGRICULTURE
HARNESS RACING COMMISSION
PUBLIC NOTICE

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to change its Rule 10. The Commission will hold a public hearing on the proposed rule changes on May 12, 2009. Written comments should be sent to Hugh J. Gallagher, Administrator of Harness Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, DE 19901. Written comments will be accepted for thirty (30) days from the date of publication in the *Register of Regulations* on April 1, 2009.

The proposed changes are for the purpose of updating Rule 10 to reflect current policies, practices and procedures. Copies are published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.shtml. A copy is also available for inspection at the Harness Racing Commission office.

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, April 16, 2009 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
PUBLIC NOTICE

The Delaware Department of Health and Social Services will be submitting its annual grant application under Part C of the Individuals with Disabilities Education Improvement Act of 2004. The application will be available until May 15, 2009; public comment is being accepted until May 1, 2009.

Please contact the Part C Birth to Three office at 302-255-9134 (call collect from Kent and Sussex) to secure a copy of the application or e-mail Inita.joyner@state.de.us. Send your written comments to Part C/Birth to Three, DMS/DHSS, 2nd floor, Main Building, Suite 249, 1901 N. DuPont Hwy., New Castle, DE 19720 or fax to 302-255-4407.

DEPARTMENT OF LABOR
DIVISION OF INDUSTRIAL AFFAIRS
OFFICE OF WORKERS' COMPENSATION
1341 Workers' Compensation Regulations
PUBLIC NOTICE

The Secretary of Labor, in accordance with 19 **Del.C.** §§2322B, C, E, and F, has proposed revisions to the rules and regulations relating to the Delaware Workers' Compensation Health Care Payment System. These proposals revise the Fee Schedule Instructions and Guidelines, Utilization Review, and Forms regulations; and add a 6th Practice Guideline, "Cervical", to the regulations.

A public hearing will be held before the Health Care Advisory Panel ("Panel") at 4:00 p.m. on May 4, 2009, in the Department of Labor Fox Valley Annex, 4425 N. Market Street, Wilmington, Delaware 19802 where members

of the public can offer comments. Anyone wishing to receive a copy of the proposed rules may obtain a copy from John Kirk, Deputy Director, Division of Industrial Affairs, Department of Labor, P.O. Box 9954, 4425 N. Market Street, Wilmington, Delaware, 19809-9954. Persons wishing to submit written comments may forward these to the Panel at the above address. The final date to receive written comments will be at the public hearing.

The Panel will consider making a recommendation to the Secretary at the regularly scheduled meeting following the public hearing.

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL**

DIVISION OF AIR AND WASTE MANAGEMENT

TANK MANAGEMENT BRANCH

SAN # 2008-20 and 2008-23

Title of the Regulations:

1351 Delaware Regulations Governing Underground Storage Tank Systems

Brief Synopsis of the Subject, Substance and Issues:

The Delaware Regulations Governing Underground Storage Tank Systems were first effective July 11, 1986. The most recent revision date is January 11, 2008. The DNREC is proposing changes to the UST Regulations to incorporate federal requirements, to add clarifying language, and to ensure the greatest protection of human health, safety and the environment in Delaware.

The changes to the Delaware UST Regulations are proposed for the following reasons:

"Addition of requirements for a Tank Operator training program are required by the Federal Energy Policy Act of 2005 (EPACT). The EPACT requires the state to promulgate regulations by August 8, 2009.

"Requirements prohibiting the installation of new USTs within specific distances of public, industrial and domestic wells have been added to ensure protection of drinking water supplies.

"Clarification language added to specific sections in response to public comment requesting such.

"Corrections to errors in January 11, 2008 edition of the UST Regulations

Notice of Public Comment:

The DNREC will conduct a Public Hearing on Tuesday, April 21, 2009. The hearing is scheduled to begin at 7:00pm in the conference room at the DNREC office located at 391 Lukens Drive, New Castle, DE. The public and interested parties are invited to attend the hearing and to make comments orally or in writing at the hearing. Written comments not presented at the hearing should be addressed to Ms. Jill Williams Hall, DNREC/TMB, 391 Lukens Drive, New Castle, DE 19720 and must be received by the Department by the end of the comment period, as designated by the hearing officer at the hearing.

Copies of the proposed regulations are available online at <http://www.dnrec.delaware.gov/info/Pages/Rules.aspx>

Copies may be viewed during regular business hours at the following DNREC offices:

DNREC, 391 Lukens Drive, New Castle, DE

DNREC, R&R Building, 89 Kings Highway, Dover, DE

DNREC, Route 113, Sussex Suites, Unit #6, Georgetown, DE

Prepared by:

Jill Williams Hall, Planner IV, 395-2500, 3/6/09, jill.hall@state.de.us

DIVISION OF FISH AND WILDLIFE**REGISTER NOTICE****SAN# 2009-06****Title of the Regulations:**

Tidal Finfish Regulation 3541 Atlantic Sharks.

Tidal Finfish Regulation 3581 Spiny Dogfish; Closure Of Fishery

Brief Synopsis of the Subject, Substance and Issues:

The Department of Natural Resources and Environmental Control will hold a public hearing regarding proposed modifications to Tidal Finfish Regulation 3541 concerning Atlantic sharks and a proposed amendment to Tidal Finfish Regulation 3581 concerning commercial fishing for spiny dogfish. The purpose of the proposed revisions are to bring Delaware into compliance with the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Atlantic Coastal Sharks and to liberalize commercial requirements in concert with the most recent revision (Addendum II) to the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Spiny Dogfish.

The Interstate Plan for Coastal Sharks largely mirrors requirements for shark fishing in federal waters. Specifically, all states from Virginia through New Jersey, including Delaware, must prohibit recreational and commercial landings of the following shark species from May 15 through July 15: silky, tiger, blacktip, spinner, bull, lemon, nurse, scalloped hammerhead, great hammerhead, and smooth hammerhead. Furthermore, Delaware and all other states must prohibit recreational and commercial landings of sandbar sharks year-round, except for those commercial fishermen in possession of a valid sandbar shark research permit issued by the National Marine Fisheries Service (NMFS). Shore-bound anglers may harvest one shark not otherwise prohibited, including smooth dogfish sharks, per calendar day. Shore-bound anglers may also harvest one additional smooth dogfish shark per day. Recreational fishing vessels will be allowed to harvest and possess one shark not otherwise prohibited, including one smooth dogfish per trip, regardless of the number of people on board the vessel. In addition each recreational angler aboard a vessel may harvest and possess one bonnethead, one Atlantic sharpnose shark, and one smooth dogfish per person per trip. All sharks possessed by recreational fishermen must have the heads, tails, and fins attached naturally to the carcass prior to landing on shore. Commercial fishermen may eviscerate and remove the head of any shark reduced to possession, but the tail and fins must remain attached to the carcass. Other measures, including provisions on gill net fishing for sharks, are proposed to bring Delaware into compliance with shark fishing regulations in federal waters.

The coast-wide commercial quota for spiny dogfish has been liberalized to 12 million pounds per year, to be allocated among a Northern Region, Southern Region, and North Carolina. The Southern Region, which includes Delaware, is allocated 26% of the annual quota. When the quota in the Southern Region is projected to be reached, the commercial landing, harvest, and possession of spiny dogfish for commercial purposes will be prohibited for the remainder of the year. The daily landing limit for any Delaware commercial foodfishing holder shall be 3,000 pounds of spiny dogfish, except for those taking spiny dogfish from federal waters or for any Delaware fisherman selling spiny dogfish to a federally-permitted dealer, in which case federal possession and landing limits apply, including federal closures on the possession and landing of spiny dogfish. Any Delaware commercial fisherman in possession of a federal permit will have to abide by the most restrictive spiny dogfish landing limits, whether they are federal or state.

NOTICE OF PUBLIC COMMENT:

A public hearing on this regulation will be held in the Division of Soil and Water building at the western end of Pilottown Road in Lewes, DE at 6:30 PM on April 23, 2009. Comments for the hearing record should be addressed to Lisa Vest, Hearing Officer, Office of the Secretary, Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, De 19901 or by e-mail to lisa.vest@state.de.us by 4:30 PM April 28, 2009.

PREPARED BY:

Roy W. Miller (302) 739-9914, February 13, 2009

DIVISION OF SOIL AND WATER CONSERVATION**REGISTER NOTICE****SAN #2006-15****Title of the Regulations:**

5103 Delaware Dam Safety Regulations

Brief Synopsis of the Subject, Substance and Issues:

Develop and promulgate Delaware's Dam Safety Regulations. The regulations will affect only public dam owners of certain dams. The regulations will establish standards for dam inspection, development of emergency action plans, operations and maintenance of dams and the overall responsibility of public dam owners and agencies.

Notice of Public Comment:

A final hearing has been scheduled for April 27th at 4:00 PM in the DNREC Auditorium located at the Richardson and Robbins Building 89 Kings Highway, Dover, DE 19901.

Prepared By:

Frank M. Piorko
Phone (302) 739-4411 E-mail Frank.Piorko@state.de.us

DEPARTMENT OF STATE**DIVISION OF PROFESSIONAL REGULATION****3700 BOARD OF SPEECH/LANGUAGE PATHOLOGISTS, AUDIOLOGISTS AND HEARING AID
DISPENSERS****PUBLIC NOTICE**

Pursuant to 24 **Del.C.** §3706(a)(1), the Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers has proposed revisions to its rules and regulations.

A public hearing will be held on May 13, 2009 at 2:15 p.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 Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers, 861 Silver Lake Boulevard, Dover, Delaware 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 proposes several amendments to Rule 8.0, which addresses the continuing education requirements for licensees. First, Rule 8.2.2 is amended to increase the number of required continuing education hours for each of the three professions regulated by the Board. Single-licensed and dual-licensed individuals will be required to complete 30 continuing education hours every 2 years and triple-licensed individuals will be required to complete 45 hours. If approved, this change will go into effect for the license renewal period beginning August 1, 2009 and ending July 31, 2011.

Rule 8.2.2.6 is amended to clarify that an extension of time within which to complete continuing education or a waiver of the continuing education requirements may be granted upon a showing of hardship, but such request must be submitted prior to expiration of the license.

The Rules pertaining to online renewal and attestation have been revised for greater clarity. Rules 8.2.6, 8.2.7, 8.2.8, 8.2.9 and 8.2.10 have been added to provide a detailed explanation of the continuing education audit process. Finally, Rule 8.2.11 expressly gives the Board the authority to conduct hearings and impose the full range of sanctions available under 24 **Del.C.** §3716 when licensees fail to comply with the continuing education requirements.

The proposed amendments strengthen continuing education standards and give the Board express authority to sanction licensees who do not comply with those standards. Therefore, the proposed revisions will serve to protect the public from unsafe practices and enhance practitioner competence.

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

DIVISION OF PROFESSIONAL REGULATION
8800 BOXING, SPARRING MATCHES AND EXHIBITIONS
PUBLIC NOTICE
8800 Boxing, Sparring Matches and Exhibitions
Rescheduled Hearing

Consistent with a recent statutory amendment, by passage of HB 501, which updated the authority of the Division of Professional Regulation, the Department of State, in accordance with 28 Del. C. Ch. 1, has proposed to strike the existing regulations related to boxing, sparring matches and exhibitions in their entirety and establish new combative sports rules and regulations governing boxing and mixed arts.

A public hearing was held on December 8, 2008, James L. Collins, Director of the Division of Professional Regulation, conducted the hearing. As a result of the public comment and the Director determined to make both substantive and non-substantive revisions to the proposed amendments originally published in the *Delaware Register of Regulations* on November 1, 2008 at 12 DE Reg. 637.

The full text of the revised regulations was published in the *Register of Regulations* on February 1, 2009 at 12 DE Reg. 1054. The second public hearing originally scheduled for March 2, 2009 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover was cancelled due to inclement weather. The public hearing has now been rescheduled to April 23, 2009 at 9:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover.

The Director will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Office of the Director, Division of Professional Regulation, Cannon Building, 861 Silver Lake Blvd. Suite 203, Dover, DE 19904. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact the Director's office at the above address or by calling (302) 744-4500.

The Director will consider promulgating the proposed regulations immediately following the public hearing.

PUBLIC SERVICE COMMISSION
PUBLIC NOTICE**Notice of Seeking Comments from Public Concerning Regulations Proposed by Public Service Commission Staff**

In Order No. 7263 (Aug. 21, 2007), the Delaware Public Service Commission ("PSC" or the "Commission") opened this docket to consider promulgating rules to govern Delmarva Power & Light Company's ("DP&L") development of Integrated Resource Plans ("IRPs") for its Standard Offer Service ("SOS") customers, as authorized by the Electric Utility Retail Customer Supply Act of 2006 ("the Act"). Pursuant to that Order, the Commission Staff drafted proposed IRP rules after consulting with the parties in DP&L's ongoing IRP docket (PSC Dckt. No. 07-20) and with the three (3) state agencies then involved in DP&L's IRP process. On November 14, 2007, Staff submitted draft rules entitled "Integrated Resource Planning Regulations."

In PSC Order No. 7318 (Dec. 4, 2007), the Commission accepted Staff's draft IRP rules and initiated the formal rule-making procedure dictated by the Administrative Procedures Act ("APA"). Thereafter, the Commission directed publication in the Delaware Register (among other places) of Staff's proposed IRP Rules and directed a Hearing Examiner to conduct proceedings regarding the proposed IRP rules.

After holding a duly-noticed public evidentiary hearing, the Hearing Examiner issued Findings and Recommendations (Sept. 12, 2008). The Hearing Examiner recommended Commission approval of Staff's proposed IRP Rules, as described in the Hearing Examiner's Report.

In PSC Order No. 7518 (Jan. 6, 2009), however, the Commission did not approve Staff's proposed IRP Rules. The Commission asked Staff to clarify certain aspects of the Regulations and to issue revised Regulations. Staff has now issued its revised Regulations.

The Commission now solicits comments from the Public regarding Staff's revised Regulations.

Written comments must be filed with the Delaware Public Service Commission, 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, DE, 19904 no later than May 6, 2009. The PSC will utilize the comments received to evaluate Staff's revised Regulations.

All prior filings in this Docket can be reviewed at the PSC's office at the address listed above. Anyone who plans to submit comments should also review PSC Order No. 7518 (Jan. 6, 2009).

If you have questions, you may contact the Commission in person, by writing, by telephone (including text telephone), and by Internet e-mail. You may call the Commission at 1-800-282-8574 (toll-free in Delaware) or you may call (302) 736-7500 (voice or text telephone). You may also send questions or request further information by Internet e-mail addressed to pamela.knotts@state.de.us. If you have a disability and wish to participate in, or to review the materials in these proceedings, please contact the Commission to discuss any auxiliary aids or services which you might need to help you.
