
Delaware Register of Regulations

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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 April 15, 2007.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

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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
June 1	May 15	4:30 p.m.
July 1	June 15	4:30 p.m.
August 1	July 16	4:30 p.m.
September 1	August 15	4:30 p.m.
October 1	September 15	4:30 p.m.

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7418 Broadkill River Watershed.....	10	DE Reg. 1038 (Final)
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7420 Dragon Run Creek Watershed.....	10	DE Reg. 305 (Prop.)
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7421 Leipsic River Watershed.....	10	DE Reg. 1037 (Final)
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7423 Mispillion River Watershed.....	10	DE Reg. 1038 (Final)
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Symbol Key

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

Proposed Regulations

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

**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 Rules 3, 4 and 6. The Commission will hold a public hearing on the proposed rule changes on June 12, 2007. 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 May 1, 2007.

The proposed changes are for the purpose of updating Rules 3, 4 and 6 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 Racing Commission office.

501 Harness Racing Rules and Regulations

(Break in Continuity of Sections)

3.0 Officials

(Break in Continuity of Sections)

3.2.3.7.2 The Board of Judges may suspend a license; or they may impose a fine in accordance with these Rules for each violation; or they may suspend and fine; or they may order that a person be ineligible for licensing; If a driver is given a driving suspension of five (5) days or less by the Board of Judges in Delaware, then such penalty shall commence on the first day after the driver has fulfilled all of the driving obligations programmed in the State of Delaware at the time the penalty is assessed.

*(Break in Continuity of Sections)***4.0 Associations**

4.1 General Duty

4.1.1 An aAssociation, its officers, directors, officials and employees shall comply with the rules and orders of the Commission, ~~the State Steward~~ and judges.

4.1.2 An aAssociation may request an exemption from a requirement in this chapter to utilize new technology or innovative construction or design of the racetrack facilities. The Commission may grant an exemption if ~~the Commission~~ it determines that:

4.1.2.1 the aAssociation's proposal substantially satisfies the purpose of the requirement; and

4.1.2.2 the exemption is in the best interests of the race horses, the racing industry and the citizens of Delaware.

4.2 Financial Requirements

4.2.1 Insurer of the Race Meeting

4.2.1.1 Approval of a race meeting by the Commission does not establish the Commission as the insurer or guarantor of the safety or physical condition of the aAssociation's facilities or purse of any race.

4.2.1.2 In accordance with §10043 of the Act, an aAssociation shall timely provide the Commission with a certificate of liability insurance, in an amount approved by the Commission, with premium prepaid. The insurance shall provide a minimum of medical expense coverage equal to the average daily purse account raced for at the previous meeting conducted by the aAssociation.

4.2.1.3 An aAssociation shall maintain in an approved depository, those amounts deducted from the pari-mutuel handle for distribution for the purposes specified in the Act and Commission rules.

4.2.1.4 An aAssociation is responsible to ensure that the amounts retained from the pari-mutuel handle are distributed according to the Act and Commission rules and not otherwise.

4.2.1.5 An aAssociation shall ensure that all purse monies, disbursements and appropriate nomination race monies are available to make timely distribution in accordance with the Act, Commission rules, aAssociation rules and race conditions, and with any contractual arrangements with the horsemen's association recognized for purposes related to the allocation of purses, if applicable.

4.2.2 Financial Reports

4.2.2.1 The Commission may require periodic audits to determine that the aAssociation has funds available to meet those distributions for the purposes required by the Act, Commission rules, the conditions and nomination race program of the race meeting and the obligations incurred in the daily operation of the race meeting.

4.2.2.2 Pursuant to §10029(e) or §10055(a) of the Act, the Commission may require that the books, records and financial or other statements of any aAssociation licensed under the provisions of the Act, or licensed to make, conduct and sell pools in accordance with Subchapter IV of the Act, shall be kept in such form or in such manner as the Commission prescribes.

4.2.2.3 In accordance with §10030 of the Act, every licensed aAssociation shall file with the Department of Finance, not later than four (4) months after the close of the aAssociation's fiscal year, a statement, duly certified by an independent public accountant, of its receipts from all sources whatsoever during the fiscal year and of all expenses and disbursements, itemized in the manner and form directed by the Department of Finance, showing the net revenue from all sources derived by the licensee during the fiscal year covered by such statement.

4.2.2.4 Pursuant to §10029(e) or §10055(a) of the Act, the Commission may visit, investigate and place expert accountants and such other persons as it deems necessary, in the offices, tracks or places of business of any licensed aAssociation, or in the office or place of business of any person or entity licensed to operate a pool, for the purpose of satisfying itself that the Commission's rules and regulations are

strictly complied with. The salaries and expenses of such expert accountants or other persons shall be paid by the aAssociation to whom they are assigned.

4.2.2.5 Any financial reports, or any other financial information, obtained pursuant to the Act or these rules shall not be disclosed as public information except as required by 29 **Del.C.** Ch. 100.

4.3 Facilities and Equipment

4.3.1 Facilities for Patrons and Licensees

4.3.1.1 An aAssociation shall ensure that the public areas of the aAssociation grounds are designed and maintained for the comfort and safety of the patrons and licensees and are accessible to all persons with disabilities as required by federal law.

4.3.1.2 An aAssociation shall provide and maintain adequate restroom facilities for the patrons and licensees.

4.3.1.3 An aAssociation shall provide an adequate supply of free drinking water.

4.3.1.4 An aAssociation shall maintain all facilities on aAssociation grounds to ensure the safety and cleanliness of the facilities at all times.

4.3.1.5 During a race performance, the aAssociation shall provide:

4.3.1.5.1 a first aid room equipped with at least two beds and other appropriate equipment; and

4.3.1.5.2 the services of at least one certified emergency medical technician (EMT).

4.3.1.6 An aAssociation shall provide a properly equipped ambulance, staffed with certified paramedics or EMTs, at any time the racetrack is open for racing. If the ambulance is being used to transport an individual, the aAssociation may not conduct a race until the ambulance is replaced.

4.3.1.7 An aAssociation shall provide adequate office space for the use of the ~~State Steward~~, judges and other Commission personnel as required by the Commission. The location and size of the office space, furnishings and equipment required under this section must be approved by the Commission, after appropriate consideration has been given to the limitations of available space and/or other resources or infrastructure on the grounds of the aAssociation.

4.3.1.8 An aAssociation shall promptly post Commission notices in places that can be easily viewed by patrons and licensees.

4.3.2 Officials' Stands

An aAssociation shall provide adequate stands for officials to have a clear view of the racetrack. The location and design of the stands must be approved by the Commission.

4.3.3 Audio and Visual Equipment

4.3.3.1 An aAssociation shall provide and maintain in good working order a communication system between the:

4.3.3.1.1 ~~stewards'~~judges' stand;

4.3.3.1.2 racing office;

4.3.3.1.3 tote room;

4.3.3.1.4 paddock;

4.3.3.1.5 test barn;

4.3.3.1.6 starting gate;

4.3.3.1.7 ~~video camera~~ recording system locations;

4.3.3.1.8 veterinarian;

4.3.3.1.9 track announcer;

4.3.3.1.10 location of the ambulances (equine and human); and

4.3.3.1.11 other locations and persons designated by the Commission.

4.3.3.2 An aAssociation shall provide and maintain a public address system capable of clearly transmitting announcements to the patrons and to the stable area.

PROPOSED REGULATIONS

4.3.3.3 An association shall provide an electronic photo finish device to photograph, videotape or otherwise record visually the finish of each race and record the time of each horse in at least hundredths of a second. The location and operation of the photo finish devices must be approved by the Commission before its first use in a race. The association shall promptly post a photograph of each photo finish for win, place or show in an area accessible to the public. The association shall ensure that the photo finish devices are calibrated before the first day of each race meeting and at other times as required by the Commission. On request by the Commission, the association shall provide, without cost, a print ~~from a negative~~ of a photo finish to the Commission. Photo finish ~~negatives~~ prints of each race shall be maintained by the association for not less than six months after the end of the race meeting, or such other period as may be requested by the ~~stewards/~~ judges or the Commission.

4.3.3.3.1 It is the duty of the Presiding Judge to ensure that the photo finish camera is in proper working order before the start of the race. Whenever the judges use a photo to determine the order of finish it shall be displayed for public inspection.

4.3.3.4 An Association shall provide for the use of the photo finish head numbers, saddle pads, and a starting gate, with approved backups.

4.3.3.45 An association shall provide a ~~videotaping~~ recording system approved by the Commission. Cameras must be located to provide clear panoramic and head-on views of each race. Separate monitors, which simultaneously display the images received from each camera and are capable of simultaneously displaying a synchronized view of the recordings of each race for review shall be provided in the ~~stewards'/judges' stand~~. The location and construction of ~~video towers~~ recording system equipment supports must be approved by the Commission.

4.3.3.56 The judges may, at their discretion, direct the ~~video camera~~ recording system operators to ~~videotape~~ record the activities of any horses or persons handling horses prior to, during or following a race.

4.3.3.67 Races must be recorded by an adequate number of ~~videe~~ recording cameras, as approved by the Commission.

4.3.3.78 An association shall, upon request, provide to the Commission, without cost, a copy of a ~~videotape~~ recording of a race.

4.3.3.89 ~~Videotapes recorded~~ Recordings made prior to, during and following each race shall be maintained by the association for not less than six months after the end of the race meeting, or such other period as may be requested by the judges or the Commission.

4.3.3.910 An association shall provide a viewing area in which, on approval by the judges, an owner, trainer, driver or other interested individual may view a ~~videotape~~ recording of a race.

4.3.3.1011 Following any race in which there is an inquiry or objection, the association shall display to the public on designated monitors the videotaped recorded replays of the incident in question which were utilized by the judges in making their decision.

4.3.4 Racetrack

4.3.4.1 The surface of a racetrack must be designed, constructed and maintained to provide for the safety of the drivers and horses.

4.3.4.2 ~~Prior to the first race meeting at an association racetrack~~ Upon the request of the Commission, a licensed surveyor shall provide to the Commission a certified ~~report of the grade and measurement of the distances to be run~~ track measurement.

4.3.4.3 Distances to be run shall be measured from the starting line at a distance three feet out from the inside rail or other fixed marker.

4.3.4.4 The surveyor's report must be approved by the Commission prior to the first race day of the meeting.

4.3.4.5 An association shall provide an adequate drainage system for the racetrack.

4.3.4.6 An aAssociation shall provide adequate equipment and personnel to maintain the track surface and appurtenances in a safe training and racing condition. The aAssociation shall provide back-up equipment for maintaining the track surface.

4.3.5 Rails

The design and construction of rails, where used, must be approved by the Commission prior to the first race meeting at the track.

4.3.6 Starting Gates

During racing hours, an aAssociation shall provide at least two operable starting gates, which have been approved by the Commission.

4.3.7 Distance Markers

4.3.7.1 An aAssociation shall provide starting point markers and distance poles in a size and position that is clearly seen from the judges' stand.

4.3.7.2 ~~The starting point markers and distance poles must be marked as follows:~~

~~4.3.7.2.1 3/4 pole - Red and white horizontal stripes~~

~~4.3.7.2.2 1/2 pole - Red and white horizontal stripes~~

~~4.3.7.2.3 1/4 pole - Red and white horizontal stripes~~

~~4.3.7.2.4 1/8 poles - Green and white horizontal stripes~~

~~4.3.7.2.5 1/16 poles - Black and white horizontal stripes~~

~~4.3.7.2.6 Recall Pole - Yellow and white horizontal stripes~~

4.3.8 Saddle Pad Colors

4.3.8.1 All extended pari-mutuel racetracks shall adopt the following color format for saddle pad colors for post positions in each race:

4.3.8.1.1 Post Position One - Red

4.3.8.1.2 Post Position Two - Blue

4.3.8.1.3 Post Position Three - White

4.3.8.1.4 Post Position Four - Green

4.3.8.1.5 Post Position Five - Black

4.3.8.1.6 Post Position Six - Yellow

4.3.8.1.7 Post Position Seven - Pink

4.3.8.1.8 Post Position Eight - Gray

4.3.8.1.9 Post Position Nine - Purple

4.3.8.1.10 Post Position Ten - Blue/Red

4.3.8.1.11 Post Position Eleven - Light Blue

4.3.8.1.12 Post Position Twelve - Red/White

4.3.8.2 All saddle pad numbers, with the exception of post positions three and five, shall be white with a black border. The saddle pad numbers for post positions three and five shall be solid black and solid white, respectively.

4.3.9 Lighting

4.3.9.1 An aAssociation shall provide lighting for the racetrack and the patron facilities that is adequate to ensure the safety and security of the patrons, licensees and horses. Lighting to ensure the proper operation of the videotape and photo finish equipment must be approved by the Commission.

4.3.9.2 An aAssociation shall provide adequate additional lighting in the stable area as required by the Commission.

4.3.9.3 If an aAssociation conducts racing at night, the aAssociation shall maintain a back-up lighting system that is sufficient to ensure the safety of race participants and patrons.

4.3.10 Equine Ambulance

4.3.10.1 An aAssociation shall provide an equine ambulance on aAssociation grounds on each day that the racetrack is open for pari-mutuel and qualifying racing or training.

PROPOSED REGULATIONS

- 4.3.10.2 The ambulance must be properly ventilated and kept at an entrance to the racing strip when not in use.
- 4.3.10.3 The ambulance must be a covered vehicle that is low to the ground and large enough to accommodate a horse in distress. The ambulance must be able to:
- 4.3.10.3.1 navigate on the racetrack during all weather conditions; and
- 4.3.10.3.2 transport a horse off the ~~a~~Association grounds.
- 4.3.10.4 The ambulance must be equipped with:
- 4.3.10.4.1 ramps to facilitate loading a horse;
- 4.3.10.4.2 adequate means of loading a horse that is down;
- 4.3.10.4.3 a rear door;
- 4.3.10.4.4 a movable partition to initially provide more room to load a horse and to later restrict a horse's movement; and
- 4.3.10.4.5 a shielded area for the person who is attending to the horse.
- 4.3.10.5 An ~~a~~Association may not conduct a race unless an equine ambulance or an official veterinarian-approved substitute is readily available.
- 4.3.10.6 The equine ambulance, its supplies and attendants and the operating procedures for the equine ambulance must be approved by the official veterinarian.
- 4.3.11 ~~Barns~~ Receiving Area
- 4.3.11.1 An ~~a~~Association shall provide ~~barns~~ a receiving area and paddock containing a sufficient number of stalls to accommodate all horses ~~approved in~~ to race for that day.
- 4.3.11.2 An ~~a~~Association shall ensure that the barns paddock and receiving barns are kept clean and in good repair. Each ~~barn paddock~~, including the receiving barn, ~~must have~~ shall include a hot and cold water ~~supply available~~, be well-ventilated, have proper drainage and be constructed to be comfortable in all seasons.
- ~~4.3.11.3 An association shall ensure that each horse is stabled in an individual box stall with minimum dimensions of 10 by 10 feet.~~
- 4.3.11.43 An ~~a~~Association shall provide an adequate area for the placement of manure removed from the stalls. All manure must be removed from the stable area on a prompt and regular schedule. ~~The association shall ensure that refuse from the stalls and other refuse are kept separate.~~
- 4.3.12 Isolation Area
- 4.3.12.1 An ~~a~~Association shall provide an isolation area for the care and treatment of a horse that is ordered isolated by the State veterinarian.
- 4.3.12.2 The isolation area must be approved by the ~~State Steward~~ Presiding Judge.
- 4.3.13 Weather Equipment
- An ~~a~~Association shall provide a consistent method whether by instrumentation or otherwise to obtain an appropriate means for measuring temperature. The Presiding Judge shall consult at least one member of the driver's committee by the third race to determine an allowance. The following guidelines shall be used in making this determination:
- Temperature or Windchill:
- 32 degrees - 25 degrees (F) = 1 second allowance
- 24 degrees - 15 degrees (F) = 2 second allowance
- 14 degrees - 0 degrees (F) = 3 second allowance
- Other relevant factors such as precipitation shall also be considered.
- 4.4 Operations
- 4.4.1 Security
- 4.4.1.1 An ~~a~~Association conducting a race meeting shall maintain security controls over its premises. Security controls are subject to the approval of the Commission.

4.4.1.2 An aAssociation may establish a system or method of ~~issuing credentials or passes to~~ restricting access to its restricted areas or to ensure that all participants at its race meeting are licensed as required by these rules.

4.4.1.3 An aAssociation shall prevent access to and shall remove or cause to be removed from its restricted areas any person who is unlicensed, or who has not been issued a visitor's pass or other identifying credential, or whose presence in such restricted area is unauthorized.

4.4.1.4 Unless otherwise authorized by the Commission, an aAssociation shall provide continuous security in the stable receiving and paddock areas during all times that horses are stabled on the grounds entered. ~~An association shall require any person entering the stable area to display valid credentials issued by the Commission or a visitor's pass issued by the association.~~ An aAssociation shall provide security fencing around the stable paddock and receiving areas in a manner that is approved by the Commission.

4.4.1.5 On request by the Commission, an aAssociation shall provide a list of the security personnel, including the name, qualifications, training, duties duty station and area supervised by each employee.

4.4.1.6 Each day, the chief of security for an aAssociation shall deliver a written report to the ~~State Steward~~ Presiding Judge regarding occurrences on aAssociation grounds relating to harness horse racing on the previous day. Not later than 24 hours after an incident occurs requiring the attention of security personnel, the chief of security shall deliver to the ~~State Steward~~ Presiding Judge a written report describing the incident. The report must include the name of each individual involved in the incident, the circumstances of the incident and any recommended charges against each individual involved.

4.4.2 Fire Prevention

4.4.2.1 An aAssociation shall develop and implement a program for fire prevention on aAssociation grounds. An aAssociation shall instruct employees working on aAssociation grounds of the procedures for fire prevention.

4.4.2.2 No person shall:

4.4.2.2.1 ~~smoke in stalls, feed rooms or under shed rows~~ the receiving areas, paddock, or any property on Association grounds;

4.4.2.2.2 burn open fires or oil and gas lamps in the ~~stable area~~ Association grounds;

4.4.2.2.3 leave unattended any electrical appliance that is plugged-in to an electrical outlet.

4.4.2.2.4 permit horses to come within reach of electrical outlets or cords;

4.4.2.2.5 store flammable materials such as cleaning fluids or solvents in the ~~stable area~~ Association grounds; or

4.4.2.2.6 lock a stall which is occupied by a horse.

4.4.2.3 An aAssociation shall post a notice in the stable receiving areas and paddock which lists the prohibitions outlined in 4.4.2.2.1 - 4.4.2.2.6 above.

4.4.3 Insect and Rodent Control

An aAssociation and the licensees occupying the aAssociation's ~~barn~~ receiving areas and paddock shall cooperate in procedures to control insects, rodents or other hazards to horses or licensees.

4.4.4 Complaints

4.4.4.1 An aAssociation shall designate a location and provide personnel who shall be readily available to the public to provide or receive information.

4.4.4.2 An aAssociation shall promptly notify the Commission of a complaint regarding:

4.4.4.2.1 an alleged violation of the Act or a rule of the Commission;

4.4.4.2.2 an alleged violation of ordinances or statutes;

4.4.4.2.3 accidents or injuries; or

4.4.4.2.4 unsafe or unsanitary conditions for patrons, licensees or horses.

4.4.5 Ejection and Exclusion

An Association may eject or exclude a person for any lawful reason.

1 DE Reg. 502 (11/01/97)

2 DE Reg. 1240 (01/01/99)

2 DE Reg. 1765 (04/01/99)

5 DE Reg. 832 (10/1/01)

(Break in Continuity of Sections)

6.0 Types of Races

(Break in Continuity of Sections)

6.3.3.15

A claimed horse shall not be eligible to start in any race in the name or interest of the owner of the horse at the time of entry for the race from which the horse was claimed for thirty (30) days, unless reclaimed out of another claiming race. Nor shall such horse remain in or be returned to the same stable or care or management of the first owner or except out of another claiming race. Further, such claimed horse shall only be required eligible to continue to enter in races the track where claimed in the state of Delaware for a period of 60 days ~~or the balance of the current racing meet, whichever comes first~~ following the date of the claim, unless released by the Racing Secretary an authorized representative of the Association.

***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: <http://www.state.de.us/research/AdminCode/title3/500/index.shtml#TopOfPage>**

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

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

PUBLIC NOTICE

Employee Education About False Claims Act

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**), pursuant to 42 CFR §447.205, and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, the proposed provides notice to the public that the Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) has filed a Title XIX Medicaid State Plan Amendment (SPA) with the Centers for Medicare and Medicaid Services (CMS) to comply with the mandated provisions of the Deficit Reduction Act (DRA) of 2005 (Public Law 109-171) pertaining to Employee Education About False Claims Recovery.

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

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

SUMMARY OF PROPOSED AMENDMENT

Statutory Authority

Deficit Reduction Act of 2005 (Public Law 109-171), enacted on February 8, 2006, Section 6032,

Employee Education About False Claims Recovery

Background

The federal Deficit Reduction Act of 2005 (DRA) calls for active enforcement of Medicaid fraud and abuse as part of a "Medicaid Integrity Program" (MIP). In particular, effective January 1, 2007, Section 6032 of the DRA requires any entities that receive or make annual payments under the Title XIX Medicaid State Plan of at least \$5 million dollars, as a condition of receiving such payments, to have established written policies and procedures about the Federal and State False Claims Act for their employees, agents and contractors.

Specifically, Section 6032 amends the Social Security Act, Title 42, United States Code, Section 1396a(a), by inserting an additional relevant paragraph. To summarize, this new paragraph mandates that any entity that receives or makes annual payments under the State Plan of at least \$5 million dollars annually, as a condition of receiving such payments, must comply with the following requirements:

- 1) Establish written policies for all employees of the entity, including management and any contractor(s) or agent(s) of the entity. These written policies shall provide detailed information about the following:
 - Federal False Claims Act, including administrative remedies for false claims and statements established under Title 31, USC, Chapter 38.
 - State laws pertaining to civil or criminal penalties for false claims and statements; whistleblower protections under such laws; and the role of these laws in preventing and detecting fraud, waste and abuse in Federal health care programs.
- 2) The written policies must include details about the entity's policies and procedures for detecting and preventing fraud, waste and abuse.
- 3) Any employee handbook for the entity must include specific discussion of the laws about false claims and statements, the rights of employees to be protected as whistleblowers, and the entity's policies and procedures for detecting and preventing fraud, waste and abuse.

Based on guidance in the form of State Medicaid Director Letter (SMDL) #06-024, dated December 13, 2006,

CMS has interpreted the word "entity" to include:

a governmental agency, organization, unit, corporation, partnership, or other business arrangement (including any Medicaid managed care organization, irrespective of the form of business structure or arrangement by which it exists), whether for-profit or not-for profit, which receives or makes payments, under a State plan approved under title XIX or under any waiver of such plan, totaling at least \$5,000,000 annually.

CMS has clarified that payments to the entity are to be aggregated for purposes of the annual threshold:

If an entity furnishes items or services at more than a single location or under more than one contractual or other payment arrangement, the provisions of [Section 6032] apply if the aggregate payments to that entity meet the \$5,000,000 annual threshold. This applies whether the entity submits claims for payments using one or more provider identification or tax identification numbers.

CMS has clarified that the annual threshold is based on the Federal fiscal year:

An entity will have met the \$5,000,000 annual threshold as of January 1, 2007, if it received or made payments in that amount in Federal fiscal year 2006. Future determinations regarding an entity's responsibility stemming from the requirements of [Section 6032] will be made by January 1 of each subsequent year, based upon the amount of payments an entity either received or made under the State Plan during the preceding Federal fiscal year.

These changes are effective January 1, 2007.

Summary of Proposals

The state plan amendment will establish DHSS's oversight of policies and procedures to implement the education of employees regarding the false claims act.

Pursuant to this plan amendment, the Department will provide oversight and monitoring of entities that receives or makes Title XIX Medicaid payments of at least \$5,000,000 annually based on payments received or made in Federal fiscal year 2006.

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

DMMA PROPOSED REGULATION #07-20**NEW:**

79 x 1

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: DELAWARE4.42 Employee Education About False Claims Recoveries.Citation

1902(a)(68)
of the Act,
P.L. 109-171
(section 6032

- (a) The Medicaid agency meets the requirements regarding establishment of policies and procedures for the education of employees of entities covered by section 1902(a)(68) of the Social Security Act (the Act) regarding false claims recoveries and methodologies for oversight of entities' compliance with these requirements.

(1) Definitions

(A) An "entity" includes a governmental agency, organization, unit, corporation, partnership, or other business arrangement (including any Medicaid managed care organization, irrespective of the form of business structure or arrangement by which it exists), whether for-profit or not-for-profit, which receives or makes payments, under a State Plan approved under title XIX or under any waiver of such plan, totaling at least \$5,000,000 annually.

If an entity furnishes items or services at more than a single location or under more than one contractual or other payment arrangement, the provisions of section 1902(a)(68) apply if the aggregate payments to that entity meet the \$5,000,000 annual threshold. This applies whether the entity submits claims for payments using one or more provider identification or tax identification numbers.

A governmental component providing Medicaid health care items or services for which Medicaid payments are made would qualify as an "entity" (e.g., a state mental health facility or school district providing school-based health services). A government agency which merely administers the Medicaid program, in whole or part (e.g., managing the claims processing system or determining beneficiary eligibility), is not, for these purposes, considered to be an entity:

79 x 2

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: DELAWARE

An entity will have met the \$5,000,000 annual threshold as of January 1, 2007, if it received or made payments in that amount in Federal fiscal year 2006. Future determinations regarding an entity's responsibility stemming from the requirements of section 1902(a)(68) will be made January 1 of each subsequent year, based upon the amount of payments an entity either received or made under the State Plan during the preceding Federal fiscal year.

(B) An "employee" includes any officer or employee of the entity.

(C) A "contractor" or "agent" includes any contractor, subcontractor, agent, or other person which or who, on behalf of the entity furnishes, or otherwise authorizes the furnishing of, Medicaid health care items or services, performs billing or coding functions, or is involved in the monitoring of health care provided by the entity.

(2) The entity must establish and disseminate written policies which must also be adopted by its contractors or agents. Written policies may be on paper or in electronic form, but must be readily available to all employees, contractors, or agents. The entity need not create an employee handbook, if none already exists.

79 x 3

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: DELAWARE

- (3) An entity shall establish written policies for all employees (including management), and of any contractor or agent of the entity, that include detailed information about the False Claims Act and the other provisions named in section 1920(a)(68)(A). The entity shall include in those written policies detailed information about the entity's policies and procedures for detecting and preventing waste, fraud, and abuse. The entity shall also include in any employee handbook a specific discussion of the laws described in the written policies, the rights of employees to be protected as whistleblowers and a specific discussion of the entity's policies and procedures for detecting and preventing fraud, waste, and abuse.
 - (4) The requirements of this law should be incorporated into each State's provider enrollment agreements.
 - (5) The State will implement this State Plan amendment of **January 1, 2007**.
- (b) ATTACHMENT 4.42-A describes, in accordance with section 1902(a)(68) of the Act, the methodology of compliance oversight and the frequency with which the State will re-assess compliance on an ongoing basis.

ATTACHMENT 4.42-A

Page 1

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
State/Territory: DELAWARE

FALSE CLAIMS ACT ATTACHMENT

1. The Delaware Health and Social Services (DHSS), the single state agency, will send a letter to any entity that receives annual payments of at least \$5 million during the October 1, 2005 to September 31, 2006 period regarding the requirements of Section 6032 of the Deficit Reduction Act of 2005, the "Employee Education About False Claims Recovery." These letters will be sent by March 30, 2007.
2. DHSS will request copies of an affected provider's written policies, and the plan to disseminate those policies to staff, within three (3) months of State Plan approval.
3. Affected providers written policies and procedures will be reviewed for compliance with the Act. Said policies and procedures will include an explanation of the false claims act; the providers' policies and procedures for detecting and preventing waste, fraud and abuse; the rights of the employee to be protected as whistle blowers; and, the telephone numbers and/or addresses for reporting fraud and abuse.
4. Thereafter, DHSS will contact affected providers on a yearly basis for any update or change to its written policies. DHSS will accomplish this verification by provider survey.

5. New affected providers identified each year will be required to submit their polices and dissemination plan and will be handled per #2, 3, 4.
6. DHSS has a range of sanctions contained in its administrative regulation for non-compliance with Medicaid policies. These sanctions range from requiring a plan of correction to termination from the Medicaid program. These sanctions will be applied to non-compliance with the "Employee Education About False Claims Recovery."
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DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Section 311 (18 Del.C. §311)
18 DE Admin. Code 1216

PUBLIC NOTICE

1216 Military Sales Practices

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

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

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

1216 Military Sales Practices

1.0 Purpose and Scope

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

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

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

2.0 Definitions

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

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

"General Advertisement" means an advertisement having as its purpose the raising of awareness in the concept of life insurance or in an insurer's or insurance producer's products.

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

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

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

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

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

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

“Side Fund” means a fund or reserve that is part of or otherwise attached to a life insurance policy (excluding individually issued annuities) by rider, endorsement or other mechanism which accumulates premium or deposits at interest or by other means. The term does not include accumulated or cash value or secondary guarantees provided by a universal life policy nor does it include cash values provided by a whole life policy which are subject to standard nonforfeiture law for life insurance.

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

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

3.0 Authority

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

4.0 Exemptions

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

4.1.1 Credit insurance;

4.1.2 Group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer;

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

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

4.1.5 Contracts used to fund:

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

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

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

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

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

4.1.5.6 Prearranged funeral contracts.

4.1.6 Nothing herein shall be construed to abrogate the ability of nonprofit organizations (and/or

other organizations) to educate members of the United States Armed Forces in accordance with Department of Defense (DOD) Instruction 1344.07 – Personal Commercial Solicitation on DoD Installations or successor directive.

5.0 Practices Declared False, Misleading, Deceptive or Unfair

5.1 The following acts or practices by an insurer or insurance producer are declared to be false, misleading, deceptive or unfair when committed on a military installation or in military controlled housing:

5.1.1 Prohibited In-Person Face to Face Solicitation: Time, Place and Setting

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

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

5.1.1.3 Making appointments with or soliciting service members during their normally scheduled duty hours.

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

5.1.1.5 Soliciting the sale of insurance without first obtaining permission from an office designated by the installation commander.

5.1.1.6 Posting unauthorized bulletins, notices or advertisements.

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

5.1.2 Corrupt Practices, Improper Influence, Inducements

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

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

5.2 The following acts or practices by an insurer or insurance producer are declared to be false, misleading, deceptive or unfair, regardless of location:

5.2.1 Corrupt Practices, Improper Influence, Inducements

5.2.1.1 Possessing, completing, submitting, or processing or assisting in completing, submitting or processing of any form or device used by the United States Armed Forces to direct a service member’s pay to a third party, including using or assisting in using a service member’s “MyPay” account or other similar internet or electronic medium, for the purpose of establishing a direct deposit for the purchase of life insurance.

5.2.1.2 Employing any device or method or entering into any agreement whereby funds received from a service member by allotment for the payment of insurance premiums are identified on the service member’s Leave and Earnings Statement or equivalent or successor form as “Savings” or “Checking.”

5.2.1.3 Receiving funds from a service member for the payment of premium from a depository institution with which the service member has no formal banking relationship. For purposes of this section, there is no formal banking relationship unless the depository institution:

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

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

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

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

5.2.1.6 Offering or giving anything of value, directly or indirectly, to DoD personnel to

procure their assistance in encouraging, assisting or facilitating the solicitation or sale of life insurance to another service member.

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

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

5.2.2 Confusion Regarding Source, Sponsorship, Approval, Affiliation

5.2.2.1 Making any representation, or using any device, that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance producer or product offered is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, the United States Armed Forces, or any State or Federal agency or government entity.

5.2.2.2 Using any title, descriptive name or identifier, other than titles which identify the insurance producer as a producer or agent for the insurer. Examples of prohibited titles include, but are not limited to, "Battalion Insurance Counselor," "Unit Insurance Advisor," "Servicemen's Group Life Insurance Conversion Consultant" or "Veteran's Benefits Counselor."

5.2.2.3 Soliciting the purchase of any life insurance product through the use of or in conjunction with any third party service or fraternal organization that promotes the welfare of or assists members of the United States Armed Forces, absent express approval from the Department of Insurance.

5.2.3 Confusion Regarding Premiums, Costs and Investment Returns

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

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

5.2.4 Disparagement of SGLI or VGLI

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

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

5.2.5 Required Disclosures

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

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

5.2.5.3 Excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance, the amount of coverage and the cost thereof.

5.2.5.4 Failing to make, at the time of sale or offer, the written disclosures required by Section 10 of the "Military Personnel Financial Services Protection Act," Pub. L. No. 109-290.

5.2.5.5 Failing to provide the applicant at the time a policy is applied for when the sale is conducted in-person face to face, a copy of the application, or a written disclosure that clearly and concisely sets out the type and amount of coverage applied for and cost thereof, and in all cases an explanation of any free look period with instructions on how to cancel.

5.2.5.6 Failing to comply with 18 DE Admin. Code 1203.

5.2.6 Deceptive or Unfair Products, Suitability, Required Counseling

5.2.6.1 Excluding individually issued annuities, recommending the purchase of any life insurance product which includes a side fund to service members in pay grades E-4 and below unless the insurer has reasonable grounds for believing that the life insurance, standing alone, is suitable. Sale of a life insurance product which includes a side fund to a service member in pay grades E-4 and below who is currently enrolled in SGLI, is presumed unsuitable.

5.2.6.2 Overcoming the Presumption of Unsuitability

5.2.6.2.1 The presumption of unsuitability regarding the sale of life

insurance contracts which include a side fund to service members in pay grades E-4 and below may be overcome if, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivors benefits, savings and investments, survivors income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance.

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

5.2.6.2.3 Other military survivor's benefits provided by the federal government which must be included in a service member's needs assessment include, but are not limited to, the Death Gratuity, Funeral Reimbursement, Transition Assistance, Survivor and Dependents' Educational Assistance, Dependency and Indemnity Compensation, TRICARE Healthcare benefits, Survivor's Housing Benefits and Allowances, Federal Income Tax Forgiveness, and Social Security Survivors Benefits.

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

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

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

5.2.6.3.3 which by default diverts or transfers funds accumulated in the side fund to pay, reduce or offset any premiums due:

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

5.2.6.5 Offering for sale or selling any life insurance product that excludes coverage if the insured's death is related to war, declared or undeclared, or any act related to military service save and except for accidental death coverage which may be excluded.

5.2.6.6 Suggesting, recommending or encouraging a service member to cancel or terminate his or her SGLI policy or issuing a life insurance policy which replaces an existing SGLI policy.

5.2.6.7 Accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the United States Army with the pay grade of E-3 and below without first obtaining for the Company's files a completed copy of DA Form 2056, "Commercial Insurance Solicitation Record," or its equivalent, which confirms that the applicant has received counseling as required by Army Regulation 210-7 or its equivalent.

6.0 Severability

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

7.0 Effective Date

7.1 This regulation shall become effective August 1, 2007.

PROPOSED REGULATIONS

DEPARTMENT OF INSURANCE

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

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

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

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

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

1217 Unfair Discrimination in Life Insurance, Annuities and Health Insurance on the Basis of Physical or Mental Impairment**1.0 Authority**

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

2.0 Purpose

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

3.0 Unfairly Discriminatory Acts or Practices

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

4.0 Effective Date

4.1 This regulation shall become effective August 1, 2007.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF WATER RESOURCES

Statutory Authority: 7 **Delaware Code** Chapters 40, 60, 66 and 70 (29 **Del.C.** §§8014(5) and 8025)

7 **DE Admin. Code** 7403

NOTICE OF PUBLIC HEARINGS

7403 Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay Watersheds, Delaware

1. Brief Synopsis of the Subject, Substance, and Issues

The Department of Natural Resources and Environmental Control (DNREC) plans to conduct two public hearings to gather comments on the proposed Pollution Control Strategy for the Inland Bays including the proposed **Regulations of the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay, and Little Assawoman Bay Watersheds**. The proposed Strategy includes both voluntary and regulatory actions which need to be implemented in order to achieve the nitrogen and phosphorus load reductions required by the Total Maximum Daily Loads for these watersheds. The proposed regulations would impact multiple sources of nutrients including point sources, stormwater, and onsite wastewater treatment and disposal systems.

2. Possible Terms of the Agency Action

Following the adoption of the proposed Regulations, various programs to reduce nutrient pollutant loadings will be implemented.

3. Statutory Basis or Legal Authority to Act

The authority to develop a this Pollution Control Strategy associated Regulations is provided by Title 7 of the **Delaware Code**, Chapters 40, 60, 66, and 72 and in Title 29 of the **Delaware Code**, Sections 8014(5) and 8025.

4. Other Legislation That May be Impacted

None

5. Notice of Public Comment

Two public hearings for the proposed **Regulations of the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay Watersheds** will be held. One hearing will be held at 6:00 PM on Wednesday, June 13, at the Millsboro Senior Center, 322 Wilson Highway, Millsboro, Delaware. A second hearing will be held at 6:00 PM on Thursday, June 14, at the Georgetown CHEER Community Center, 20520 Sand Hill Road, Georgetown, Delaware.

The hearing record for these proposed Regulations will remain open until 4:30 PM, Friday, June 29, 2007. Please send written comments to Katherine Bunting-Howarth, Division of Water Resources, Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, DE 19901; facsimile: (302) 739-7864; email: (katherine.howarth@state.de.us). All written comments must be received by 4:30 PM, Friday, June 29, 2007. Electronic submission is preferred.

Copies of the proposed regulations and technical support documents for these watersheds are available by mail from Maryann Pielmeier, DNREC, DWR, Watershed Assessment Section, 820 Silver Lake Blvd., Suite 220, Dover, DE 19904-2464, via telephone by calling (302) 739-9939, via e-mail by contacting maryann.pielmeier@state.de.us, or from the DNREC website at the following URL: <http://www.dnrec.state.de.us/water2000/Sections/Watershed/ws/>

6. Prepared By

John Schneider, Watershed Assessment Section, 739-9939

7403 Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay Watersheds, Delaware**FORWARD**

For years, various governmental and private entities have encouraged the use of voluntary practices in order to reduce nutrient loading into the Indian River, Indian River Bay, Rehoboth Bay, Little Assawoman Bay and their tributaries such that water quality standards are achieved in support of their designated uses. While reducing pollutant loads to an extent, these attempts have not resulted in the desired outcome. In order to achieve the Total Maximum Daily Loads (TMDLs), determined through vigorous research and modeling, the following Pollution Control Strategy regulations must be implemented.

In instances where strict interpretation of these regulations would limit land uses as zoning allows, the Department of Natural Resources and Environmental Control may issue permits and approvals based on the use of the best treatment options available to address the TMDL to the greatest extent practicable.

In addition, the Department will consider the use of water quality trading to achieve point and nonpoint source load reductions. All trading proposals will be in support of the TMDL required load reductions and are subject to Department approval.

It is the policy of the Department of Natural Resources and Environmental Control to implement each component of the Pollution Control Strategy and these Regulations in a timely fashion. The Department supports review of all related ordinances, regulations and laws in order to promote consistency among all legal instruments.

1.0 Authority and Scope

1.1 These Regulations are adopted by the Secretary of the Department of Natural Resources and Environmental Control under and pursuant to the authority set forth in 7 **Del.C.** Ch. 40, 60, 66 and 72 and in 29 **Del.C.** §§ 8014(5) and 8025.

1.2 These Regulations apply to the lands draining into the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay and their tributaries.

1.3 Unless otherwise stated in these Regulations, the effective date of these Regulations is 60 days from the date of publication of the final Regulations.

1.4 Proposed major subdivision plans, site plans, concept plans, initial stage calculation sheets, requests for service level evaluation, or requests for scoping meetings which have been received by DeIDOT prior to the effective date of this regulation for a development proposal, for the purpose of securing a letter of no objection, support facilities report, entrance location, or entrance approval, are not subject to the stormwater requirements of these Regulations, Section 5. If after 5 years from the effective date, an application for the project has not been submitted to the appropriate county or local government and substantial expenditures have not been made for the project to proceed, all stormwater provisions of these Regulations will be applicable to the project.

In instances where submissions to DELDOT are not required prior to filing an application with Sussex County or local government, projects for which applications have been submitted to the County or a municipality prior to the effective date of these Regulations are not subject to the Stormwater provisions, Section 5, of these Regulations.

For projects within the County, the effective date of Section 5 shall be 10 calendar days after the date of publication of the final Regulations in the Delaware Register of Regulations. For projects on lands located within municipalities as of the date of publication of these Regulations, the effective date of Section 5 of these Regulations shall be one year from the date of publication of the final Regulations in the Delaware Register of Regulations.

1.5 Section 6 of these Regulations will become effective 30 days from the date of publication of the final Regulations.

1.6 Section 7 of these Regulations will become effective 180 days from the date of publication of the final Regulations.

1.6 New systems described in Sections 8.2.1 and 8.3.1 of these Regulations are those proposed projects utilizing Large On-site Wastewater Treatment and Disposal Systems which require submission of a Site Investigation Report (SIR) and a Preliminary Groundwater Impact Assessment (PGIA) or a Site Selection and Evaluation Report (SSER) and are submitted to the Department 60 days after the date of publication of the final Regulations.

1.7 All permits issued for new and replacement systems described in Section 8.4 after December 31, 2014 will require technologies that achieve Performance Standard Nitrogen level 3.

2.0 Definitions

2.1 The following words and terms, when used in these Regulations, should have the following meaning unless the context clearly indicates otherwise:

“**Best Management Practice (BMP)**” means a system or procedure that has been determined to be an effective, practical means of preventing or reducing nonpoint source pollution. These include conservation practices or management measures which control soil loss and reduce water quality degradation caused by nutrients, animal wastes, toxins, sediment, and runoff.

“**Buffer**” means an existing or purposely established area of vegetation which protects water resources from pollution.

“**Certified Service Provider**” means an individual representative of a manufacturer/supplier who holds a Department Class E System Contractor or Class H System Inspector license, or a Class E System Contractor who is certified, through Department approved training, on the operation and maintenance of the advanced treatment unit or system, or a Class H System Inspector who has become certified through Department approved training on the operation and maintenance of the advanced treatment unit or system, or a homeowner who has obtained Department individual home service provider certification and has been through Department approved training on the operation and maintenance of their advanced treatment unit or system. The Department homeowner certification allows the homeowner to operate and maintain their advanced treatment unit or system at their primary place of residence.

“**Clean Water Act (CWA)**” means the Federal Water Pollution Control Act, 33 U.S.C. §§1251-1387.

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

“**Drainfield**” means a system of open-jointed or perforated piping, alternative distribution units, or other seepage systems for receiving the flow from septic tanks or other treatment facilities and designed to distribute effluent for oxidation and adsorption by the soil within the zone of aeration.

“**End of Pipe**” means the location where effluent discharges from the end of the advanced pretreatment unit before ultimately dispersing into the soil drainfield. This is the location where nitrogen and phosphorus sampling may occur in order to determine compliance with the applicable performance standard.

“**High potential for phosphorus mobility**” means an area where:
the site’s soils have a Fertility Index Value (FIV) of greater than 100 for phosphorus or a soil test value of over 100 parts per million (ppm) by the Mehlich 3 soil test; and
the groundwater phosphorus content is above 0.034 mg/l and there is an indication that groundwater is anoxic due to low dissolved oxygen or oxidation reduction potential below 200 mV; and
the disposal area contains soils with a seasonal high water table above 27 inches.

“**Indian River Watershed**” means the lands that drain into the Indian River and its tributaries as illustrated in the Delaware watershed map available in the Watershed Assessment Section of the Division of Water Resources in the Department of Natural Resources and Environmental Control.

“**Indian River Bay Watershed**” means the lands that drain into the Indian River Bay and its tributaries as illustrated in the Delaware watershed map available in the Watershed Assessment Section of the Division of Water Resources in the Department of Natural Resources and Environmental Control.

“**Innovative and Alternative (IA) onsite wastewater treatment and disposal systems**” means anything other than a conventional onsite wastewater treatment and disposal system.

“**Intermittent stream**” means a well-defined channel that contains water for only part of the year and is fed by groundwater.

“**Little Assawoman Bay Watershed**” means the lands that drain into the Little Assawoman Bay and its tributaries as illustrated in the Delaware watershed map available in the Watershed Assessment Section of the Division of Water Resources in the Department of Natural Resources and Environmental Control.

“**Major subdivision**” means a subdivision of land involving a proposed new street or the extension of an existing street.

“**Mean high water (MHW)**” means the point on the bank, tidal flat, beach or shore, up to which the presence or action of the water leaves a distinct mark, either by erosion, destruction of terrestrial vegetation (non-aquatic), physical markings or characteristics, and known vegetation lines, and may be further identified by tidal

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gauge data, or any other suitable means delineating the mean height reached by a rising tide.

“National Pollutant Discharge Elimination System (NPDES)” means the program prescribed by the Federal Water Pollution Control Act for point sources of pollution.

“Nonpoint source (NPS) pollution” means pollution originating from diffuse areas having no well-defined source.

“Nutrient” means any element or compound essential as a raw mineral for organism growth and development and, for the purpose of this regulation, is limited to nitrogen and phosphorus.

“Onsite wastewater treatment and disposal system (OWTDS)” means a conventional or innovative and alternative wastewater treatment and disposal systems installed or proposed to be installed on the land of the owner or on other land to which the owner has the legal right to install the system.

“Ordinary high water mark” means, for nontidal waters, the line where the presence and action of water are continuous enough during ordinary rainfall years to leave a mark upon the soil of the bed or banks of the waterbody.

“Perennial stream, pond or ditch” means a stream, portion of a stream, ditch or a pond in line with a perennial stream that flows continuously during periods of average rainfall as a result of groundwater discharge or surface runoff.

“Performance Standard Nitrogen level 1 (PSN1)” means where total nitrogen levels achieve either:

- an average annual concentration of 5 mg/l (parts per million (ppm)) total nitrogen in effluent sampled at the end-of-pipe of the pretreatment unit; or
- a 90% reduction in the effluent total nitrogen concentration when compared to the influent total nitrogen concentration; or
- an average annual concentration of 5 mg/l beneath any permitted wastewater spray irrigation field as verified by monitoring in-field lysimeters, providing that the design percolate concentration does not exceed 5 mg/l on an average annual basis.

Discharge limitations are to be expressed as a mass, based on average design flows (221 gallons per day per unit for residential systems).

“Performance Standard Nitrogen level 2 (PSN2)” means where total nitrogen levels achieve either:

- an average annual concentration of 10 mg/l (parts per million (ppm)) total nitrogen in effluent sampled at the end-of-pipe of the pretreatment unit; or
- an 80% reduction in effluent total nitrogen concentration when compared to the influent total nitrogen concentration; or
- an average annual concentration of 10 mg/l beneath any permitted wastewater spray irrigation field as verified by monitoring in-field lysimeters, providing that the design percolate concentration does not exceed 10 mg/l on an average annual basis.

Discharge limitations are to be expressed as a mass, based on average design flows (221 gallons per day per unit for residential systems).

“Performance Standard Nitrogen level 3 (PSN3)” means where total nitrogen levels achieve either:

- an average annual concentration of 20 mg/l (parts per million (ppm)) total nitrogen in effluent sampled at the end-of-pipe of the pretreatment unit; or
- a 60% reduction in effluent total nitrogen concentration when compared to the influent total nitrogen concentration.

Discharge limitations are to be expressed as a mass, based on average design flows (221 gallons per day per unit for residential systems).

“Performance Standard Phosphorus level 1 (PSP1)” means where total phosphorus levels achieve either:

- an average annual concentration of 3.9 mg/l (parts per million (ppm)) total phosphorus in effluent sampled at the end-of-pipe of the pretreatment unit; or
- a 75% reduction in effluent total phosphorous concentration when compared to the influent total phosphorus; or
- an average annual concentration of 3.9 mg/l beneath any permitted wastewater spray irrigation field as verified by monitoring in-field lysimeters, providing that the design

percolate concentration does not exceed 3.9 mg/l on an annual average basis.

Discharge limitations are to be expressed as a mass, based on average design flows (221 gallons per day per unit for residential systems).

“Performance Standard Phosphorus level 2 (PSP2)” means where total phosphorus levels achieve either:

- an average annual concentration of 7.85 mg/l (parts per million (ppm)) total phosphorus in effluent sampled at the end-of-pipe of the pretreatment unit; or
- a 50% reduction in effluent total phosphorus concentration when compared to the influent total phosphorus concentration.

Discharge limitations are to be expressed as a mass, based on average design flows (221 gallons per day per unit for residential systems).

“Person” means any individual, business enterprise, or business entity, including but not limited to, a trust, firm, joint stock company, partnership corporation (including government corporation), limited liability company or association, any state, municipality, commission, or political subdivision of a state, any federal agency, any interstate body, or other such entities as allowed by law.

“Point source pollution” means pollution discharged directly from a specific site such as a municipal sewage treatment plant or an industrial outfall pipe.

“Pollution Control Strategy (PCS)” means a document that specifies actions necessary to systematically achieve pollutant load reductions specified by a Total Maximum Daily Load for a given waterbody. The regulatory actions are included in these Regulations.

“Pre-engineered plan” means a design using packaged mechanical devices such as equipment of cataloged design which complies with all applicable regulations and approved by the Department, or listed by a third party testing authority for a specific application recognized and approved by the Department.

“Rehoboth Bay Watershed” means the lands that drain into the Rehoboth Bay and its tributaries as illustrated in the Delaware watershed map available in the Watershed Assessment Section of the Division of Water Resources in the Department of Natural Resources and Environmental Control.

“Site plan” means a drawing illustrating proposed residential planned communities, conditional uses, dwellings, multiple family dwellings, townhouses, houses of worship, hotels, motels or motor lodges, docks or piers, footbridges or walkways, business and office buildings, commercial buildings or industrial buildings, mobile home parks, campgrounds, borrow pits, or amusement places, circuses, or carnival grounds.

“Systematically eliminate” means to require the elimination of waste loading into the affected waterbody by point sources on a firm, fixed schedule as approved by the Department. This elimination must occur within five years of the expiration of the facility’s current NPDES permit unless a longer period of time is provided for in a State or Federally enforceable Consent Order, Decree, or Administrative Order.

“Total Maximum Daily Load (TMDL)” means the amount of a given pollutant that may be discharged to a waterbody from point, nonpoint, and natural background sources and still allows attainment or maintenance of the applicable narrative and numerical water quality standards. A TMDL is the sum of the individual Waste Load Applications (WLA’s) for point sources and Load Allocations (LA’s) for nonpoint sources and natural background sources of pollution. A TMDL may include a reasonable margin of safety (MOS) to account for uncertainties regarding the relationship between mass loading and resulting water quality. In simplistic terms, a TMDL matches the strength, location and timing of pollution sources within a watershed with the inherent ability of the receiving water to assimilate the pollutant without adverse impact.

“Watershed” means a region or area delineated by a topographical divide and draining ultimately to a particular watercourse.

“Wetlands” means, for the purposes of these Regulations, those regulated by the State of Delaware and the Army Corp of Engineers as mapped or otherwise field verified.

3.0 Point Source Implementation

3.1 Permitted discharges of nutrients into the Indian River, Indian River Bay, Rehoboth Bay, Little Assawoman Bay or their tributaries under the NPDES program shall be systematically eliminated through their NPDES renewal process.

3.2 Subject to approval by the Department, point sources may choose to engage in water quality trading on a case-by-case basis in accordance with the following:

3.2.1 Trades must occur within the same watershed (Indian River, Indian River Bay, Rehoboth

Bay, or Little Assawoman Bay) as the point source discharge is located.

3.2.2 Trades must involve a trading ratio of at least 2:1 between nonpoint sources and point sources.

3.2.3 The nutrient load reduction involved in the trade must constitute reductions that occur beyond the baseline or the point or nonpoint source nutrient reductions required under the TMDL and this Pollution Control Strategy.

4.0 Buffer Zone Established (Reserved)

5.0 Sediment and Stormwater Controls

5.1 Sediment and stormwater runoff shall be managed for nutrient reductions where practicable.

5.2 When the Delaware Sediment and Stormwater Regulations require the creation of a permanent sediment and stormwater management plan, that plan shall be designed and implemented to include design criteria to further reduce nutrient contributions. Consistency will be determined at the conceptual stormwater plan process step. Compliance will be determined before approval of final site or subdivision plans.

5.3 Compliance with 5.2 of this Regulation shall be achieved using one of the following methods:

5.3.1 Reduce nutrient contributions by the percentage required by the TMDL for the watershed in which the project is located, based on a comparison between the post-developed condition with and without stormwater quality management best management practices (using the procedures outlined in the guidance document entitled, "Achieving Stormwater Pollution Control Strategy Reductions for Water Quality"); or

5.3.2 Reduce nutrient contributions so as to achieve irreducible concentrations of nutrients (using the procedures outlined in the guidance document entitled, "Achieving Stormwater Pollution Control Strategy Reductions for Water Quality"); or

5.3.3 Reduce nutrient contributions using three practices within a treatment train (using the procedures outlined in the guidance document entitled, "Achieving Stormwater Pollution Control Strategy Reductions for Water Quality"); or

5.3.4 Utilize an average 100-foot buffer landward from the limit of tidal wetlands, as shown on the State wetlands map, or the mean high water line of all tidal waters, whichever extends farther upland, and from the ordinary high water mark of perennial streams, perennial ditches, and ponds in line with these perennial waterbodies provided no portion of the buffer is less than 50 feet wide; or

5.3.5 Utilize a 50-foot buffer landward from the limit of tidal wetlands, as shown on the State wetlands map, or the mean high water line of all tidal waters, whichever extends farther upland, and from the ordinary high water mark of perennial streams, perennial ditches, and ponds in line with these perennial waterbodies and utilize 30-foot buffers from all intermittent streams and preserve at least 30% of existing forest.

5.4 When methods 5.3.4 and 5.3.5 are utilized, the applicant must provide plans of sufficient detail which include the following features and data:

5.4.1 Map showing the footprint of all buffers and the average width, linear length, and acreage of areas to be treated by each buffer;

5.4.2 Map showing the wetlands to be preserved and the total acreage of those wetlands;

5.4.3 Map showing the forested areas to be preserved and protected and the acreage of those forested areas.

5.5 When methods 5.3.4 and 5.3.5 are used, the following applies:

5.5.1 Property owner(s) shall maintain the buffer in perpetuity in accordance with these regulations. Property owners shall install boundary signs or markers or distinctive vegetation identifying the upland edge of the buffer.

5.5.2 Buffers shall be clearly demarcated, designated and recorded on final site plans and final major subdivision plats.

5.5.3 The owner of the property shall provide in the deed restrictions and any lease or agreements of sale for any residential lot or dwelling unit, the following notice: "This property includes a water quality buffer. The buffer is designed to reduce pollutants entering the Inland Bays. The buffer is required to be maintained in vegetation and shall be managed in accordance with the Regulations of the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay Watersheds."

5.5.4 Buffer property owners or managers shall manage buffers to maintain their water quality benefits.

6.0 On-site Wastewater Treatment and Disposal Systems - General

6.1 This section of the Regulations of the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay Watersheds complements sections of the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems. If inconsistencies exist, these Regulations of the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay Watersheds control.

6.2 All cesspools or seepage pits are prohibited within Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay watersheds and shall be replaced in accordance with the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems and these Regulations of the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay Watersheds.

6.3 Existing holding tanks must be operated in accordance with their permits and their conditions.

6.4 In instances where central sewer will become available within five years, temporary holding tanks will only be permitted after the Department receives a letter from Sussex County, the appropriate municipality, or the wastewater utility with an approved Certificate of Public Convenience and Necessity (CPCN) stating when central sewer will become available.

6.5 Existing onsite wastewater treatment and disposal systems which are repaired or replaced and new systems on parcels recorded prior to 10 calendar days after the date of publication of these final Regulations in the Delaware Register of Regulations shall be subject to the setback requirements of these Regulations and the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems. However, if it is impossible to comply with such requirements due to lot size limitations, the system shall conform to the maximum extent practicable.

6.6 No new drainfields on parcels recorded 10 calendar days or more after the publication of these final Regulations in the Delaware Register of Regulations may be present within 100 feet landward from the limit of tidal wetlands, as shown on the State Wetlands Map, or the mean high water line of all tidal waters, whichever extends farther upland, and from the ordinary high water mark of perennial streams, perennial ditches, and ponds in line with these perennial waterbodies.

6.7 All innovative and alternative onsite wastewater treatment and disposal systems having flows of less than or equal to 2,500 gallons per day must comply with Performance Standard Nitrogen level 3.

7.0 On-site Wastewater Treatment and Disposal System Operation, Maintenance and Inspection Program

7.1 An operation, maintenance and inspection program for individual onsite wastewater treatment and disposal systems (OWTDS) is hereby established for the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay watersheds.

7.2 OWTDS inspections and pumpouts shall be performed once every three years. Pumpouts shall be performed by a licensed Class F Liquid Waste Hauler. Inspections shall be performed by a licensed Class H System Inspector. However, owners of existing conventional systems may serve as system inspectors to perform their own inspection provided they are certified by the Department under Section 5.04045 of the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems.

7.3 If the owner of an individual OWTDS provides proof of a licensed operator or has an annual service contract with a certified service provider then the requirements of Section 7.2 have been met.

7.4 The Department will provide notice to OWTDS owners of the need to have an inspection completed within 36 months of the notice.

7.5 Standard inspection forms, developed by the Department, shall be used by the system inspector. The property owner shall provide the system inspector with all available pertinent information. The completed inspection report shall detail the results of the inspection. The system inspector shall provide the Department and the property owner with a written copy of the inspection report.

7.6 If an inspection reveals a malfunctioning or failed OWTDS, the Department shall notify the owner in writing and may provide technical and administrative assistance regarding OWTDS repair or replacement.

7.6.1 If the OWTDS needs to be replaced, technologies selected to replace failed systems shall be consistent with these Regulations and its performance standards, located in Section 8, and those of the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems.

7.7 The Department may phase implementation of this Section or alter the inspection schedule by ordering the inspection of any OWTDS when it has been determined that the OWTDS is in need of immediate improvements.

7.8 All properties utilizing an OWTDS that are sold or otherwise transferred to other ownership shall have their systems pumped out and inspected prior to the completion of the sale. If an inspection has occurred within the previous 36 months and the property owner can provide documentation of such pump out and inspection, then such documentation will fulfill the requirements of this section.

7.9 The Department will maintain a list of all licensed Class H System Inspectors and certified service providers which will be available for review.

8.0 On-site Wastewater Treatment and Disposal System Performance Standards

8.1 All OWTDSs in the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay Watersheds are required to reduce their nutrient wastewater loads.

8.2 Requirements for large OWTDSs having flows greater than 20,000 gallons per day (gpd):

8.2.1 All new systems shall meet Performance Standard Nitrogen level 1 (PSN1).

8.2.2 All replacement systems shall meet Performance Standard Nitrogen level 2 (PSN2).

8.2.3 When the operation and maintenance permit expires for an existing system, the Department will require the system meet Performance Standard Nitrogen level 2 (PSN2). If the Department deems that the OWTDS must be redesigned to meet PSN2, the owner or operator of the system will have up to 60 months based upon the permit expiration date to bring the OWTDS into compliance.

8.2.4 Where the system location is identified as having high potential for phosphorus mobility, new OWTDSs shall meet a Performance Standard Phosphorus level 1 (PSP1).

8.2.5 When the operation and maintenance permit expires for an existing system, and the system location is identified as having high potential for phosphorus mobility, the system must comply with the Performance Standard Phosphorous level 1 (PSP1). If the Department deems that the system must be redesigned to meet PSP1, the owner or operator of the system will have up to 60 months based upon the permit expiration date to bring the system into compliance.

8.3 Requirements for large OWTDSs having flows greater than 2,500 gpd but less than 20,000 gpd:

8.3.1 All new systems shall meet a Performance Standard Nitrogen level 2 (PSN2).

8.3.2 All replacement systems shall meet a Performance Standard Nitrogen level 3 (PSN3).

8.3.3 When the operation and maintenance permit expires for an existing system, the system must meet a Performance Standard Nitrogen level 3 (PSN3). If the Department deems that the large OWTDS must be redesigned, the owner of the system will have up to 60 months based upon the permit expiration date to bring the system into compliance.

8.3.4 When the operation and maintenance permit expires for an existing system and the system location is identified as having high potential for phosphorus mobility, the system must comply with the Performance Standard Phosphorous level 2 (PSP2).

8.4 Requirements for small OWTDSs having flows less than or equal to 2,500 gpd:

8.4.1 All new and replacement systems shall meet a Performance Standard Nitrogen level 3 (PSN3).

8.4.2 Department approval and use of advanced treatment units shall be in accordance with the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems and the Innovative and Alternative System Approval Checklist.

8.4.3 All permit applications shall be prepared in accordance with the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems and these Regulations.

8.4.4 To provide proper operation and maintenance of the innovative and alternative onsite wastewater treatment and disposal system, the permittee is required to adhere to Department permit conditions. These permit conditions require mandatory operation and maintenance for the life of the system by maintaining a service contract with a certified service provider.

8.4.5 The Department reserves the right to randomly sample any innovative and alternative onsite wastewater treatment and disposal system to ensure they are meeting performance standards.

8.4.6 The Department reserves the right to perform compliance inspections on all innovative and alternative onsite wastewater treatment and disposal systems.

8.5 Large systems will be operated and monitored in accordance with permit conditions, and the following:

8.5.1 Large systems shall be operated by a Department licensed operator. The class level of the operator required and frequencies of inspections will be in accordance with the Regulations for Licensing Operators of Wastewater Facilities.

8.5.2 Large systems shall be sampled as outlined in the permit conditions.

8.5.3 Monitoring results obtained during the previous one (1) month shall be summarized for each month and reported on approved On-Site Effluent Groundwater Monitoring Report Form(s) postmarked no later than the 28th day of the month following the completed reporting period. Signed copies of these, and all other reports required herein, shall be submitted to the Department.

8.6 Failure to meet standards:

8.6.1 If the samples indicate that a large OWTDS is not meeting the appropriate standard, the Department will require the owner/operator to bring the large OWTDS into compliance with the appropriate standard(s).

8.6.2 Failure to meet the performance standards for a particular innovative and alternative system having flows of 2,500 gallons per day or less does not obligate the Department to require replacement of that particular system but will affect continued approval for use and constitute cause for the Department to rescind the approval of the particular treatment technology.

8.6.3 Continued permitting of the innovative and alternative technology for having flows of 2,500 gallons per day or less is based upon confirmation in the field that existing systems of that type in Delaware meet the nutrient reduction standards, are properly operated and maintained, and function effectively.

8.6.4 The Department may, at any time, rescind the use of any innovative and alternative technology for cause.

9.0 Enforcement, Variances and Waivers

9.1 Enforcement of these regulations shall be as outlined in Title 7, Chapter 60, Section 6005 of the Delaware Code.

9.2 Waiver requests from Section 5 shall be determined through the procedures outlined in Section 3.0 of the Delaware Sediment and Stormwater Regulations.

9.3 Waiver requests for all other sections of these Regulations shall follow these procedures. Upon the applicant's request, the Secretary may grant a waiver from the strict application of this Regulation after an opportunity for formal public hearing and review.

9.3.1 Notice shall be provided to all contiguous property owners.

9.3.2 A public hearing will be held if a meritorious request is received within a reasonable time as stated in the advertisement.

9.3.3 A public hearing request shall be deemed meritorious if it exhibits a familiarity with the waiver request and has a reasoned statement of the waiver's probable impact.

9.3.4 No waiver shall be granted unless the said variance meets the following criteria:

9.3.4.1 The action will not result in substantial adverse effect on water quality, in general;
and

9.3.4.2 The waiver must minimize the effects to the water quality goals of these Regulations to the greatest extent possible; and

9.3.4.3 A denial of the desired waiver would preclude a reasonable use of the property;
and

9.3.4.4 The justification for the waiver is not related to a self-imposed special condition.

9.4 In the event that more than one waiver from these Regulations is required, the Secretary may coordinate the review of such waivers.

10.0 Other (Reserved)

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DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

1800 Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners

Statutory Authority: 24 Delaware Code, Section 1806(a)(2) (24 **Del.C.** §1806(a)(2))
24 **DE Admin. Code** 1800

PUBLIC NOTICE

The Delaware Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners ("Board"), in accordance with 29 **Del.C.** Chapter 101 and 24 **Del.C.** §1806(a)(2), proposes changes and additions to its regulations. By these changes and additions, the Board establishes the process and requirements for obtaining the Master HVACR license and the Master HVACR Restricted license, as those terms are defined in 24 **Del.C.** §1802(11) and (12), respectively. Various non-substantive structural, grammatical, typographic, and stylistic changes are also included.

PLEASE NOTE: Individuals who qualify for licensure without taking the examination pursuant to 24 **Del.C.** §1821(f) **must** complete and submit the "Grandfathered HVACR License Application" prior to June 30, 2007. The application may be found at <http://www.dpr.delaware.gov/boards/plumbers/hvacrforms.shtm>. After June 30, 2007, licensure may only be obtained according to the process and requirements outlined in 24 **Del.C.** Chapter 18, Subchapter III and these regulations.

A public hearing is scheduled for Tuesday, June 12, 2007 at 9:00 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Board care of Judy Letterman at the above address. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Judy Letterman at the above address or by calling (302) 744-4504.

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

1800 Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners

1.0 General Provisions.

~~1.1 Legislative authority. These Rules and Regulations are adopted by the Delaware Board of Plumbing Examiners (hereinafter "the Board") by authority of 24 **Del.C.** Ch. 18, and the Administrative Procedures Act, 29 **Del.C.** Ch. 101.~~

~~1.31 Election of Officers - The Board will conduct election of officers for the offices of Chairperson a President, Vice-Chairperson President, and Secretary annually in May of each year. In the event of a resignation, termination or departure of one of the officers, a replacement shall be elected at the next Board meeting or at a meeting called for that purpose. Statutory reference: 24 **Del.C.** §1804(a).~~

~~1.2 Applicability. These Rules and Regulations shall govern proceedings before the Board to the extent they are consistent with governing law. Statutory reference: 29 **Del.C.** §10111 (2); 24 **Del.C.** §1805(2).~~

Definitions - Words and terms defined in Title 24, Section 1802 of the Delaware Code are applicable to these regulations. The following additional words and terms, when used within these regulations, shall have the following meaning, unless the context clearly indicates otherwise:

"Certificate of Good Standing" means a certified statement of the applicant's disciplinary and complaint record as a license holder in another jurisdiction, which is sent directly from the other jurisdiction to the Board.

"Complete application" means the Division of Professional Regulation has received the application form, all supporting documents (including verifications of disciplinary record), and all required fees.

~~1.4 Meetings. The Board shall, meet as often as necessary to transact the regular business of the Board and in any event, shall meet at least once each calendar quarter. Statutory reference: 24 **Del.C.** §1804(b).~~

~~1.5 Contact person. Information about the Board and its practices can be obtained by contacting the Division of Professional Regulation, Cannon Building, 861 Silver Lake Blvd., Ste. 203, Dover, Delaware 19904.~~

~~2467, telephone 302-739-4522 and <http://www.professionallicensing.state.de.us/boards/plumbers/index.shtml>.
Statutory reference: 29 ~~Del.C.~~ § 10111(1).~~

2.0 ~~Practice and Procedure~~ Plumbing Licensing Requirements.

~~2.1 Open meetings. All meetings of the Board, or any advisory or subcommittee, will be conducted in compliance with the Freedom of Information Act, 29 ~~Del.C.~~ Ch. 100. Statutory reference: 24 ~~Del.C.~~ §1812.~~

~~2.2 Disciplinary hearings. The procedural rules for disciplinary proceedings before the Board are outlined in 6.0. Statutory reference: 29 ~~Del.C.~~ §10111(2).~~

~~2.3 Advisory and subcommittees. The Board may appoint such advisory and subcommittees from time to time to assist in the performance of its duties as the Board deems necessary. Statutory reference: 29 ~~Del.C.~~ §10111(1).~~

~~3.0 2.1 Pre-examination Requirements for Licensure.~~

~~3.1 Definitions. The following definitions shall apply for purposes of this section:~~

~~3.1.1 "Performed Plumbing Services" means practical, hands-on experience working with tools in the installation, maintenance, extension, alteration, repair and removal of all piping, plumbing fixtures, plumbing appliances and plumbing apparatus. It does not include time spent in supervising, engineering, estimating and other managerial tasks, nor time spent in working with an entity authorized to perform plumbing services, but on menial tasks or on tasks which do not constitute the practice of plumbing, such as sewer cleaning. Statutory Reference: 24 ~~Del.C.~~ §1806(a).~~

~~3.1.2 "Direct Supervision" shall mean control and oversight by a licensed plumber who is an owner or full-time employee of the entity providing plumbing services. The supervising licensed plumber shall be deemed to be responsible and accountable for the work performed. Statutory reference: 24 ~~Del.C.~~ §1806(a) and §1813(b).~~

~~3.2.1.1 Pre-examination requirements. Board approval is required before an applicant will be allowed to sit for the exam. To get Board approval, In order to sit for the examination, an applicant must complete and return an application form to the Board's office, showing that the applicant has two (2) years of verified experience under the supervision of a licensed plumber after having received a Journeyman's Certificate in an apprenticeship program that meets or exceeds the Federal Bureau of Apprenticeship and Training Standard. Alternatively, the applicant can show seven (7) years of verified experience under the supervision of a licensed plumber if the applicant has successfully completed the series of state-approved tests offered in the Delaware technical high schools or other apprenticeship school.~~

~~3.3 2.1.2 Supporting documentation. The applicant shall present a copy of the Journeyman certificate, or, alternatively, the applicant shall present proof of passing the series of state-approved tests offered in the Delaware technical high schools or other apprenticeship school. Verification of the required experience shall be by affidavit of the supervising licensed plumber on the form approved by the Board. If the applicant is unable to obtain an affidavit from the supervising licensed plumber, the tax form W-2 or the affidavit of the employer or officer of the employing company may be submitted as proof of experience at the discretion of the Board. Statutory Reference: 24 ~~Del.C.~~ §1806(b).~~

~~3.4 2.1.3 Disciplinary record. An applicant must also certify to the Board that he or she has not engaged in any of the acts that would be grounds for discipline of a licensee of the State of Delaware and that he or she does not have any disciplinary proceedings or unresolved complaints pending against him or her in any jurisdiction where he or she has previously been or currently is licensed, or certified as a plumber. An applicant currently or previously licensed or certified in another jurisdiction shall provide the Board with certified statements from all other such jurisdictions verifying their disciplinary and complaint records. Statutory Reference: 24 ~~Del.C.~~ §1806(c).~~

~~3.5 2.1.4 Complete application. An application to sit for the examination is not considered complete until the Division of Professional Regulation has received the application form, all supporting documents (including verifications of disciplinary record) and all fees required by this section. Statutory Reference: 24 ~~Del.C.~~ §1806(b).~~

~~4.0 2.2 Licensure by Examination. and Licensure.~~

~~4.1 Applications. A person wishing to be licensed as a plumber shall complete the application form designated by the Board and submit it to the Division of Professional Regulation along with any required supporting documents and the appropriate fees. Statutory reference: 24 ~~Del.C.~~ §1806(b).~~

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~~4.2.2.1 Examination. The Board designates the NAI BLOCK Plumbing Examination as the required examination for licensure in Delaware. The examination will be offered four (4) times per year, once quarterly. No person shall be permitted to sit for the examination until he or she has completed the Pre-examination Requirements of Rule 3.0 Subsection 2.1 and received the Board's approval to take the examination. 24 Del.C. §1805(3), (4).~~

~~4.3 Passing Score. The passing score on the examination shall be 70%. Statutory Reference: 24 Del.C. §1805(3).~~

~~4.4 2.2.2 Reexamination - Applicants who do not earn a passing score on the examination may retake the examination it two (2) additional times, at its the next regularly scheduled administrations, without further Board approval. An applicant who does not earn a passing score after taking the examination a total of after three (3) times may attempts must reapply to the Board for permission to retake the exam. Such applicants may not reapply to the Board after until one (1) year has passed from the date he or she last took the examination. Statutory Reference: 24 Del.C. §1806(d).~~

~~5.0 2.3 Licensure by Reciprocity.~~

~~5.1 2.3.1 Equivalency. An applicant under this section must demonstrate that the standards for licensure of the sState through which the applicant seeks reciprocity are equivalent to those of this State, under 24 Del.C. §1806. Applicants must provide that state's laws and regulations governing plumbing licensure to the Board~~

6.0 Disciplinary Proceedings.

~~6.1 The statutory Grounds for Discipline and the Disciplinary Sanctions can be found 24 Del.C. §1810 and §1811 respectively.~~

3.0 HVACR Licensure Requirements

~~3.1 Licensure by Examination - All applicants must submit complete applications. Only complete applications will be considered by the Board. Successful applicants must:~~

~~3.1.1 Pass the Board-approved HVACR exam - Applicants must have prior approval from the Board to take the exam. To get the Board's approval, an applicant must first meet all the requirements in regulations 3.1.2 through 3.1.5. The exam is offered four (4) times per year, once quarterly. A score of 70% or greater is required to pass the exam.~~

~~3.1.2 Document the required experience - The law contains different experience requirements for applicants with a Journeyman's Certificate and those without a Journeyman's Certificate, as described below:~~

~~3.1.2.1 Journeyman's Certificate - Applicants that have a Journeyman's Certificate from an apprenticeship program that meets or exceeds the Federal Bureau of Apprenticeship and Training Standard must include a copy of the Certificate with their application. These applicants must also document completion of two (2) years of post-apprenticeship HVACR experience under the direct supervision of a master HVACR licensee, master HVACR restricted licensee, or an individual holding a similar level of licensure in another state. Experience gained before receipt of the Journeyman's Certificate does not qualify and will not be counted toward fulfillment of the two (2) year requirement.~~

~~3.1.2.2 No Journeyman's Certificate - Applicants who do not possess a Journeyman's Certificate must document completion of seven (7) years of HVACR experience under the direct supervision of a master HVACR licensee, master HVACR restricted licensee, or an individual holding a similar level of licensure in another state.~~

~~Applicants without a Journeyman's Certificate must also pass the series of Board-approved apprenticeship equivalency exams (known as the "Bypass Exams") before they will be approved to take the HVACR exam. Applicants must have prior approval from the Board to take the exam. Applicants will receive approval after they meet all the requirements in regulations 3.1.2 through 3.1.5. Applicants who pass the Bypass Exams are automatically approved to take the HVACR exam.~~

~~3.1.2.3 Proper Documentation of Experience - Documentation of the required experience shall be by affidavit of the applicant's supervisor. Applicants unable to obtain an affidavit from their supervisor may submit tax W-2 tax forms or affidavits of the employers or officer of their employing companies as alternative proof of experience. Alternative proof of experience is acceptable at the discretion of the Board. All affidavits must be on the affidavit form approved by the Board and available through the Board's office.~~

~~3.1.3 Provide a copy of their CFC Card - Document certification at the appropriate level for~~

handling chlorofluorocarbons (COUGH's) by a testing organization approved by the Environmental Protection Agency.

3.1.4 Truthfully attest in the affirmative that they:

3.1.4.1 have not received any administrative penalties regarding their provision of HVACR or HVACR restricted services:

3.1.4.2 do not have any disciplinary proceedings or unresolved complaints pending against them in any jurisdiction where they have previously been or are currently authorized to provide HVACR or HVACR restricted services:

3.1.4.3 do not have an impairment related to drug or alcohol use that would limit their ability to provide HVACR or HVACR restricted services in a manner that is not detrimental to the health, safety, or welfare of the public; and

3.1.4.4 do not have a criminal conviction, or any pending criminal charges, for any crime listed in or covered by Board regulation 8.0.

3.1.5 Provide Certificates of Good Standing - Applicants who have ever been licensed or certified by another jurisdiction (another state, the District of Columbia, or a U.S. territory) must contact the other jurisdiction and request a certified statement of the applicant's disciplinary and complaint record. All certified statements must be sent from other jurisdictions directly to the Board.

3.1.6 Reexamination - Applicants who do not pass the exam may retake it at the next two (2) regularly scheduled administrations without further Board approval. An applicant who does not pass the exam after these three (3) attempts may reapply for licensure but not until one (1) year after the date of the third exam.

3.2 Licensure by Reciprocity - An applicant for licensure by reciprocity must demonstrate that the standards for licensure of the state through which the applicant seeks reciprocity are equivalent to those of this State. Applicants must provide that state's HVACR licensure or certification laws and regulations to the Board.

4.0 **[Reserved]**

5.0 **[Reserved]**

6.0 **[Reserved]**

***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 Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners is available at: <http://regulations.delaware.gov/AdminCode/title24/1800%20Board%20of%20Plumbing%20Examiners.shtml#TopOfPage>**

DIVISION OF PROFESSIONAL REGULATION

2500 Board of Pharmacy

Statutory Authority: 24 Delaware Code, Section 2509 (24 Del.C. §2509)

24 DE Admin. Code 2500

PUBLIC NOTICE

The Delaware Board of Pharmacy, in accordance with 29 Del.C. Chapter 101 and 24 Del.C. §2509, proposes amendments to its regulation 2.0. Specifically, the amendments to 2.0 **Grounds for Disciplinary Proceeding** codify the Board's position that, in good faith and upon reasonable belief, a Pharmacist may withhold a suspected forged prescription for release to law enforcement without fear of disciplinary action by the Board. Minor grammatical, typographic, and stylistic changes are also included.

The Board previously originally proposed such an amendment, which appeared in the *Delaware Register of Regulations*, Volume 10, Issue 10, at page 1553 on April 1, 2007. In response to written and oral comments received at its April 18, 2007, meeting, the Board decided to modify the previous proposal. The Board's modified proposal is contained herein and supersedes the prior proposal.

A public hearing is scheduled for Wednesday, June 20, 2007 at 10:00 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and

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consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Board care of Judy Letterman at the above address. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Judy Letterman at the above address or by calling (302) 744-4504.

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

2500 Board of Pharmacy

(Break in Continuity of Sections)

2.0 Grounds for Disciplinary Proceeding

2.1 ~~Unprofessional conduct shall that may merit discipline pursuant to 24 Del.C. §2518(a) includes but is not limited to the following act(s) of a pharmacist pursuant to 24 Del.C. §2518(A):~~

2.1.1 ~~Knowingly engaging in any activity which violates State and Federal Statutes laws and Regulations governing the practice of Pharmacy;~~

2.1.2 Knowingly dispensing an outdated or questionable product;

2.1.3 Knowingly dispensing the cheaper product and charging third party vendors for a more expensive product;

2.1.4 Knowingly charging for more dosage units than is actually dispensed;

2.1.5 Knowingly altering prescriptions or other records which the law requires the pharmacies or pharmacists to maintain;

2.1.6 Knowingly dispensing medication without proper authorization;

2.1.7 Knowingly defrauding any persons or government agency receiving pharmacy services;

2.1.8 Placing a signature on any affidavit pertaining to any phase of the practice of pharmacy which the pharmacist knows to contain false information;

2.1.9 Fraudulently altering or forging the contents of prescriptions;

2.1.10 Payment of money or the providing of free services to a third party in return for the third party's referral of patients to the pharmacist or pharmacy;

2.1.11 Dispensing any legend drugs either for personal use or for use by another person without a valid order from a prescriber. Valid prescription means that it is not only written correctly, but is for a medical use (i.e. prescriptions written "as directed" are prohibited);

2.1.12 Unauthorized substitution;

2.1.13 Dispensing medications which are not approved for marketing by the Food and Drug Administration nor approved for marketing by State law;

2.1.14 Continuous failure to correct violations of Statutes and Regulations noted in Board of Pharmacy communication;

2.1.15 Knowingly allowing persons who are not registered pharmacists to dispense medication without proper supervision;

2.1.16 Knowingly committing a fraudulent act. This would include destroying or altering any records such as prescriptions, profiles, third party vouchers and receipts;

2.1.17 Knowingly misbranding a drug by using a brand name when a generic is dispensed;

2.1.18 Practicing under the influence of drugs or alcohol;

2.1.19 The placement of an advertisement which the pharmacist knows to be false or misleading;

2.1.20 Knowingly breaching confidentiality of the patient/pharmacist relationship by supplying information to unauthorized persons;

2.1.21 Engaging in activities that would discredit the profession of pharmacy;

2.1.22 Attempting to circumvent the patient counseling requirements or discouraging the patients from receiving patient counseling concerning their prescription drug orders; and

2.1.23 Using facsimile equipment to circumvent documentation, authenticity, verification, or other standards of pharmacy or drug diversion. ~~(Effective 2/29/96)~~

2.2 Pharmacists may, in good faith and upon reasonable belief, withhold suspected forged prescriptions for release to law enforcement. When, in the judgment of the pharmacist, it is not prudent or possible

to retain a suspected forged prescription, the pharmacist may exercise the option of making and retaining a copy of the prescription for release to law enforcement. Reporting the incident to law enforcement supports the personal responsibility of the dispensing pharmacist to be constantly vigilant against forged or altered prescriptions.

4 DE Reg. 163 (7/1/00)

***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 Board of Pharmacy is available at: <http://regulations.delaware.gov/AdminCode/title24/2500%20Board%20of%20Pharmacy.shtml#TopOfPage>**

DIVISION OF PROFESSIONAL REGULATION

3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals

Statutory Authority: 24 Delaware Code, Section 3006(a)(1) (24 **Del.C.** §3006(a)(1))
24 DE Admin. Code 3000

PUBLIC NOTICE

The Delaware Board of Mental Health and Chemical Dependency Professionals, in accordance with 29 **Del.C.** Chapter 101 and 24 **Del.C.** §3006(a)(1), proposes amendments to its Regulations 5.0 and 6.0. By these amendments, the Board establishes the regulations governing the licensure of Marriage and Family Therapists and Associate Marriage and Family Therapists. Minor grammatical, typographic, or stylistic changes are also included.

A public hearing is scheduled for Wednesday, June 27, 2007 at 12:00 noon in the second floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Board care of Timothy E. Oswell at the above address. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Timothy E. Oswell at the above address or by calling (302) 744-4530.

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

3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals

1.0 ~~Meetings and Elections of Officers~~

~~1.1 Meetings—Regular meetings of the Board shall be held on a monthly basis as needed, at least in June and December, at a time and place designated by the Board. The office of President must rotate among the professions regulated and the public members.~~

~~1.2 Election of Officers—The Board shall elect officers annually at the regular December meeting.~~

10 DE Reg. 872 (11/01/06)

2.0 ~~Licensure~~ License for Professional Counselors of Mental Health (LPCMH)

2.1 Licensure by Certification Requirements

2.1.1 Certification - An applicant for licensure by certification shall be certified by the National Board for Certified Counselors, Inc. (NBCC) as a National Certified Counselor (NCC), by the Academy of Clinical Mental Health Counselors (ACMHC) as a Certified Clinical Mental Health Counselor (CCMHC), or by a certifying organization acceptable to the Board. This certification shall be verified by the "NBCC Certification Form," the "ACMHC Certification Form" or the "Certifying Organization Certification Form," submitted directly to the Board by the certifying organization.

2.1.1.1 Certifying organizations acceptable to the Board shall include NBCC, ACMHC, and other certifying organizations that meet all of the following criteria:

2.1.1.1.1 The organization shall be a national professional mental health organization recognized as setting national standards of clinical competency.

2.1.1.1.2 The organization shall require the applicant to take a

standardized examination designed to test his/her understanding of the principles involved in the mental health specialty for which he/she is being certified. Certification shall be based upon the applicant's attaining the minimum passing score set by the organization.

2.1.1.1.3 The organization shall prescribe a code of ethics substantially equivalent to that of the NBCC.

2.1.1.1.4 The organization shall require the minimum of a master's degree in a counseling or behavioral science field.

2.1.1.2 Individuals licensed prior to the effective date of this Rule ~~may~~ must maintain certification or membership in the certifying organization, acceptable to the board at the time of their initial licensure in order to qualify for renewal of their license notwithstanding that such certifying organization is no longer deemed acceptable to the board.

(Break in Continuity of Sections)

2.5 Ethics - The Board hereby adopts the current version of National Board for Certified Counselors Code of Ethics ("Code"). The practice of all persons licensed as an LPCMH or LAMCH shall conform to the principles of the Code. Violation of the Code shall constitute grounds for discipline.

4 DE Reg. 970 (12/01/00)

5 DE Reg. 2109 (05/01/02)

10 DE Reg. 872 (11/01/06)

3.0 Licensure of Associate Counselors of Mental Health (LACMH)

3.1 Written Plan - The applicant shall submit a written plan for supervised professional experience, on the "Written Plan for Professional Counseling Experience and Supervision" form, supplied by the Board, and signed by the approved professional supervisor.

4 DE Reg. 970 (12/01/00)

10 DE Reg. 872 (11/01/06)

4.0 Licensure of Chemical Dependency Professionals (LCDP)

5.0 ~~Licensure of~~ License for Marriage and Family Therapists (LMFT)

5.1 Licensure by Examination Requirements

5.1.1 LAMFT Required - Successful LMFT applicants must hold an active License for Associate Marriage and Family Therapists (LAMFT).

Limited Exception - Individuals who have completed the experience requirements of regulation 5.1.2 and hold an acceptable degree under regulation 6.2, may apply for an LMFT without first obtaining an LAMFT. LMFT applicants under this exception must submit documentation of their experience pursuant to the requirements of regulation 5.1.2 and their educational background pursuant to regulation 6.2. If the submitted documentation is acceptable to the Board, the applicant will receive permission to take the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) exam. If approved to take the exam, an applicant under this exception will receive an LMFT once the Board receives proof that the applicant has passed the exam. A score of 70% or greater is required to pass the exam.

5.1.2 Experience - Applicants must provide documentation of completion of 3,200 hours of marriage and family therapy services, as defined in 24 Del.C. §3051(d), over a period of no less than two (2) but no more than four (4) consecutive years.

5.1.2.1 Of the required 3,200 hours total experience, 1,600 hours must have been completed under the supervision of an individual who meets the requirements of regulation 6.3.1. The 1,600 hours of supervised experience must be fulfilled as follows:

5.1.2.1.1 500 hours of couple and family therapy.

5.1.2.1.2 500 hours of individual therapy.

5.1.2.1.3 500 hours of couple and family or individual therapy or some combination of the two, and

5.1.2.1.4 100 hours of face-to-face clinical supervision with the applicant's supervisor.

5.1.2.2 Hours completed under the supervision of an individual who does not meet the requirements of 6.3.1 will not count toward fulfillment of the required 1,600 hours of supervised experience but may count toward fulfillment of the 1,600 hours of experience not required to be supervised.

5.2 Licensure by Reciprocity Requirements

5.2.1 Licensure Status - Verification of an applicant's possession of a current MFT license in good standing from another state, the District of Columbia, or U.S. territory must be submitted directly to the Board by that state, the District of Columbia, or U.S. territory.

5.2.2 Prior Licensing Jurisdictions - The applicant must submit a notarized statement listing all licensing jurisdictions in which he previously practiced and a signed "Release of Information" granting the Board permission to contact those jurisdictions for verification of disciplinary history and current status.

5.2.3 Substantial Similarity of Licensing Standards - Applicants must submit the statute, rules, and regulations governing MFT licensure for the state in which they are currently licensed and through which they are seeking reciprocity. The burden of proof is on the applicant to demonstrate that the licensing standards of that state are substantially similar to Delaware's standards. The Board will make a determination of substantial similarity based on the information presented.

5.2.4 No Substantial Similarity of Licensing Standards - Applicants from states whose licensing standards are not substantially similar to Delaware's standards may receive reciprocal licensure if they have held their license in good standing for at least five (5) years and have passed the AMFTRB exam.

5.3 Renewal of Licensure

5.3.1 Renewal Date - LMFT licensees must renew their license biennially on or before September 30th of even-numbered years. License renewal may be accomplished online at the Division of Professional Regulation's website. Alternatively, licensees may submit paper renewal documents. Requests for paper renewal forms must be directed to the Division of Professional Regulation.

5.3.2 Continuing Education (CE) Requirements

5.3.2.1 Purpose - The CE requirement is intended to maintain licensees' professional competence in the practice of MFT.

5.3.2.2 Licensees must complete at least 40 acceptable CE hours during the previous licensure period in order to renew their license. CE requirements for initial licensure periods of less than two (2) years shall be prorated.

5.3.2.3 Acceptable CE includes:

5.3.2.3.1 CE courses approved by a national mental health or substance abuse treatment organization or their local affiliates, such as the American Association for Marriage and Family Therapy (AAMFT), the International Family Therapy Association (IFTA), the National Board for Certified Counselors, Inc. (NBCC), Academy of Clinical Mental Health Counselors (ACMHC), or the American Psychological Association (APA) are acceptable, regardless of course content, and do not need to be approved by the Board.

5.3.2.3.2 Any course that would achieve the purpose of the CE requirement, explained in regulation 5.3.2.1 above, is acceptable and does not require Board review and approval. Courses that do not clearly achieve the purpose of CE require Board approval. Licensees should request Board approval in advance of attendance. Requests for approval may be submitted afterward, but there is no guarantee of approval. These hours must be documented by a course agenda, syllabus, or other brief documentation that would allow the Board to assess the appropriateness of the course content. Only licensees may request course approvals. Sponsoring organizations may not request course approvals.

5.3.2.3.3 Teaching academic or CE courses, presentation of original papers, or the writing of a peer-reviewed article may account for up to 20 CE hours. An official transcript, agenda, or syllabus must be provided to document course hours and content. A copy of the published paper presented must be provided to document hours and content. Only the hours worked in preparation and delivery of the items contained in 5.3.2.3.2 will be counted.

5.3.2.3.4 CE obtained through independent or home study, including online CE, may only account for a maximum of 50% of the CE requirement.

5.3.3 Hardship - The Board shall have the authority to make exceptions to the CE requirements, in its discretion, upon a showing of good cause. "Good Cause" may include, but is not limited to: disability, illness, military service, extended absence from the jurisdiction, or exceptional family responsibilities. Requests for hardship consideration must be submitted to the Board in writing prior to the end of the licensing period, along with payment of the appropriate renewal fee. A license shall be renewed upon approval of the hardship extension by the

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Board, but the license shall be subject to revocation if the licensee does not comply with the terms of the hardship exception established by the Board.

5.3.4 Verification - Verification of CE hours shall be by attestation. Attestation shall be completed electronically if the renewal is accomplished online. Alternatively, the attestation of completion may be submitted by paper renewal documents. Requests for paper renewal forms must be directed to the Division of Professional Regulation.

5.3.5 Post-Renewal Audit - The Board will conduct random audits of renewal applications to ensure the veracity of attestations and compliance with the CE requirements. Licensees selected for the random audit shall submit CE course attendance verification in the form of a certificate signed by the course presenter or by a designated official of the sponsoring organization. Licensees shall retain their CE course attendance documentation for each licensure period. Licensees shall retain their CE course attendance documentation for at least one (1) year after renewal.

5.4 Inactive Status - Licensees may be placed in inactive status upon written request to the Board.

5.5 Return to Active Status - Return to active status from inactive status shall be granted upon fulfillment of the following requirements:

5.5.1 Written Request - Written request to the Board to be returned to active status.

5.5.2 Continuing Education - Completion of 40 hours of acceptable continuing education, obtained within the two (2) year period prior to the request for return to active status.

5.5.3 Fee - Payment of the fee for licensure renewal. No late fee shall be assessed for return to active status.

5.6 Ethics - The Board hereby adopts the current version of the American Association for Marriage and Family Therapy (AAMFT) Code of Ethics ("Code"). The practice of all persons possessing an LMFT or LAMFT shall conform to the principles of the Code. Violation of the Code shall constitute grounds for discipline.

6.0 Licensure of License for Associate Marriage and Family Therapists (LAMFT)

6.1 Examination - Successful LAMFT applicants must pass the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) exam. No LAMFT applicant may take the exam without prior approval of the Board. Board approval is based on fulfillment of the requirements in regulation 6.2 (proof of acceptable education) and regulation 6.3 (submission of a plan to acquire the requisite experience). LAMFT applicants must fulfill those requirements to receive permission to take the exam. If approved to take the exam, an applicant will receive an LAMFT once the Board receives proof that the applicant has passed the exam. A score of 70% or greater is required to pass the exam.

6.2 Education - An applicant's education must be documented by an official transcript submitted directly to the Board by the degree-granting institution.

6.2.1 All successful applicants must possess either:

6.2.1.1 A graduate degree in marriage and family therapy (MFT) from a graduate program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE).

6.2.1.2 A graduate degree in MFT from a non-COAMFTE accredited graduate program acceptable to the Board, or

6.2.1.3 A graduate degree from a nationally accredited college or university in an allied field which is acceptable to the Board. Acceptable allied fields are limited to: counseling, social work, psychology, and psychiatry.

6.2.2 To be acceptable to the Board, a graduate degree under regulations 6.2.1.2 or 6.2.1.3 above must be based on at least 45 credit hours which must include the following:

6.2.2.1 Three (3) credit hours in each of the 10 core content areas for a total of 30 credit hours. The 10 core content areas are:

- | | |
|------------------|---|
| <u>6.2.2.1.1</u> | <u>Marriage and Family Therapy Models and Theories</u> |
| <u>6.2.2.1.2</u> | <u>Diagnosis and Treatment of Mental and Emotional Disorder</u> |
| <u>6.2.2.1.3</u> | <u>Psychopathology</u> |
| <u>6.2.2.1.4</u> | <u>Gender, Culture, and Ethnic Diversity in MFT</u> |
| <u>6.2.2.1.5</u> | <u>Sexual Issues In Marriage and Family Therapy</u> |
| <u>6.2.2.1.6</u> | <u>Family Therapy Theory & Techniques</u> |
| <u>6.2.2.1.7</u> | <u>Couple Therapy Theory and Techniques</u> |
| <u>6.2.2.1.8</u> | <u>Ethical, Legal and Professional Issues in MFT</u> |

6.2.2.1.9 Research Methods and Evaluation

6.2.2.1.10 Clinical Supervised Experience in MFT

6.2.2.2 Nine (9) credit hours earned by serving an internship. The internship must have included at least 300 hours of direct client counseling, 150 hours of which must have been spent on couples and family therapy.

6.2.2.3 Six (6) credit hours in electives.

6.3 Experience - LAMFT applicants must provide a written plan for acquiring the LMFT experience requirements contained in regulation 5.1.2 above. The plan must be signed by the applicant's proposed supervisor. Supervisors must be acceptable to the Board.

6.3.1 To be acceptable to the Board, a supervisor must be either:

6.3.1.1 a Delaware-licensed marriage and family therapist,

6.3.1.2 an individual holding the "approved supervisor" designation from the American Association for Marriage and Family Therapy (AAMFT),

6.3.1.3 a candidate for the AAMFT "approved supervisor" designation who is acceptable to the Board,

6.3.1.4 a licensed marriage and family therapist from another state who has held a license in good standing for a minimum of five (5) years in that state and has passed the AMFTRB exam, or

6.3.1.5 only if one of the above is not available, an individual with the following license from any state: clinical social worker, psychologist, professional counselor of mental health, or physician specializing in psychiatry with training in MFT supervision.

6.3.2 Licensees must notify the Board in writing, on the Board-approved form, within 30 days if their supervisor changes. Any supervisor must meet the requirements in 6.3.1. All changes are subject to Board approval. Contact the Board office or website for the proper form.

7.0 Application and Fee, Affidavit and Time Limit

7.1 Application and Fee - The applicant shall submit a completed "Application for Licensure," accompanied by a non-refundable application fee.

7.2 Affidavit - The applicant shall submit a signed, notarized "Affidavit," affirming that the applicant:

7.2.1 has not violated any rule or regulation set forth by the Delaware Board of Mental Health and Chemical Dependency Professionals;

7.2.2 has not been the recipient of any administrative penalties from any jurisdiction in connection with licensure, registration or certification as a mental health provider;

7.2.3 does not have any impairment related to drugs, alcohol, or a finding of mental incompetence by a physician that would limit the applicant's ability to safely act as an LPCMH, LACMH, LCDP, LMFT, or LAMFT, respectively;

7.2.4 that he/she has not been convicted of and has no pending criminal charge or charge(s) relating to any crime that is substantially related to the provision of mental health counseling, or chemical dependency counseling or marriage and family therapy; and

7.2.5 has not been penalized for any willful violation of any code of ethics or professional mental health counseling standard.

7.3 Time Limit for Completion of Application - Any application not completed within one (1) year shall be considered null and void.

4 DE Reg. 970 (12/01/00)

9 DE Reg. 1106 (01/01/06)

10 DE Reg. 872 (11/01/06)

8.0 Ethics Reserved

~~8.1 The Board hereby adopts the current version of National Board for Certified Counselors Code of Ethics ("Code").~~

~~8.2 The practice of all persons licensed as an LPCMH or LAMCH shall conform to the principles of the Code. Violation of the Code shall constitute grounds for discipline.~~

4 DE Reg. 970 (12/01/00)

10 DE Reg. 872 (11/01/06)

***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 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals is available at: <http://regulations.delaware.gov/AdminCode/title24/3000%20Board%20of%20Professional%20Counselors%20of%20Mental%20Health.shtml#TopOfPage>**

OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Section 121(b) (5 **Del.C.** §121(b))
5 **DE Admin. Code** 2106/2208

Notice of Proposed Adoption of a Regulation of the State Bank Commissioner**Summary**

The State Bank Commissioner proposes to adopt new Regulation 2106/2208 (“Guidance on Nontraditional Mortgage Product Risks”). This proposed regulation parallels a Guidance jointly issued by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision and the National Credit Union Administration, and is being adopted to provide regulatory consistency between mortgage brokers and mortgage lenders regulated under Chapters 21 and 22 respectively of Title 5 of the **Delaware Code** that are not affiliated with a bank holding company or an insured financial institution, and the financial institutions that are subject to that federal Guidance. The State Bank Commissioner would adopt the proposed new Regulation 2106/2208 on or after June 6, 2007. Other regulations issued by the State Bank Commissioner are not affected by this proposal. The State Bank Commissioner is issuing this regulation in accordance with Title 5 of the **Delaware Code**.

Comments

A copy of the proposed new regulation is published in the *Delaware Register of Regulations*. A copy is also on file in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE 19901 and is available for inspection during regular office hours. Copies are available upon request.

Interested parties are invited to comment or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner as to whether this proposed new regulation should be adopted, rejected or modified. Written materials submitted will be available for inspection at the above address. Comments must be received at or before the public hearing scheduled for 10:00 a.m. June 6, 2007.

Public Hearing

A public hearing on the proposed regulation will be held in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE 19901 on Wednesday June 6, 2007, commencing at 10:00 a.m. This notice is issued pursuant to the requirements of Subchapter III of Chapter 11 and Chapter 101 of Title 29 of the **Delaware Code**.

Regulation 2106/2208 Guidance On Nontraditional Mortgage Product Risks
5 Del.C. §2110(a), §2210(a)

Effective Date: [proposed]

1.0 Introduction and Background

1.1 On October 4, 2006, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA) (collectively, the Agencies) published final guidance in the Federal Register (Volume 71, Number 192, Page 58609-58618) on nontraditional mortgage

product risks (“interagency guidance”). The interagency guidance applies to all banks and their subsidiaries, bank holding companies and their nonbank subsidiaries, savings associations and their subsidiaries, savings and loan holding companies and their subsidiaries, and credit unions.

1.1.1 The Delaware State Bank Commissioner (the “Commissioner”) strongly supports the purpose of the guidance adopted by the Agencies and is committed to promote uniform application of its consumer protections for all borrowers.

1.1.2 The following guidance will promote consistent regulation in the mortgage market and clarify how mortgage brokers and mortgage companies (referred to as “providers”) not affiliated with a bank holding company or an insured financial institution can offer nontraditional mortgage products in a way that clearly discloses the risks that borrowers may assume:-

1.1.3 In order to maintain regulatory consistency, this guidance substantially mirrors the interagency guidance, except for the deletion of sections not applicable to non-depository institutions.

1.2 The Agencies developed their guidance to address risks associated with the growing use of mortgage products that allow borrowers to defer payment of principal and, sometimes, interest. These products, referred to variously as “nontraditional,” “alternative,” or “exotic” mortgage loans (hereinafter referred to as nontraditional mortgage loans), include “interest-only” mortgages and “payment option” adjustable-rate mortgages. These products allow borrowers to exchange lower payments during an initial period for higher payments during a later amortization period.

1.3 While similar products have been available for many years, the number of institutions and providers offering them has expanded rapidly. At the same time, these products are offered to a wider spectrum of borrowers who may not otherwise qualify for more traditional mortgages. The Commissioner is concerned that some borrowers may not fully understand the risks of these products. While many of these risks exist in other adjustable-rate mortgage products, the concern of the Commissioner is elevated with nontraditional products because of the lack of principal amortization and potential for negative amortization. In addition, providers are increasingly combining these loans with other features that may compound risk. These features include simultaneous second-lien mortgages and the use of reduced documentation in evaluating an applicant’s creditworthiness.

1.4 Residential mortgage lending has traditionally been a conservatively managed business with low delinquencies and losses and reasonably stable underwriting standards. In the past few years consumer demand has been growing, particularly in high priced real estate markets, for closed-end residential mortgage loan products that allow borrowers to defer repayment of principal and, sometimes, interest. These mortgage products, herein referred to as nontraditional mortgage loans, include such products as “interest-only” mortgages where a borrower pays no loan principal for the first few years of the loan and “payment option” adjustable-rate mortgages (ARMs) where a borrower has flexible payment options with the potential for negative amortization.¹

1.5 While some providers have offered nontraditional mortgages for many years with appropriate risk management, the market for these products and the number of providers offering them has expanded rapidly. Nontraditional mortgage loan products are now offered by more lenders to a wider spectrum of borrowers who may not otherwise qualify for more traditional mortgage loans and may not fully understand the associated risks.

1.6 Many of these nontraditional mortgage loans are underwritten with less stringent income and asset verification requirements (“reduced documentation”) and are increasingly combined with simultaneous second-lien loans.² Such risk layering, combined with the broader marketing of nontraditional mortgage loans, exposes providers to increased risk relative to traditional mortgage loans.

1.7 Given the potential for heightened risk levels, management should carefully consider and appropriately mitigate exposures created by these loans. To manage the risks associated with nontraditional mortgage loans, management should:

1. Interest-only and payment option ARMs are variations of conventional ARMs, hybrid ARMs, and fixed rate products. Refer to the Appendix for additional information on interest-only and payment option ARM loans. This guidance does not apply to reverse mortgages; home equity lines of credit (“HELOCs”), other than as discussed in the Simultaneous Second-Lien Loans section; or fully amortizing residential mortgage loan products.

2. Refer to the Appendix for additional information on reduced documentation and simultaneous second-lien loans.

1.7.1 Ensure that loan terms and underwriting standards are consistent with prudent lending practices, including consideration of a borrower's repayment capacity; and

1.7.2 Ensure that consumers have sufficient information to clearly understand loan terms and associated risks prior to making a product choice.

1.8 The Commissioner expects providers to effectively assess and manage the risks associated with nontraditional mortgage loan products.

1.9 Providers should use this guidance to ensure that risk management practices adequately address these risks. The Commissioner will carefully scrutinize risk management processes, policies, and procedures in this area. Providers that do not adequately manage these risks will be asked to take remedial action.

1.10 The focus of this guidance is on the higher risk elements of certain nontraditional mortgage products, not the product type itself. Providers with sound underwriting, and adequate risk management will not be subject to criticism merely for offering such products.

2.0 Loan Terms and Underwriting Standards

2.1 When a provider offers nontraditional mortgage loan products, underwriting standards should address the effect of a substantial payment increase on the borrower's capacity to repay when loan amortization begins.

2.2 Central to prudent lending is the internal discipline to maintain sound loan terms and underwriting standards despite competitive pressures. Providers are strongly cautioned against ceding underwriting standards to third parties that have different business objectives, risk tolerances, and core competencies. Loan terms should be based on a disciplined analysis of potential exposures and compensating factors to ensure risk levels remain manageable.

2.3 Qualifying Borrowers -- Payments on nontraditional loans can increase significantly when the loans begin to amortize. Commonly referred to as payment shock, this increase is of particular concern for payment option ARMs where the borrower makes minimum payments that may result in negative amortization. Some providers manage the potential for excessive negative amortization and payment shock by structuring the initial terms to limit the spread between the introductory interest rate and the fully indexed rate. Nevertheless, a provider's qualifying standards should recognize the potential impact of payment shock, especially for borrowers with high loan-to-value (LTV) ratios, high debt-to-income (DTI) ratios, and low credit scores. Recognizing that a provider's underwriting criteria are based on multiple factors, a provider should consider these factors jointly in the qualification process and may develop a range of reasonable tolerances for each factor. However, the criteria should be based upon prudent and appropriate underwriting standards, considering both the borrower's characteristics and the product's attributes.

2.3.1 For all nontraditional mortgage loan products, a provider's analysis of a borrower's repayment capacity should include an evaluation of their ability to repay the debt by final maturity at the fully indexed rate,³ assuming a fully amortizing repayment schedule.⁴ In addition, for products that permit negative

3. The fully indexed rate equals the index rate prevailing at origination plus the margin that will apply after the expiration of an introductory interest rate. The index rate is a published interest rate to which the interest rate on an ARM is tied. Some commonly used indices include the 1-Year Constant Maturity Treasury Rate (CMT), the 6-Month London Interbank Offered Rate (LIBOR), the 11th District Cost of Funds (COFI), and the Moving Treasury Average (MTA), a 12-month moving average of the monthly average yields of U.S. Treasury securities adjusted to a constant maturity of one year. The margin is the number of percentage points a lender adds to the index value to calculate the ARM interest rate at each adjustment period. In different interest rate scenarios, the fully indexed rate for an ARM loan based on a lagging index (e.g., MTA rate) may be significantly different from the rate on a comparable 30-year fixed-rate product. In these cases, a credible market rate should be used to qualify the borrower and determine repayment capacity.

4. The fully amortizing payment schedule should be based on the term of the loan. For example, the amortizing payment for a loan with a 5-year interest only period and a 30-year term would be calculated based on a 30-year amortization schedule. For balloon mortgages that contain a borrower option for an extended amortization period, the fully amortizing payment schedule can be based on the full term the borrower may choose.

amortization, the repayment analysis should be based upon the initial loan amount plus any balance increase that may accrue from the negative amortization provision.⁵

2.3.2 Furthermore, the analysis of repayment capacity should avoid over-reliance on credit scores as a substitute for income verification in the underwriting process. The higher a loan's credit risk, either from loan features or borrower characteristics, the more important it is to verify the borrower's income, assets, and outstanding liabilities.

2.4 Collateral-Dependent Loans -- Providers should avoid the use of loan terms and underwriting practices that may heighten the need for a borrower to rely on the sale or refinancing of the property once amortization begins. Loans to individuals who do not demonstrate the capacity to repay, as structured, from sources other than the collateral pledged may be unfair and abusive.⁶ Providers that originate collateral-dependent mortgage loans may be subject to criticism and corrective action.

2.5 Risk Layering -- Providers that originate or purchase mortgage loans that combine nontraditional features, such as interest only loans with reduced documentation or a simultaneous second-lien loan, face increased risk. When features are layered, a provider should demonstrate that mitigating factors support the underwriting decision and the borrower's repayment capacity. Mitigating factors could include higher credit scores, lower LTV and DTI ratios, significant liquid assets, mortgage insurance or other credit enhancements. While higher pricing is often used to address elevated risk levels, it does not replace the need for sound underwriting.

2.6 Reduced Documentation -- Providers increasingly rely on reduced documentation, particularly unverified income, to qualify borrowers for nontraditional mortgage loans. Because these practices essentially substitute assumptions and unverified information for analysis of a borrower's repayment capacity and general creditworthiness, they should be used with caution. As the level of credit risk increases, it is expected that a provider will more diligently verify and document a borrower's income and debt reduction capacity. Clear policies should govern the use of reduced documentation. For example, stated income should be accepted only if there are mitigating factors that clearly minimize the need for direct verification of repayment capacity. For many borrowers, providers generally should be able to readily document income using recent W-2 statements, pay stubs, or tax returns.

2.7 Simultaneous Second-Lien Loans -- Simultaneous second-lien loans reduce owner equity and increase credit risk. Historically, as combined loan-to-value ratios rise, so do defaults. A delinquent borrower with minimal or no equity in a property may have little incentive to work with a lender to bring the loan current and avoid foreclosure. In addition, second-lien home equity lines of credit (HELOCs) typically increase borrower exposure to increasing interest rates and monthly payment burdens. Loans with minimal or no owner equity generally should not have a payment structure that allows for delayed or negative amortization without other significant risk mitigating factors.

2.8 Introductory Interest Rates -- Many providers offer introductory interest rates set well below the fully indexed rate as a marketing tool for payment option ARM products. When developing nontraditional mortgage product terms, a provider should consider the spread between the introductory rate and the fully indexed rate. Since initial and subsequent monthly payments are based on these low introductory rates, a wide initial spread means that borrowers are more likely to experience negative amortization, severe payment shock, and an earlier-than-scheduled recasting of monthly payments. Providers should minimize the likelihood of disruptive early recastings and extraordinary payment shock when setting introductory rates.

2.9 Lending to Subprime Borrowers -- Providers of mortgage programs that target subprime borrowers through tailored marketing, underwriting standards, and risk selection should ensure that such programs do not

5. The balance that may accrue from the negative amortization provision does not necessarily equate to the full negative amortization cap for a particular loan. The spread between the introductory or "teaser" rate and the accrual rate will determine whether or not a loan balance has the potential to reach the negative amortization cap before the end of the initial payment option period (usually five years). For example, a loan with a 115 percent negative amortization cap but a small spread between the introductory rate and the accrual rate may only reach a 109 percent maximum loan balance before the end of the initial payment option period, even if only minimum payments are made. The borrower could be qualified based on this lower maximum loan balance.

6. A loan will not be determined to be "collateral-dependent" solely through the use of reduced documentation.

feature terms that could become predatory or abusive. They should also recognize that risk-layering features in loans to subprime borrowers may significantly increase risks for both the provider and the borrower.

2.10 Non-Owner-Occupied Investor Loans -- Borrowers financing non-owner-occupied investment properties should qualify for loans based on their ability to service the debt over the life of the loan. Loan terms should reflect an appropriate combined LTV ratio that considers the potential for negative amortization and maintains sufficient borrower equity over the life of the loan. Further, underwriting standards should require evidence that the borrower has sufficient cash reserves to service the loan, considering the possibility of extended periods of property vacancy and the variability of debt service requirements associated with nontraditional mortgage loan products.

3.0 Risk Management Practices

3.1 Providers should ensure that risk management practices keep pace with the growth of nontraditional mortgage products and changes in the market. Providers that originate or invest in nontraditional mortgage loans should adopt more robust risk management practices and manage these exposures in a thoughtful, systematic manner. To meet these expectations, providers should:

3.1.1 Develop written policies that specify acceptable product attributes, production, sales and securitization practices, and risk management expectations; and

3.1.2 Design enhanced performance measures and management reporting that provide early warning for increasing risk.

3.2 Policies -- A provider's policies for nontraditional mortgage lending activity should set acceptable levels of risk through its operating practices and policy exception tolerances. Policies should reflect appropriate limits on risk layering and should include risk management tools for risk mitigation purposes. Further, a provider should set growth and volume limits by loan type, with special attention for products and product combinations in need of heightened attention due to easing terms or rapid growth.

3.3 Concentrations -- Providers with concentrations in nontraditional mortgage products should have well-developed monitoring systems and risk management practices. Further, providers should consider the effect of employee and third party incentive programs that could produce higher concentrations of nontraditional mortgage loans. Concentrations that are not effectively managed will be subject to elevated supervisory attention and potential examiner criticism to ensure timely remedial action.

3.4 Controls -- A provider's quality control, compliance, and audit procedures should focus on mortgage lending activities posing high risk. Controls to monitor compliance with underwriting standards and exceptions to those standards are especially important for nontraditional loan products. The quality control function should regularly review a sample of nontraditional mortgage loans from all origination channels and a representative sample of underwriters to confirm that policies are being followed. When control systems or operating practices are found deficient, business-line managers should be held accountable for correcting deficiencies in a timely manner.

3.5 Third-Party Originations -- Providers often use third parties, such as mortgage brokers or correspondents, to originate nontraditional mortgage loans. Providers should have strong systems and controls in place for establishing and maintaining relationships with third parties, including procedures for performing due diligence. Oversight of third parties should involve monitoring the quality of originations so that they reflect the provider's lending standards and compliance with applicable laws and regulations.

3.5.1 Monitoring procedures should track the quality of loans by both origination source and key borrower characteristics. This will help providers identify problems such as early payment defaults, incomplete documentation, and fraud. If appraisal, loan documentation, credit problems or consumer complaints are discovered, the provider should take immediate action. Remedial action could include more thorough application reviews, more frequent re-underwriting, or even termination of the third-party relationship.

3.6 Secondary Market Activity -- The sophistication of a provider's secondary market risk management practices should be commensurate with the nature and volume of activity. Providers with significant secondary market activities should have comprehensive, formal strategies for managing risks. Contingency planning should include how the provider will respond to reduced demand in the secondary market.

3.6.1 While third-party loan sales can transfer a portion of the credit risk, a provider remains exposed to reputation risk when credit losses on sold mortgage loans or securitization transactions exceed expectations. As a result, a provider may determine that it is necessary to repurchase defaulted mortgages to protect its reputation and maintain access to the markets.

4.0 Consumer Protection Issues

4.1 While nontraditional mortgage loans provide flexibility for consumers, the Commissioner is concerned that consumers may enter into these transactions without fully understanding the product terms. Nontraditional mortgage products have been advertised and promoted based on their affordability in the near term; that is, their lower initial monthly payments compared with traditional types of mortgages. In addition to apprising consumers of the benefits of nontraditional mortgage products, providers should take appropriate steps to alert consumers to the risks of these products, including the likelihood of increased future payment obligations. This information should be provided in a timely manner—before disclosures may be required under the Truth in Lending Act or other laws—to assist the consumer in the product selection process.

4.2 Concerns and Objectives -- More than traditional ARMs, mortgage products such as payment option ARMs and interest-only mortgages can carry a significant risk of payment shock and negative amortization that may not be fully understood by consumers. For example, consumer payment obligations may increase substantially at the end of an interest-only period or upon the “recast” of a payment option ARM. The magnitude of these payment increases may be affected by factors such as the expiration of promotional interest rates, increases in the interest rate index, and negative amortization. Negative amortization also results in lower levels of home equity as compared to a traditional amortizing mortgage product. When borrowers go to sell or refinance the property, they may find that negative amortization has substantially reduced or eliminated their equity in it even when the property has appreciated. The concern that consumers may not fully understand these products would be exacerbated by marketing and promotional practices that emphasize potential benefits without also providing clear and balanced information about material risks.

4.2.1 In light of these considerations, communications with consumers, including advertisements, oral statements, promotional materials, and monthly statements should provide clear and balanced information about the relative benefits and risks of these products, including the risk of payment shock and the risk of negative amortization. Clear, balanced, and timely communication to consumers of the risks of these products will provide consumers with useful information at crucial decision-making points, such as when they are shopping for loans or deciding which monthly payment amount to make. Such communication should help minimize potential consumer confusion and complaints, foster good customer relations, and reduce legal and other risks to the provider.

4.3 Legal Risks -- Providers that offer nontraditional mortgage products must ensure that they do so in a manner that complies with all applicable laws and regulations. With respect to the disclosures and other information provided to consumers, applicable laws and regulations include the following:

4.3.1 Truth in Lending Act (TILA) and its implementing regulation, Regulation Z.

4.3.2 Section 5 of the Federal Trade Commission Act (FTC Act).

4.4 TILA and Regulation Z contain rules governing disclosures that providers must provide for closed-end mortgages in advertisements, with an application,⁷ before loan consummation, and when interest rates change. Section 5 of the FTC Act prohibits unfair or deceptive acts or practices.

4.5 Other federal laws, including the fair lending laws and the Real Estate Settlement Procedures Act (RESPA), also apply to these transactions. Moreover, the sale or securitization of a loan may not affect a provider's potential liability for violations of TILA, RESPA, the FTC Act, or other laws in connection with its origination of the loan. State laws, including laws regarding unfair or deceptive acts or practices, may apply.

5.0 Recommended Practices

Recommended practices for addressing the risks raised by nontraditional mortgage products include the following:⁸

5.1 Communications with Consumers -- When promoting or describing nontraditional mortgage

7. These program disclosures apply to ARM products and must be provided at the time an application is provided or before the consumer pays a nonrefundable fee, whichever is earlier.

8. Providers also should review the recommendations relating to mortgage lending practices set forth in other supervisory guidance from their respective primary regulators, as applicable, including guidance on abusive lending practices.

products, providers should give consumers information that is designed to help them make informed decisions when selecting and using these products. Meeting this objective requires appropriate attention to the timing, content, and clarity of information presented to consumers. Thus, providers should give consumers information at a time that will help consumers select products and choose among payment options. For example, providers should offer clear and balanced product descriptions when a consumer is shopping for a mortgage—such as when the consumer makes an inquiry to the provider about a mortgage product and receives information about nontraditional products, or when marketing relating to nontraditional mortgage products is given by the provider to the consumer—not just upon the submission of an application or at consummation.⁹ The provision of such information would serve as an important supplement to the disclosures currently required under TILA and Regulation Z or other laws.¹⁰

5.1.1 Promotional Materials and Product Descriptions -- Promotional materials and other product descriptions should provide information about the costs, terms, features, and risks of nontraditional mortgages that can assist consumers in their product selection decisions, including information about the matters discussed below.

5.1.1.1 Payment Shock -- Providers should apprise consumers of potential increases in payment obligations for these products, including circumstances in which interest rates or negative amortization reach a contractual limit. For example, product descriptions could state the maximum monthly payment a consumer would be required to pay under a hypothetical loan example once amortizing payments are required and the interest rate and negative amortization caps have been reached.¹¹ Such information also could describe when structural payment changes will occur (e.g., when introductory rates expire, or when amortizing payments are required), and what the new payment amount would be or how it would be calculated. As applicable, these descriptions could indicate that a higher payment may be required at other points in time due to factors such as negative amortization or increases in the interest rate index.

5.1.1.2 Negative Amortization -- When negative amortization is possible under the terms of a nontraditional mortgage product, consumers should be apprised of the potential for increasing principal balances and decreasing home equity, as well as other potential adverse consequences of negative amortization. For example, product descriptions should disclose the effect of negative amortization on loan balances and home equity, and could describe the potential consequences to the consumer of making minimum payments that cause the loan to negatively amortize. (One possible consequence is that it could be more difficult to refinance the loan or to obtain cash upon a sale of the home.)

5.1.1.3 Prepayment Penalties -- If the provider may impose a penalty in the event that the consumer prepays the mortgage, consumers should be alerted to this fact and to the need to ask the lender about the amount of any such penalty.

5.1.1.4 Cost of Reduced Documentation Loans -- If a provider offers both reduced and full documentation loan programs and there is a pricing premium attached to the reduced documentation program, consumers should be alerted to this fact.

5.1.2 Monthly Statements on Payment Option ARMs -- Monthly statements that are provided to

9. Providers also should strive to: (1) focus on information important to consumer decision making; (2) highlight key information so that it will be noticed; (3) employ a user-friendly and readily navigable format for presenting the information; and (4) use plain language, with concrete and realistic examples. Comparative tables and information describing key features of available loan products, including reduced documentation programs, also may be useful for consumers considering the nontraditional mortgage products and other loan features described in this guidance.

10. Providers may not be able to incorporate all of the practices recommended in this guidance when advertising nontraditional mortgages through certain forms of media, such as radio, television, or billboards. Nevertheless, providers should provide clear and balanced information about the risks of these products in all forms of advertising.

11. Consumers also should be apprised of other material changes in payment obligations, such as balloon payments.

consumers on payment option ARMs should provide information that enables consumers to make informed payment choices, including an explanation of each payment option available and the impact of that choice on loan balances. For example, the monthly payment statement should contain an explanation, as applicable, next to the minimum payment amount that making this payment would result in an increase to the consumer's outstanding loan balance. Payment statements also could provide the consumer's current loan balance, what portion of the consumer's previous payment was allocated to principal and to interest, and, if applicable, the amount by which the principal balance increased. Providers should avoid leading payment option ARM borrowers to select a non-amortizing or negatively-amortizing payment (for example, through the format or content of monthly statements).

5.1.3 Practices to Avoid -- Providers also should avoid practices that obscure significant risks to the consumer. For example, if a provider advertises or promotes a nontraditional mortgage by emphasizing the comparatively lower initial payments permitted for these loans, the provider also should give clear and comparably prominent information alerting the consumer to the risks. Such information should explain, as relevant, that these payment amounts will increase, that a balloon payment may be due, and that the loan balance will not decrease and may even increase due to the deferral of interest and/or principal payments. Similarly, providers should avoid promoting payment patterns that are structurally unlikely to occur.¹² Such practices could raise legal and other risks for providers.

5.1.3.1 Providers also should avoid such practices as: giving consumers unwarranted assurances or predictions about the future direction of interest rates (and, consequently, the borrower's future obligations); making one-sided representations about the cash savings or expanded buying power to be realized from nontraditional mortgage products in comparison with amortizing mortgages; suggesting that initial minimum payments in a payment option ARM will cover accrued interest (or principal and interest) charges; and making misleading claims that interest rates or payment obligations for these products are "fixed."

5.2 Control Systems -- Providers should develop and use strong control systems to monitor whether actual practices are consistent with their policies and procedures relating to nontraditional mortgage products. Providers should design control systems to address compliance and consumer information concerns as well as the risk management considerations discussed in this guidance. Lending personnel should be trained so that they are able to convey information to consumers about the product terms and risks in a timely, accurate, and balanced manner. As products evolve and new products are introduced, lending personnel should receive additional training, as necessary, to continue to be able to convey information to consumers in this manner. Lending personnel should be monitored to determine whether they are following these policies and procedures. Providers should review consumer complaints to identify potential compliance, reputation, and other risks. Attention should be paid to appropriate legal review and to using compensation programs that do not improperly encourage lending personnel to direct consumers to particular products.

5.2.1 With respect to nontraditional mortgage loans that a provider makes, purchases, or services using a third party, such as a mortgage broker, correspondent, or other intermediary, the provider should take appropriate steps to mitigate risks relating to compliance and consumer information concerns discussed in this guidance. These steps would ordinarily include, among other things, (1) conducting due diligence and establishing other criteria for entering into and maintaining relationships with such third parties, (2) establishing criteria for third-party compensation designed to avoid providing incentives for originations inconsistent with this guidance, (3) setting requirements for agreements with such third parties, (4) establishing procedures and systems to monitor compliance with applicable agreements, policies, and laws, and (5) implementing appropriate corrective actions in the event that the third party fails to comply with applicable agreements, policies, or laws.

APPENDIX

Interest-Only Mortgage Loan -- A nontraditional mortgage on which, for a specified number of years (e.g., three or five years), the borrower is required to pay only the interest due on the loan during which time the rate may

12. For example, marketing materials for payment option ARMs may promote low predictable payments until the recast date. Such marketing should be avoided in circumstances in which the minimum payments are so low that negative amortization caps would be reached and higher payment obligations would be triggered before the scheduled recast, even if interest rates remain constant.

fluctuate or may be fixed. After the interest-only period, the rate may be fixed or fluctuate based on the prescribed index and payments include both principal and interest.

Payment Option ARM -- A nontraditional mortgage that allows the borrower to choose from a number of different payment options. For example, each month, the borrower may choose a minimum payment option based on a "start" or introductory interest rate, an interest-only payment option based on the fully indexed interest rate, or a fully amortizing principal and interest payment option based on a 15-year or 30-year loan term, plus any required escrow payments. The minimum payment option can be less than the interest accruing on the loan, resulting in negative amortization. The interest-only option avoids negative amortization but does not provide for principal amortization. After a specified number of years, or if the loan reaches a certain negative amortization cap, the required monthly payment amount is recast to require payments that will fully amortize the outstanding balance over the remaining loan term.

Reduced Documentation -- A loan feature that is commonly referred to as "low doc/no doc," "no income/no asset," "stated income" or "stated assets." For mortgage loans with this feature, a provider sets reduced or minimal documentation standards to substantiate the borrower's income and assets.

Simultaneous Second-Lien Loan -- A lending arrangement where either a closed-end second-lien or a home equity line of credit (HELOC) is originated simultaneously with the first lien mortgage loan, typically in lieu of a higher down payment.

DEPARTMENT OF TRANSPORTATION

DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 17 Delaware Code Sections 134, 141 and 21 Delaware Code Chapter 41
(17 Del.C. §§134,141 and 21 Del.C. Ch. 41)

PUBLIC NOTICE

Revisions to the Delaware Manual on Uniform Traffic Control Devices

Under Title 17 of the **Delaware Code**, Sections 134 and 141, as well as 21 **Delaware Code** Chapter 41, the Delaware Department of Transportation (DelDOT), is seeking to adopt a Delaware version of the Federal Manual on Uniform Traffic Control Devices (MUTCD). Thus far the Department has drafted changes to Parts 2, 3, 4, 5, and 10 of the Federal MUTCD. The remaining portions of the MUTCD (Parts 1, 6, 7, 8, and 9) will be reviewed and revised at a later date.

Public Comment Period

The Department will take written comments on the draft changes to the Delaware MUTCD from May 1, 2006 through May 31, 2006.

Copies of the Draft Delaware MUTCD can be obtained by reviewing or downloading a PDF copy at the following web address: <http://www>.

Questions or comments regarding this document should be directed to:

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Please Note: Due to the size of the proposed regulation, it is not being published here. A PDF version is available at the website listed below:

<http://regulations.delaware.gov/register/may2007/proposed/Introduction.pdf>

(Adobe Reader required)

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 HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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

ORDER

Long Term Care Medicaid

DSSM 20320.7 Substantial Home Equity

Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance initiated proceedings to amend the Title XIX Medicaid State Plan and existing rules in the Division of Social Services Manual (DSSM) to comply with the substantial home equity provisions mandated by the Deficit Reduction Act (DRA) of 2005 (Public Law 109-171). 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 March 2007 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2007 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposed Amendment

Statutory Authority

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

Background

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

Summary of Proposal

The DRA contains a number of provisions necessitating changes to Delaware rules. This regulatory action incorporates the mandatory provisions as it relates to: *Disqualification for Long-Term Care Assistance for Individuals with Substantial Home Equity*.

The provisions of this policy apply to nursing facility and HCBS recipients who are receiving Long-Term Care Medicaid on or after January 1, 2006, as follows:

- Section 6014 of the DRA amends section 1917 of the Social Security Act (the Act) to provide that in determining the eligibility of an individual to receive medical assistance payment for nursing facility services or other long-term care services, States must deny payment if the individual's equity interest in his or her home exceeds \$500,000. States have the option to substitute an amount exceeding \$500,000, but not in excess of \$750,000. These dollar amounts are increased, beginning in 2011, from year based on the Consumer Price Index (CPI) for all consumers, rounded to the nearest \$1,000.
- The limitations on home equity do not apply if the spouse of the individual, the individual's child under 21, or the individual's blind or disabled child is lawfully residing in the home.
- This provision would not prevent an individual from using a reverse mortgage or home equity loan to reduce the individual's total equity interest in the home.
- Applicants and nursing facilities will be notified that the State has a process under which this limitation will be waived in cases of undue hardship.

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

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:

Councils would like to recommend that Delaware follow the lead of New York and Maine in adopting the higher cap of \$750,000. Political compromises on the federal budget are commonplace and it is possible that states adopting a higher cap could have limits "grandfathered". While the \$500,000 cap may appear reasonable to some policymakers today, \$500,000 in home equity (even considering incremental increases based on the CPA) may not amount to much in the future (e.g. 10 years from now). Adopting a higher cap now may protect Delaware's prospective flexibility and discretion.

Agency Response: Long-term care Medicaid is a program for *low-income* individuals. The department does not consider applicants with home equity in excess of \$500,000 as low-income. The intent of this requirement is to ensure that individual's with substantial home equity resources are not able to receive Medicaid payment for long term care services when they have assets of their own to pay for their care. This regulation, as proposed, is consistent with the provisions and intent of the DRA. Also, the DRA already provides States with the flexibility and discretion (e.g. the option under the State plan) to elect a higher amount up to \$750,000, as adjusted by inflation. No change will be made to the regulations as a result of this comment.

Findings of Fact:

The Department finds that the proposed changes as set forth in the March 2007 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Title XIX Medicaid State Plan and the Division of Social Services Manual regarding the substantial home equity provisions mandated by the

Deficit Reduction Act (DRA) of 2005 (Public Law 109-171) is adopted and shall be final effective May 10, 2007.

Vincent P. Meconi, Secretary, DHSS, 4/16/07

* Please note that no changes were made to the regulation as originally proposed and published in the March 2007 issue of the *Register* at page 1373 (10 DE Reg. 1373). Therefore, the final regulation is not being republished. Please refer to the March 2007 issue of the *Register* or contact the Division of Medicaid and Medical Assistance for more information.

DIVISION OF SOCIAL SERVICES

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

ORDER**Cash Assistance and Food Stamp Programs
3024 Citizens and Aliens, and 9007.1 Citizenship and Alien Status****Nature of the Proceedings:**

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend policies in the Division of Social Services Manual (DSSM) as it relates to the Cash Assistance and Food Stamp Programs. 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 March 2007 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2007 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**Statutory Authority**

- INA Act Sec. 301 [8 U.S.C. §1401], *Nationals and Citizens of United States at Birth*
- 7 CFR §273.4, *Citizenship and Alien Status*
- 45 CFR §233.50, *Citizenship and Alienage*

Summary of Proposed Changes

DSSM 3024, *Citizens and Aliens* and DSSM 9007.1, *Citizenship and Alien Status*: DSS is making these changes to correct Cash Assistance and Food Stamp policies regarding the eligibility of children born outside of the United States (U.S.). Current policy states that a child born to one U.S. parent is a citizen which is not entirely correct. There are other conditions that must be met to allow a child born outside of the United States to automatically become a U.S. citizen.

DSS proposes several other structural and grammatical changes within this rulemaking.

Summary of Comments Received With Agency Response

No public comments were received.

Findings of Fact:

The Department finds that the proposed changes as set forth in the March 2007 *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 eligibility of children born outside of the United States under the cash assistance and food stamp programs is adopted and shall be final effective May 10, 2007.

Vincent P. Meconi, Secretary, DHSS, 4/16/07

* Please note that no changes were made to the regulation as originally proposed and published in the March 2007 issue of the *Register* at page 1389 (10 DE Reg. 1389). Therefore, the final regulation is not being republished. Please refer to the March 2007 issue of the *Register* or contact the Division of Social Services for more information.

DIVISION OF SOCIAL SERVICES

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

ORDER

Child Care Subsidy Program 5302 Exceptions, and 5307 Dismissal of Requests

Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend policies in the Division of Social Services Manual (DSSM) as it relates to the Child Care Subsidy Program. 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 March 2007 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2007 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

Statutory Authority

- The Child Care and Development Block Grant (part of Categories 31 and 41) as amended by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996; and,
- Title XX of the Social Security Act and the Omnibus Budget Reconciliation Act (OBRA) of 1981 establishes child care under the Social Services Block Grant (part of Categories 31 and 41).

Summary of Proposed Changes

1) DSSM 5302, *Exceptions: TANF, GA, Medicaid, EA*: is revised to clarify when adequate notice will be sent. This revision also updates an obsolete policy citation.

2) DSSM 5307, *Dismissal of Requests*: is revised to clarify that Fair Hearing rules apply to the Child Care program as well as other DSS programs.

Summary of Comments Received With Agency Response

No public comments were received.

Findings of Fact:

The Department finds that the proposed changes as set forth in the March 2007 *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 Child Care Subsidy Program is adopted and shall be final effective May 10, 2007.

Vincent P. Meconi, Secretary, DHSS, 4/16/07

* Please note that no changes were made to the regulation as originally proposed and published in the March 2007 issue of the *Register* at page 1396 (10 DE Reg. 1396). Therefore, the final regulation is not being republished. Please refer to the March 2007 issue of the *Register* or contact the Division of Social Services for more information.

DIVISION OF SOCIAL SERVICES

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

ORDER**FOOD STAMP PROGRAM**

9082 Reduction in Public Assistance Benefits, and 9092 Simplified Food Stamp Program

Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend policies in the Division of Social Services Manual (DSSM) as it relates to the Food Stamp Program. 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 March 2007 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2007 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**Statutory Authority**

- 7 CFR §§273.11(k), *Comparable Disqualifications* and 273.25, *Simplified Food Stamp Program*

Summary of Proposed Changes

DSSM 9082, *Reduction of Public Assistance Benefits* and DSSM 9092, *Simplified Food Stamp Program*: DSS is making these changes to support the new TANF rules regarding Employment & Training (E & T) hours of participation and not increasing food stamps when a TANF family is sanctioned for not completing the required hours.

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:

First, Section 9092 is confusing. The standard at the top of page 14000 are prescriptive and literally require households to work a certain number (30-55) of hours. This is followed by a formula which can result in fewer required work hours. See Par. 5 (lesser of the above 30-55 hours and number of hours determined by formula). It would be preferable to reconcile these seemingly inconsistent provisions.

Agency Response: Under 9092, the hours of participation are 30 – 55 hours a week based on the family's circumstances. If the TANF grant and Food Stamp allotment divided by the state minimum wage does not equal the required number of hours of participation, the family will have to participate in other activities to reach the maximum hours of work experience participation as written in #3.

Second, in the "Summary" section on page 1401, first bullet, the new standard actually expands the exemption from work for a single parent with an infant (i.e. from under 13 weeks to under 12 months). The 12-month standard appears to be the TANF norm. See 16 DE Admin Code 3006.1. Moreover, there does not appear to be an explicit cut-off based on infant age in the Food Stamp Program. See 16 DE Admin Code 10003.1. Therefore, the "bullet" inaccurately recites that it "lowers the age at which a child exempts a single custodial parent from work requirements".

Agency Response: The "Summary" has been amended to show that the new rule increases the age from 13 weeks to under 12 months at which a child exempts a single custodial parent from work requirements.

Third, in Section 9092, since Par. 2 refers to "state" minimum wage, Par. 1 should be amended by inserting either "state" or "federal" prior to "minimum wage". Otherwise, it is unclear which minimum wage is used in the calculation.

Agency Response: "State" has been inserted prior to "minimum wage".

Fourth, although not earmarked for amendment, DSS may wish to delete the inappropriate "or" in Section 9082, first sentence, between "GA)" and "have".

Agency Response: The original document deleted the "or" however, it was overlooked by the publisher. The word "or" now appears in bracketed bold type to call the publisher's attention to the deletion.

Findings of Fact:

The Department finds that the proposed changes as set forth in the March 2007 *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 Stamp Program regarding the reduction of public assistance benefits and the simplified food stamp program is adopted shall be final effective May 10, 2007.

Vincent P. Meconi, Secretary, DHSS, 4/16/07

**DSS FINAL ORDER REGULATION #07- 24
REVISIONS:****9082 Reduction of Public Assistance Benefits**

[273.11(j)]

Do not increase food stamp benefits when a household's benefits received under another means-tested Federal, State or local welfare or public assistance program (such as but not limited to TANF, RCA or GA) [~~or~~] have been decreased (reduced, suspended or terminated) due to failure to perform an action required under the assistance program or for fraud. Under no circumstances can the food stamp benefits be allowed to increase.

Actions not considered a failure to perform for this rule include:

- Reaching a time limit for time-limited benefits;
- Having a child that is not eligible because of family cap;
- Failing to reapply or complete the application process for continued assistance under another program;
- Failing to perform an action that the individual is unable to perform; or
- Failing to comply with a purely procedural requirement.

A procedural requirement which would not cause a sanction is a step that an individual must take to continue to receive benefits in the assistance program such as providing verification of circumstances.

A substantive requirement, which would cause a sanction, is a behavioral requirement in the assistance program designed to improve the well-being of the recipient family, such as participating in job search activities.

The following conditions apply:

1. The rule applies to individuals who fail to perform a required action while receiving assistance.
2. The rule does not apply to individuals who fail to perform a required action at the time the individual initially applies for assistance.
3. The rule applies to individuals who fail to perform a required action during an application for continued benefits as long as there is no break in participation.
4. The individual must be certified for food stamps at the time of the failure to perform a required action for this rule to apply.
5. Assistance benefits shall be considered reduced if they are decreased, suspended, or terminated.
6. If the means-tested assistance program fails to verify an individual's failure to perform a required action, this rule will not apply and DSS will not be held responsible as long as DSS made a good faith effort to get the information.
7. DSS, not the individual, is responsible for obtaining information about sanctions from other programs and changes in those sanctions.
8. The rule applies for the duration of the reduction in the assistance and cannot continue beyond the sanction of the assistance program.
9. ~~When a TANF case closes, the food stamp sanction will be removed because the family is no longer eligible for assistance~~ When a TANF case closes, the food stamp sanction will remain in place for one year or until the individual no longer is considered a mandatory Employment and Training participant.
10. DSS must restore lost benefits if it is later discovered that the reduction in the public assistance was not appropriate.

(Break in Continuity of Sections)

9092 Simplified Food Stamp Program - ~~Workfare~~ Work For Your Welfare

DSS was approved by Food and Nutrition Service, under the United States Department of Agriculture, to operate a Simplified Food Stamp Program (SFSP). The SFSP permits a state to substitute certain TANF and RCA rules and procedures for food stamp rules. Delaware's SFSP component is the ~~Workfare~~ Work For Your Welfare ~~(Workfare)~~ program rules.

Households in which all members, or one or more members, receive TANF or RCA may participate in the SFSP. Non-Public Assistance (NPA) households will not participate in the SFSP.

The SFSP will follow all the regular food stamp rules for determining eligibility and certifying households. Under the SFSP, the changes in the food stamps rules that will affect ~~Workfare~~ Work for Your Welfare TANF or RCA households who receive food stamps are:

- replacing food stamp Workfare penalties with the TANF or RCA ~~Workfare~~ Work for Your Welfare program requirements and penalties, and
- replacing food stamp work exemptions with TANF or RCA exemptions.

The ~~two~~ three TANF or RCA work exemptions are:

- a) A single, custodial parent caring for a child under ~~13 weeks~~ 12 months of age; or
- b) An individual determined unemployable by a health care professional; ~~or~~
- c) A parent caring for a disabled family member in the home who does not attend school full time.

The SFSP allows Delaware to require individuals single, custodial parents who are receiving TANF or RCA and caring for children age ~~13 weeks~~ 12 months and older to participate in ~~Workfare~~ Work for Your Welfare. The SFSP also allows Delaware to use the food stamp allotment along with the TANF or RCA grant to determine the number of hours of ~~Workfare~~ Work for Your Welfare participation.

DELAWARE'S WORKFARE WORK FOR YOUR WELFARE PROGRAM ~~WORK FOR YOUR WELFARE (WORKFARE) PROGRAM~~

Work for Your Welfare (~~Workfare~~) is defined as a work experience program in which participants work to earn their benefits. Those in ~~Workfare~~ Work for Your Welfare must participate for a predetermined number of hours each week and ~~complete 10 hours of job search activities per week.~~

Required Hours of ~~Workfare~~ Participation:

One-parent households will be required to work the maximum participation hours of 30 hours per week.

Two-parent households will be required to work the maximum participation hours of 35 hours per week. If the household receives subsidized childcare assistance, the maximum participation hours increase to 55 hours per week.

Determine the ~~Workfare~~-required hours of work experience participation:

1. The pre-sanctioned TANF grant is divided by the current **[state]** minimum wage, and the result is rounded down.

- ~~The result is subtracted from the appropriate required monthly maximum participate hours (for example, 25 hours per week would be $25 \times 4.33 = 108$).~~
- ~~The remainder is multiplied by the current minimum to determine the portion of the food stamp allotment, which can be used when imposing a Workfare reduction.~~

2. The food stamp allotment is divided by the current state minimum wage, and the result is rounded down.

3. The two results (#1 and #2), added together, are the maximum monthly number of hours for which the family/household is required to participate in work experience. The family/household may have to participate in other activities to the maximum hours of participation.

4. The monthly number of hours (#3) is divided by 4.33 to get a weekly number of hours, rounded down.

5. Compare the weekly number of hours (#4) to the maximum required for a one or two-parent household. Use the lesser number for the weekly number of hours.

6. The weekly number of hours (#5) is divided by 5 to get the daily participation requirement, rounded down. (This step is needed to give the Contractor and Client an idea of how to schedule the work on a daily basis to assure that the Client is able to meet the required ~~Workfare~~ work experience hours of participation.)

7. Consult the yearly table for the number of days the participant is required to do ~~Workfare~~. Multiply that number by the daily participation rate (#6) to determine the monthly required participation rate.

Workfare Reduction Work For Your Welfare

~~For every hour that a participant fails to work, the TANF check will first be reduced by the current minimum wage. If the TANF grant reduces to zero, any remaining Workfare reduction amount will be used to reduce the food stamp allotment up to the portion used to meet the required hours of participation.~~

If the participant does not meet the required number of work experience hours, the penalty will be the closure of the entire TANF case for a minimum of one month and a mandatory four consecutive weeks of participation.

Determination of the ~~Workfare~~ reduction amount:

~~Subtract the actual hours of participation for a month from the required hours for the same month.~~

~~Any amount greater than zero is multiplied by the current minimum wage, resulting in the Workfare reduction amount.~~

~~Subtract the exact Workfare reduction amount (#2) from the TANF grant amount and round down.~~

~~Subtract any 1/3 E& T/school attendance sanctions from amount in #3 before subtracting any \$68 or \$50 sanctions.~~

~~If the subtraction of the Workfare reduction amount reduces the TANF benefit to zero and there is a remaining Workfare reduction amount, this amount will be subtracted from the food stamp allotment. Only the portion of the food stamp allotment used to determine the participation hours can be subtracted from the food~~

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stamp allotment. (If there is a \$100 Workfare reduction amount left over after the grant reduced to zero, but only \$75 of the allotment was used to determine the hours of participation, only \$75 can be subtracted from the allotment.)

Job Search Activities/Failure to Complete

Individuals in Workfare must complete 10 hours of job search activities each week. The failure to complete job search activities will result in a progressive 1/3 grant reduction sanction. For food stamps, if the individual who fails to complete job search activities is caring for a child under the age of six, no sanction will be applied to the household. The pre-sanctioned grant amount will be used in the food stamp calculation to prevent an increase in the food stamps. (Riverside Rule.)

If the individual who fails to complete job search activities is not caring for a child under six years of age, DSS will apply the appropriate food stamp sanction.

The appropriate food stamp sanctions are:

- If the individual who failed to complete job search activities is the head of household, the whole food stamp household is sanctioned for the appropriate 1 month, 3 months, or six months period, or until compliance whichever is later.
- If the individual is not the head of household, the individual is removed from the food stamp case for the appropriate 1 month, 3 months, or six months period, or until compliance whichever is later.

SUMMARY OF THE SIMPLIFIED FOOD STAMP PROGRAM:

- The simplified food stamp program [~~lowers~~ **increases**] the age at which a child exempts a single, custodial parent from work requirements in ~~Workfare to under 13 weeks~~ Work for Your Welfare to under 12 months.
- If the participant does not meet the required number of work experience hours, the penalty will be the closure of the entire TANF case for a minimum of one month and a mandatory four consecutive weeks of participation.
- When a TANF case closes, the food stamp sanction will remain in place for one year or until the individual no longer is considered a mandatory Employment and Training participant.
Household will work a pre-determined number of hours in order to receive their TANF benefit.
Hours not worked will result in a reduction in the potential benefits they could have received.
Failure to complete job search activities will result in a food stamp sanction for those households where the youngest child is 6 years of age or older.
Food stamps are calculated using the pre-sanctioned grant amount before applying any Workfare reduction amount or appropriate sanction. (Riverside rule)
Workfare reductions are applied before reductions for any sanctions.
When the TANF grant reduces to zero and a Workfare reduction amount remains, the remainder, or a portion of the remainder, is subtracted from the food stamp allotment. Only the portion of the food stamp allotment that was needed to meet the required hours of participation can be subtracted.

DIVISION OF SOCIAL SERVICES

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

ORDER

Food Stamp Employment and Training Program 10007.3 Supportive Services Reimbursements

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 Stamp Employment and Training Program regarding

participant reimbursements. 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 March 2007 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2007 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposal

Statutory Authority

- Farm Security and Rural Investment Act of 2002, *Food Stamp Program: Employment & Training Program Provisions, §4121*
- 7 CFR Part 272, *Requirements for Participating State Agencies*
- 7 CFR Part 273, *Certification of Eligible Households*

Summary of Proposed Change

DSSM 10007.3, *Supportive Services Reimbursements*: The purpose of these changes to existing policy is due to final regulations regarding participant reimbursements. See 71 FR 33381 (Federal Register, Volume 71, and Page 33381). The Food & Nutrition Services Employment & Training (FNS E&T) policy unit has specified that services to obtain and keep employment are not an allowable reimbursement.

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. DSS has considered each comment and responds as follows:

First, the federal commentary does not justify the breadth of the proposed State restrictions placed on allowable services and supports. The federal commentary disallows "post-employment" services, i.e., services after acceptance of a job offer. The commentary explicitly authorizes services to obtain employment.

Based on this language in the Food Stamp Act and on the legislative history of the E&T Program, Congress clearly intended to limit the scope of the Program to preparing for and obtaining employment. Post-employment services were never part of the Program's mandate.

Since the E&T Program is defined by its components and all the components are designed to enable participants to obtain jobs, reimbursing the costs of goods and services associated with employment retention are beyond the scope of what can be allowed. Thus, FNS must limit participation reimbursements to those costs involved in successful component participation and disallow costs associated with starting and keeping a job once one has been offered.

In contrast, DSS proposes a sweeping exclusion for all services linked to obtaining employment! Section 10007.3, in pertinent part, contains a categorical exclusion for such supports:

Services to obtain and keep employment are not an allowable reimbursement.

The words "obtain and" should be deleted.

Agency Response: DSS appreciates and understands the comments submitted by the Councils. However, according to 71 FR 33381 "...the use of Federal funds to provide services associated with starting and keeping a job is beyond the scope of the E&T Program and must be disallowed. ... FNS must limit participation reimbursements to those costs involved in successful component participation and disallow costs associated with starting and keeping a job once one has been offered." DSS continues to provide Supportive Services Reimbursements for components which lead to employment.

Second, for similar reasons, complete deletion of Par. B is not required. The text could simply be revised to read as follows:

These services can include clothes that are appropriate for in-person applications and interviews.

Compare new Par. B, authorizing coverage for uniforms for training. There could be a dress code or specific clothing required for training activities (e.g. scrubs for CAN or LPN training). Moreover, clothing should also be covered for other pre-employment activities such as in-person applications and interviews.

Agency Response: DSS will revise Par. B to allow Supportive Services Reimbursements for clothing appropriate for interviewing as long as a job offer has not been made. Under Par. C, DSS does allow Supportive Services Reimbursements for uniforms for training programs.

Third, for similar reasons, complete deletion of Par. D is not required. Consider the following alternatives:

This service is only necessary when a participant's dental condition poses a significant barrier to employability.

OR

This service is only necessary when a participant's dental condition poses a significant barrier to training, in-person applications, and interviews.

OR

This service is only necessary when a participant's dental condition poses a significant barrier to articulation or expressive communication in training, in-person applications, and interviews.

Agency Response: As stated in response to the first comment, FNS does not allow reimbursement for starting or obtaining employment. Dental services were not an allowable Supportive Services Reimbursement for training.

Findings of Fact:

The Department finds that the proposed changes as set forth in the March 2007 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Food Stamp Employment & Training Program regarding participant reimbursements is adopted and shall be final effective May 10, 2007.

Vincent P. Meconi, Secretary, DHSS, 4/16/07

DSS FINAL ORDER REGULATION #07-25

REVISIONS:

10000 Food Stamp Employment and Training (FSE&T)

(Break in Continuity of Sections)

10007.3 Supportive Services Reimbursements

All Supportive Services reimbursements/payments must be actual costs that are necessary for Employment and Training participation ~~or obtaining employment~~. They must be verified and documented. Services to obtain and keep employment are not an allowable reimbursement.

Supportive Services reimbursements /payments can be provided under the following categories;

A. Fees

These services can include licenses such as Commercial Drivers License and Nurses licenses, testing for employment or education (this includes GED test fees), or other fees directly related to training ~~or employment~~.

Monetary Limit of Service / Expense: Verified actual cost up to \$200.00 per individual, per month as determined by need.

~~B. Clothing~~ B. Clothing

~~These services can include clothes that are appropriate for interviewing or the first few days of employment.~~

~~Monetary Limit of Service / Expense: Verified actual cost up to \$150.00 per individual. This is a one time only service.~~

These services can include only clothes that are appropriate for interviewing prior to a job offer.

Monetary Limit of Service / Expense: Verified actual cost up to \$150.00 per individual. This is a one time only service.]

~~[C, B, C]~~ Accessories for ~~Work or~~ Training

These services can include purchase of safety equipment, uniforms, shoes, or tools required to participate in training ~~or work~~. The need in some cases can be verified by Office of Safety and Health Administration (OSHA) regulations.

Monetary Limit of Service / Expense: Verified actual cost up to \$150.00 per individual, per month as determined by need.

~~[D, C, D.]~~ Physical Exam

This service can be authorized when a participant is required to undergo a physical exam to participate in training ~~or accept employment~~ and such exam is not available through a public health facility or covered by Medicaid.

Monetary Limit of Service / Expense: Verified actual cost up to \$100.00 per individual, per month as determined by need.

~~E.~~ Dental Services

~~This service is only necessary when a participant's dental condition poses a significant barrier to employment.~~

~~Monetary Limit of Service / Expense: Verified actual cost up to \$400.00 per individual, per month as determined by need.~~

~~[F, D, E]~~ Eye exams and eyeglasses

When the assessment indicates the participant's vision is impaired, or when the individual needs glasses to continue in a component ~~or job~~. This does not include contact lenses unless they are medically necessary.

Monetary Limit of Service / Expense: Verified actual cost up to \$200.00 per individual, per month as determined by need.

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

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314 and 3403 (18 **Del.C.** §§314 & 3403)

18 **DE Admin. Code** 1407

ORDER

1407 Supplemental Health Insurance Coverage for Children of Insureds

After publication of proposed Regulation 1407 in the *Delaware Register of Regulations* on March 1, 2007, the public comment period on the proposed regulation remained open until April 2, 2007. Public notice of proposed Regulation 1407 in the *Register of Regulations* and two newspapers of general circulation was in conformity with Delaware law. Written comments were received into the record from America's Health Insurance Plans (AHIP), a trade association, and the Delaware State Council for Disabled Persons.

Summary of the Evidence and Information Submitted

The proposed regulation was promulgated to establish rate filing guidelines as a result of changes in family dependent health coverage enacted by the Delaware General Assembly and signed into law by the Governor. In essence, the changes to 18 **Del.C.** §§3354 and 3570 extended family dependent coverage for children to age 24 under certain conditions. The purpose of the regulation is to establish a time frame and process for health insurers to submit rate plans required by the new law.

The enabling legislation, 75 **Del. Laws** Ch. 419, contained a provision that establishes an effective date of the law "90 days after the State provides benefits fully consistent with its provisions for participants in the State's employee benefit plan." *Id.* at sec. 3. Both AHIP and the representative from MetLife, Timothy Ring, Esquire,

suggested that the regulation should be modified to reflect the effective date provisions since the State's employee benefit plan adopted some, but not all, of the provisions. The State's Personnel Office adoption of extended benefits effective March 1, 2007 did not include the expanded dependent coverage benefit for the supplemental lines of insurance (e.g. life insurance, long-term care insurance, vision insurance, dental insurance, etc.) that are offered to state employees. AHIP recommended that section 2.1 be modified to reflect the insurers' obligations consistent with the adoption of benefits for State employees.

It was also noted that the 90 day statutory grace period would commence on March 1, 2007 and that the effective date of the regulation would have to allow for that statutory period.

In all other respects, the comments received by the Department were supportive of the proposed regulation.

Findings of Fact

Pursuant to 18 **Del.C.** §311(a), the Commissioner may promulgate regulations necessary to carry out the provisions of Title 18. Pursuant to 29 **Del.C.** §10113 changes can be made to regulations or proposed regulations that conform to law without the necessity of publication for comment and which do not alter the substance of the regulation.

I find that there is a sufficient basis to conclude that this regulation be adopted to permit the Delaware Department of Insurance to carry out its obligations under 18 **Del.C.** §§3354 and 3570.

I find that a change to section 2.1 to make the application of the regulation consistent with the adoption of benefits by the State Personnel Office is appropriate, conforms to the law and does not alter the substance of the regulation.

I also find that it is appropriate to extend the original effective date of the regulation from May 11, 2007 to June 1, 2007 in conformity with the law.

Decision and Order

Based on the provisions of 18 **Del.C.** §§310, 311, 3354 and 3570 and the record in this docket, I find that there is substantial evidence in favor of the adoption of this regulation to become effective on June 1, 2007. I further order that section 2.1 of the proposed regulation be amended to read as follows:

2.1 This regulation applies to all Carriers, as defined below, consistent with and to the extent the provisions of 18 **Del.C.** §§3354 and 3570 are adopted and implemented by the State of Delaware for its employees under the State Employees Benefit Plan.

Text and Citation

The text of the proposed amendments to Regulation 1407 last appeared in the *Register of Regulations* Vol. 10, Issue 9, pages 1403-04, March 1, 2007.

IT IS SO ORDERED this 13th day of April, 2007.

Matthew Denn, Insurance Commissioner

1407 Supplemental Health Insurance Coverage for Children of Insureds

1.0 Authority

1.1 This regulation is adopted by the Commissioner pursuant to the authority granted by 18 **Del.C.** §§310, 311, 3354, and 3570 and promulgated in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Chapter 101.

2.0 Scope

2.1 This regulation applies to all Carriers, as defined below[,consistent with and to the extent the provisions of 18 **Del.C.** §§3354 and 3570 are adopted and implemented by the State of Delaware for its

employees under the State Employees Benefit Plan].

3.0 Definitions

"Carrier" means any entity that provides health insurance in this State. For the purposes of this section, carrier includes an insurance company, health service corporation, managed care organization, health maintenance organization, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation. "Carrier" also includes any third party administrator or other entity that adjusts, administers, or settles claims in connection with health benefit plans.

"Covered person" means a person who claims to be entitled to receive benefits from a carrier.

"Dependent" means a covered person's child by blood or by law who:

- a. is less than 24 years of age;
- b. is unmarried;
- c. has no dependents of his or her own;
- d. is a resident of Delaware or is enrolled as a full-time student at an accredited public or private institution of higher education; and
- e. is not actually provided coverage as a named subscriber, insured, enrollee, or covered person under any other group or individual health benefits plan, group health plan, or church plan, or entitled to benefits under 42 U.S.C. §1395 et. seq.

4.0 Submission of Rate Plans

4.1 No later than 30 days following the effective date of this regulation, each Carrier shall submit the following to the Commissioner:

4.1.1 Certified notice that within 60 days following the effective date of this regulation, the carrier will be in compliance with all terms of 18 Del.C. §§3354 and 3570.

4.1.2 A rate filing containing proposed premiums for dependent coverage consistent with 18 Del.C. §§3354(g), 3354(h), 3570(g) and 3570(h).

4.2 Where possible, rate filings made consistent with this regulation shall be made in the format and on the forms required of the carriers' other filings made pursuant to Title 18, Chapter 25 of the Delaware Code.

4.3 Rate filings required by this regulation shall demonstrate that the premium charged pursuant to 18 Del.C. §§3354 and 3570 does not exceed 102% of the applicable portion of the premium previously paid for that dependent's coverage under the contract prior to the termination of coverage at the specific age provided in the contract.

4.4 Compliance with Section 4.3 of this Regulation shall be demonstrated by:

4.4.1 Establishing the portion of existing carrier costs directly attributable to inclusion of persons whose coverage would have been terminated due to age but for implementation of 18 Del.C. §§3354 and 3570.

4.4.2 Generating a rate schedule that assesses premiums no greater than 102% of the costs generated by Section 4.4.1.

4.4.3 Fixed costs which would be incurred by the carrier regardless of inclusion of persons whose coverage would have been terminated due to age but for implementation of 18 Del.C. §§3354 and 3570 shall not be included in the carrier costs established under Section 4.4.1, and the rate filings made pursuant to Sections 4.2 and 4.3 shall affirmatively state that such fixed costs have not been included.

4.4.4 Carriers may submit rate filings pursuant to Sections 4.2 and 4.3 that produce premiums substantially similar to those that would be generated by compliance with Sections 4.4.1 through 4.4.3.

4.4.5 The Department interprets 18 Del.C. §§3354 and 3570 to permit and require it to review rate filings made pursuant to this Regulation to ensure that they are not excessive. The effective filing date provisions of 18 Del.C. §2506 apply to a carrier's conditional right to charge premiums upon the filing of a rate request.

4.4.6 The carrier shall be required to submit the notices, or any amendments thereto, required by 18 Del. C. §§3354(j) and 3570(j) to the Department for form approval prior to their use.

5.0 Effective Date

5.1 This Regulation shall become effective [~~May 11~~ June 1], 2007.

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** 1124

Secretary's Order No. 2007-A-0011

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") under 29 **Del.C.** §§8001 et seq., 29 **Del.C.** §§10111 et seq. and 7 **Del.C.** §6010(a), the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

On January 12, 2001, the Department opened a proposed rulemaking proceeding in Start Action Notice ("SAN") 2000-23, which was to develop a proposed regulation for the purpose of regulating the air emissions of volatile organic compounds ("VOCs") released during lightering operations in Delaware's waters. The purpose of the proposed regulation was to regulate the release of harmful VOCs air emissions during crude oil lightering, which is the transfer of cargo from larger ships to smaller ships in order to allow the larger ships to deliver the cargo to shallower locations along the Delaware Bay. The VOCs released during crude oil lightering are a major source of VOCs released in Delaware. VOCs are a major source of air pollution, particularly in the formation of ozone. Ozone poses a significant risk to human health and the environment. Delaware also is within a federal designated ozone non-attainment area, which means that Delaware must take regulatory steps to reduce ozone in order to comply with the federal Clean Air Act and its regulations. Many of the VOCs are classified as hazardous air pollutants ("HAPs"), including the known carcinogens benzene and polycyclic organic matter.

The Department's experts within the Division of Air and Waste Management, Air Quality Management Section ("AQMS") drafted a proposed regulation based upon reasonably available control technology in vapor balancing during lightering. The proposed regulation was prepared with the input of interested persons, including members from the lightering industry, petroleum/refining interests, environmental organizations and public health associations. The Department published the proposed regulation in the November 1, 2006 *Delaware Register of Regulations* along with notice of the withdrawal of a prior proposed regulation, which had been published in the August 1, 2001 *Delaware Register of Regulations*. The Department held a public hearing on the November 1, 2006 proposed regulations on December 4, 2006.

The Department's presiding hearing officer, Robert P. Haynes, prepared a Report, dated March 23, 2007, a copy of which is attached hereto and incorporated herein. The Report recommended approval of the regulation, as set forth in Appendix A of the Report, as a final regulation. The Report reviewed the public comments, and the Department's technical response to the comments prepared by experts within AQMS.

I find that the record developed during the public hearing process, including the Department's response, provides ample support for the Department to adopt this final regulation. The justification is that it will result in cleaner air quality, which in turn will improve human health and the environment in Delaware. The regulation approved by this Order will result in the reduction of VOCs released during crude oil lightering because uncontrolled releases will be reduced from its current unregulated releases. Crude oil lightering is one of the major sources of the VOCs and HAPs in Delaware, with the annual release of approximately 1,900 tons of VOCs and 150 tons of HAPs. The air release of VOCs is a known cause of the formation of ozone, which also is proven to be a major risk factor to human health, particularly the elderly, children and others with an impaired ability to breathe.

The regulation will reduce the amount of lightering that is done without vapor balancing equipment, or uncontrolled lightering. The regulation will require the increased use of vapor balancing equipment over a reasonable time period that the industry has indicated is acceptable to allow the changes to be made to the vessels or to acquire newer vessels. The first regulatory deadline will be an 80% limit to uncontrolled lightering out of all crude oil lightering volumes by May 1, 2008. This level will reduce to 61% by May 1, 2010, and again be reduced to 43% by May 1, 2012. Thus, the release of VOCs will be reduced by 57% in the next five years.

The final regulation also bars uncontrolled releases during most ozone action days in order to avoid adding more air pollution on the days when human health is most adversely affected by poor air quality caused by ozone. The regulation is based upon sound scientific theory and the application of available technology that can be installed in order to reduce a major source of air pollution.

In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary and 29 **Del.C.** §10118(d), hereby approved the final regulation in Appendix A to the Report,
2. The Department shall have this Order published in the *Delaware Register of Regulations* and in newspapers in the same manner as the notice of the proposed regulation;
3. The Department shall provide notice to the persons affected by the Order, as determined by the Department, including all those who submitted comments to the Department, who otherwise participated in the public hearing, and who requested to receive notice of all actions on proposed regulations.

John A. Hughes, Secretary

1124 Control of Volatile Organic Compound Emissions (Formerly Reg. No. 24)

(Break in Continuity of Sections)

46.0 Crude Oil Lightering Operations.

[5 4]/11/07

46.1 Applicability.

46.1.1 The requirements in ~~[46.1 through 46.9 Section 46.0]~~ of this regulation, with the exception of 46.3.7 of this regulation, apply to the owner or operator of a lightering service that carries out crude oil lightering operations in the waters of the State. The requirement in 46.3.7 of this regulation applies to the owner of the crude oil being lightered in the waters of the State.

46.1.2 While carrying out emergency lightering operations, the owner or operator of a lightering service subject to ~~[46.1 through 46.9 Section 46.0]~~ of this regulation is subject only to the requirements of 46.8 of this regulation.

46.1.3 The owner or operator of a lightering service subject to ~~[46.1 through 46.9 Section 46.0]~~ of this regulation may be required to obtain, revise, or amend permits issued by the Department pursuant to Regulations 1102, 1125, and 1130 of 7 **DE Admin Code**, where applicable.

46.1.4 The requirements of ~~[46.1 through 46.9 Section 46.0]~~ of this regulation are in addition to all other applicable State and Federal rules and regulations.

46.1.5 Nothing in ~~[46.1 through 46.9 Section 46.0]~~ of this regulation shall be construed to require any act or omission that would be in violation of any rules or regulations of the United States Coast Guard or to prevent any act that is necessary to secure the safety of personnel, property, or the environment.

46.2 Definitions.

As used in ~~[46.1 through 46.9 Section 46.0]~~ of this regulation, all terms not defined herein shall have the meaning given them in Regulation 1101 or in ~~[2.2 Section 2.0]~~ of this regulation.

"Baseline volume" means the average annual volume, in barrels per year, of crude oil lightered in the waters of the State during calendar years 2004 and 2005. If an existing lightering service did not carry out lightering operations throughout 2004 and 2005, the baseline volume for that existing lightering service shall be the average annual volume of crude oil lightered in the waters of State during the 24 month period beginning with its first lightering operation after December 31, 2003.

["Controlled lightering operation" means a lightering operation in which the VOC emissions are being controlled by the use of a vapor balancing system.]

"Depressurization venting" means the release of vapors to the atmosphere from the ship to be lightered, the service vessel or the vapor balancing system during controlled lightering operations.

"Emergency lightering operations" means the transfer of crude oil cargo to mitigate or prevent a cargo spill, to stabilize a vessel whose integrity has been compromised, or to comply with the requirements of a Coast Guard Captain of the Port Order issued under the authority of the Ports and Waterways Safety Act, 33 USC 1221, as implemented by 33 CFR 160.111.

"Existing lightering service" means any lightering service that carried out a lightering operation in the waters of the State with an operating permit prior to the effective date of ~~[46.1 through 46.9 Section 46.0]~~ of this regulation.

"Existing service vessel" means a service vessel that has been used in a lightering operation in the waters of the State prior to the effective date of ~~[46.1 through 46.9 Section 46.0]~~ of this regulation.

"Lightering operation" means the transfer of crude oil from the cargo tank of a ship to be lightered to the cargo tank of a service vessel. Transfers of crude oil from the cargo tanks of a lightering service's marine tank vessel to the cargo tanks of another marine tank vessel or reverse lightering is exempt from the requirements of ~~[46.1 through 46.9 Section 46.0]~~ of this regulation.

"Lightering service" means any owner or operator that, under contract, carries out a lightering operation.

"Marine tank vessel" means any marine vessel, which is specifically constructed or converted to carry liquid bulk cargo in cargo tanks.

"New lightering service" means any lightering service that is not an existing lightering service.

"New service vessel" means a service vessel that is not an existing service vessel.

"Ozone Action Day" means a day that is predicted, based on forecasted weather conditions, to reach unhealthy ozone concentrations. Frequently called a Code Red Day, an Ozone Action Day is declared prior to 1430 hours (local time) for the following day.

"Service vessel" means the marine tank vessel receiving crude oil during a lightering operation.

"Ship to be lightered" means the marine tank vessel delivering crude oil during a lightering operation.

"Uncontrolled lightering [operations]" means the period or periods when VOC emissions are vented from the service vessel to the atmosphere during a lightering operation.

["Uncontrolled lightering operation"] means a lightering operation conducted without vapor balancing.]

"Vapor balancing" means the collection and transfer of vapors displaced by the incoming crude oil from the cargo tank of a service vessel into a cargo tank of the ship to be lightered.

"Vapor control system" means an arrangement of piping and equipment used to control vapor emissions collected from a marine tank vessel. For the purposes of ~~[46.1 through 46.9 Section 46.0]~~ of this regulation, vapor control system, also, includes vapor balancing.

"Vapor leak" means a gaseous leak that is detectable by sight, sound, or smell.

"Vapor tight service vessel" means a marine tank vessel [that] has successfully demonstrated vapor tightness using the method in either paragraph (c)(1) or (c)(2) of 40 CFR 63.565 within the preceding twelve months.

"Waters of the State" means those waters within the boundaries of the State, including the 12 mile circle described from New Castle and extended to the low water mark on the eastern side of the Delaware River and extending below the 12 mile circle with the middle of the shipping channel through the Delaware River and Bay and extending to the Atlantic Ocean and including those waters of the territorial sea which are in direct contact with the coast of Delaware, extending from the line of ordinary low water seaward for a distance of 3 geographical miles. This definition shall include any waters beyond the 3-mile mark as authorized by Federal Law.

46.3 Standards.

46.3.1 When carrying out a lightering operation, the owner or operator of a lightering service subject to ~~[46.1 through 46.9 Section 46.0]~~ of this regulation shall collect and transfer the VOC emissions from the service vessel to the ship to be lightered by vapor balancing.

46.3.2 When vapor balancing, the owner or operator of a lightering service subject to ~~[46.1 through 46.9 Section 46.0]~~ of this regulation shall only use vapor tight service vessels.

46.3.2 3] Prior to vapor balancing, the owner or operator of a lightering service subject to ~~[46.1 through 46.9 Section 46.0]~~ of this regulation shall verify that all valves in the vapor balancing system of the service vessel are correctly positioned to allow the collection and control of VOC emissions.

46.3.4 During vapor balancing, the owner or operator of a lightering service subject to ~~[46.1 through 46.9 Section 46.0]~~ of this regulation shall verify that there are no vapor leaks in the vapor balancing system of the service vessel. Whenever a vapor leak is detected:

46.3.4.1 A first attempt at repair shall be made prior to the completion of the lightering operation.

46.3.4.2 If a vapor leak in the vapor balancing system of the service vessel can not be repaired prior to the completion of the lightering operation, the leak shall be tagged and recorded.

46.3.4.3 The vapor leak shall be repaired prior to the date that the service vessel is [next] used in a lightering operation.

46.3.4.4 Following completion of the repair, the service vessel shall be leak tested using the method in either paragraph (c)(1) or (c)(2) of 40 CFR 63.565.

46.3.5 During lightering operations, the owner or operator of a lightering service subject to ~~[46.1 through 46.9~~ **Section 46.0]** of this regulation shall only use service vessels equipped with submerged fill pipes.

46.3.6 When vapor balancing, the owner or operator of a lightering service subject to ~~[46.1 through 46.9~~ **Section 46.0]** of this regulation shall request information from the operator of the ship to be lightered on the total number of depressurization ventings by the ship to be lightered during each lightering operation. The owner or operator of the lightering service is ~~[neither not]~~ responsible for enforcing ~~[the requirement that the operator of the ship to be lightered provide the depressurization venting information or the information requirements of 46.3.7 of this regulation nor liable]~~ for any inaccuracies ~~[of such in the]~~ information ~~[provided by the operator of the ship to be lightered].~~

46.3.7 When vapor balancing, the owner of the crude oil shall require the owner or operator of the ship to be lightered to provide the owner or operator of the lightering service the total number of depressurization ventings by the ship to be lightered at the conclusion of each lightering operation. ~~[The owner of the crude oil is not responsible for enforcing the requirement that the operator of the ship to be lightered provide the depressurization venting information or for any inaccuracies in the information provided by the operator of the ship to be lightered.]~~

46.4 Compliance schedule.

46.4.1 The owner or operator of a lightering service subject to ~~[46.1 through 46.9~~ **Section 46.0]** of this regulation shall comply with the following requirements.

46.4.1.1 The owner or operator of an existing lightering service shall provide the following information to the Department not later than 90 days after the effective date of ~~[46.1 through 46.9~~ **Section 46.0]** of this regulation.

46.4.1.1.1 The name or identification of existing service vessels that are expected to be used in lightering operations in the waters of the State after 2006.

46.4.1.1.2 The expected date that the vapor balancing system will be installed on each existing service vessel or the date the vapor balancing system was first used, if the existing service vessel is equipped with a vapor balancing system.

46.4.1.2 The owner or operator of a lightering service shall provide the following information to the Department upon the initial use of a new service vessel in the waters of the State.

46.4.1.2.1 The name or identification of the new service vessel.

46.4.1.2.2 The date that the new service vessel commenced lightering operations in the waters of the State.

46.4.1.2.3 A statement of whether the new service vessel is equipped with a vapor balancing system. If not equipped with a vapor balancing system, a statement on the expected date that the vapor balancing system will be installed on the new service vessel or the reason that a vapor balancing system will not be installed on that new service vessel.

46.4.1.3 Compliance with standards.

46.4.1.3.1 The owner or operator of a new lightering service shall comply with the requirements of 46.3 of this regulation upon initial lightering operation or the effective date of this regulation, whichever is later.

46.4.1.3.2 The owner or operator of an existing lightering service shall comply with the requirements of 46.3.1 of this regulation to the greatest extent practicable and shall comply with the requirements of 46.3.2 through 46.3.6 of this regulation when vapor balancing.

46.4.1.4 Maximum allowable uncontrolled lightering volume.

46.4.1.4.1 Beginning 12 months after the initial lightering operation or the effective date of this regulation, whichever is later, a new lightering service's 12-month rolling total volume of uncontrolled lightering shall not exceed 5 percent of the new lightering service's total volume lightered for that same 12-month period.

46.4.1.4.2 Beginning May 1, 2008, the 12-month rolling total volume of uncontrolled lightering shall not exceed an existing lightering service's baseline volume multiplied by the percentages listed in Table 46-1 of this regulation.

Table 46-1	
Beginning on	Maximum allowable uncontrolled lightering volume
<u>May 1, 2008</u>	<u>80 %</u>
<u>May 1, 2010</u>	<u>61 %</u>
<u>May 1, 2012</u>	<u>43%</u>

46.4.1.5 The total volume of uncontrolled lightering for any given lightering operation shall be calculated using the following equation.

$$\text{TUV} = \sum_{i=1}^m (V)_i + \sum_{j=1}^n (\text{EV})_j \quad \text{Eq. []46-1}$$

Where.

TUV = the total uncontrolled volume for each given lightering operation. This total volume is used in the determination of 12-month rolling total volume of uncontrolled lightering in 46.4.1.4 of this regulation.

V = the volume of crude oil transferred to the service vessel when displaced vapors are emitted directly to the atmosphere rather than collected and controlled by vapor balancing.

EV = the equivalent volume of crude oil transferred corresponding to the collected and controlled vapors emitted from the service vessel to the atmosphere as a result of depressurization venting. The equivalent volume of crude oil shall be calculated using paragraph (d)[(2)](i)(D)(10) of 40 CFR 63.1257 or a method approved by the Department.

i = the individual uncontrolled venting when transferring crude oil.

j = the individual depressurization venting.

m = the total number of uncontrolled ventings of displaced vapors when transferring crude oil for each given lightering operation.

n = the total number of depressurization ventings for each given lightering operation.

46.4.1.6 VOC emissions reduction and audits.

Beginning in February 2010, the Department shall conduct an annual audit of lightering service records to identify the frequency and duration of VOC ventings from the ships to be lightered. If the Department finds that ventings from the ships to be lightered reduce the VOC emission reductions achieved by the lightering services to a level below the maximum allowable uncontrolled lightering volume required in Table 46-1 of this regulation, the Department shall implement solutions, which could include amending ~~[46.1 through 46.9 Section 46.0]~~ of this regulation.

46.4.2 Ozone Action Day limitations.

Beginning May 1, 2007, uncontrolled lightering operations shall be curtailed as follows on any day that the Department declares an Ozone Action Day.

46.4.2.1 Uncontrolled lightering operations shall not be carried out from 0230 hours until 1630 hours (local time) of the declared Ozone Action Day. However, if uncontrolled lightering operations have begun prior to the declaration of the Ozone Action Day, those lightering operations may continue until 0230 hours (local time) or until the service vessel is fully loaded, whichever is later.

46.4.2.2 If the Department declares consecutive Ozone Action Days, the owner or operator of a lightering service shall, to the greatest extent practicable, minimize uncontrolled lightering operations on the second and subsequent consecutively declared Ozone Action Days as follows:

46.4.2.2.1 Carrying out controlled lightering operations, if vapor balancing compatible service vessels and ships to be lightered are available.

46.4.2.2.2 Rescheduling the uncontrolled lightering operations to the periods of 1630 hours to 0230 hours (local time) of the second and subsequent consecutively declared Ozone Action Days.

46.4.3 No later than January 1, 2014 and every 5 years thereafter, the Department, owners or operators of existing lightering services subject to ~~[46.1 through 46.9 Section 46.0]~~ of this regulation, and owners of crude oil subject to 46.3.7 of this regulation shall determine the feasibility of achieving a 5 per cent maximum allowable uncontrolled lightering volume. If a 5 per cent maximum allowable uncontrolled lightering volume is determined to be feasible, the Department shall amend the requirements of Table 46-1 of this regulation within two years. The amended requirements shall establish a maximum allowable uncontrolled lightering volume of 5 per cent.

46.4.4 If the feasible maximum allowable uncontrolled lightering volume determined in 46.4.3 of this regulation is greater than 5 per cent, the Department shall amend the requirements of Table 46-1 of this regulation within two years. The amended requirements shall establish the feasible maximum allowable uncontrolled lightering volume determined in 46.4.3 of this regulation.

46.4.5 Any changes to the requirements of Table 46-1 of this regulation shall be made in accordance with the requirements of 7 Del.C. Ch. 60.

46.5 Compliance Plan.

46.5.1 Within 120 days after the effective date of ~~[46.1 through 46.9 Section 46.0]~~ of this regulation or upon initial startup of each vapor balancing system, whichever is later, the owner or operator of a lightering service shall develop and implement a compliance plan that describes how initial and ongoing compliance will be demonstrated. The owner or operator of a lightering service shall make the compliance plan for each vapor balancing system available for inspection, upon request, by the Department.

46.5.2 Initial Compliance.

To demonstrate initial compliance, the owner or operator of a lightering service shall provide the Department with the information specified in 46.5.2.1 and 46.5.2.2 of this regulation.

46.5.2.1 A copy of the service vessel's vapor control system Approval Letter issued by or on behalf of the United States Coast Guard in accordance with 46 CFR 39.10-13 and 46 CFR 31.01-03 or United States Coast Guard approved equivalent.

46.5.2.2 A copy of the service vessel's initial test certification demonstrating vapor tightness using the method in either paragraph (c)(1) or (c)(2) of 40 CFR 63.565.

46.5.3 Ongoing Compliance.

The ongoing compliance demonstration plan shall include, at a minimum, the information specified in 46.5.3.1 through 46.5.3.5 of this regulation.

46.5.3.1 The recommended instrumentation for the continuous measurement and recording of the operating pressure of the service vessel.

46.5.3.2 The recommended operating and maintenance procedures for the vapor balancing system.

46.5.3.3 The recommended startup, shutdown, and malfunction plan for the vapor balancing system, which shall include the approved calculation methodology to determine the total uncontrolled volume in 46.4.1.5 of this regulation.

46.5.3.4 The recommended operating procedures to prevent inadvertent uncontrolled VOC emissions to demonstrate compliance with 46.3.3 of this regulation.

46.5.3.5 The recommended leak testing procedures to demonstrate compliance with 46.3.4 of this regulation.

46.5.4 To the extent practical, the lightering service's standard operating and maintenance manuals and standard log sheets may be used to satisfy the requirements of the compliance plan, provided these manuals and log sheets contain all of the data necessary to meet the individual requirements of 46.5.3 of this regulation.

46.6 Equivalent methods of control.

46.6.1 Non-vapor balancing control technologies can be installed to control VOC emissions during lightering operations. New and existing lightering services may apply for the approval of an alternative control technology by submitting a complete request in accordance with the requirements of 46.6.2 and 46.6.3 of this regulation.

46.6.2 Upon receipt of a written request, the Department may approve the use of an alternative

control technology to satisfy the requirements of 46.3.1 of this regulation.

46.6.3 The written request must contain a complete description of the alternative control technology, proposed compliance demonstration plan, proposed testing procedures, proposed recordkeeping requirements, and the expected startup date.

46.7 Recordkeeping.

The owner or operator of a lightering service subject to ~~[46.1 through 46.9 Section 46.0]~~ of this regulation shall keep the records specified in this paragraph in a readily accessible location for at least five years. These records shall be made immediately available to the Department on verbal or written request. For the purposes of 46.7 of this regulation, the terms "readily accessible location" and "immediately available" may apply to records located on a service vessel.

46.7.1 The owner or operator of an existing lightering service subject to ~~[46.1 through 46.9 Section 46.0]~~ of this regulation shall keep calculations, including documentation of data, required to determine the baseline volume of the lightering service.

46.7.2 The owner or operator of an existing lightering service subject to ~~[46.1 through 46.9 Section 46.0]~~ of this regulation shall keep calculations, including documentation of data, required to determine the 12-month rolling total volume of uncontrolled lightering of their lightering service in accordance with 46.4.1.4 of this regulation.

46.7.3 Beginning on the effective date of ~~[46.1 through 46.9 Section 46.0]~~ of this regulation or upon initial lightering operation in the waters of Delaware, whichever is later, the owner or operator of a lightering service subject to ~~[46.1 through 46.9 Section 46.0]~~ of this regulation shall keep the following information for each lightering operation.

- | | |
|-----------------|---|
| <u>46.7.3.1</u> | <u>The dates and times that the lightering operation began and ended.</u> |
| <u>46.7.3.2</u> | <u>The lightering location.</u> |
| <u>46.7.3.3</u> | <u>The name or identification of the service vessel or vessels involved.</u> |
| <u>46.7.3.4</u> | <u>The name or identification of the ship to be lightered.</u> |
| <u>46.7.3.5</u> | <u>The name or identification of the owner of the crude oil to be transferred.</u> |
| <u>46.7.3.6</u> | <u>The total volume of crude oil transferred during the lightering operation.</u> |
| <u>46.7.3.7</u> | <u>The total uncontrolled volume of crude oil transferred during the lightering</u> |

operation, including documentation of the data required to calculate the total uncontrolled volume in accordance with 46.4.1.5 of this regulation.

46.7.4 Beginning on the effective date of ~~[46.1 through 46.9 Section 46.0]~~ of this regulation or upon the initial startup of a service vessel's vapor balancing system, whichever is later, the owner or operator of a lightering service shall keep the following information.

46.7.4.1 Vapor tightness documentation for the service vessel in accordance with 46.3.2 of this regulation. The documentation shall include, at a minimum, the information specified in 46.7.4.1.1 through 46.7.4.1.6 of this regulation.

- | | |
|-------------------|---|
| <u>46.7.4.1.1</u> | <u>The service vessel name or identification.</u> |
| <u>46.7.4.1.2</u> | <u>The name and address of the owner or operator of the service</u> |
| | <u>vessel.</u> |
| <u>46.7.4.1.3</u> | <u>The date and location of vapor tightness test.</u> |
| <u>46.7.4.1.4</u> | <u>The vapor tightness test method used.</u> |
| <u>46.7.4.1.5</u> | <u>The test results.</u> |
| <u>46.7.4.1.6</u> | <u>The tester's name and signature.</u> |

46.7.4.2 Records of the total number of depressurization ventings by the ship to be lightered in accordance with 46.3.5 of this regulation, when vapor balancing.

46.7.4.3 Operating logs and the pressure monitoring results for the vapor balancing system of the service vessel, when vapor balancing.

46.7.4.4 Records of the occurrence and duration of a malfunction of the vapor balancing system of the service vessel, when vapor balancing.

46.7.4.5 Records of any corrective action taken, as a result of a malfunction, that was inconsistent with the startup, shutdown, and malfunction plan, when vapor balancing.

46.7.4.6 Records or logs of inspections conducted to prevent inadvertent uncontrolled VOC emissions in accordance with 46.3.2 of this regulation, when vapor balancing.

46.7.4.7 Records or logs of leak test inspections conducted in accordance with

46.3.4 of this regulation, when vapor balancing.

46.7.4.8 Maintenance logs and records of any repairs made in accordance with

46.3.4 of this regulation.

46.7.4.9 Records identifying whether vapor balancing was or was not conducted.

46.7.4.10 If vapor balancing was not conducted, records identifying the reason that

vapor balancing was not attempted.

46.7.4.11 If vapor balancing was conducted and there was an uncontrolled volume of crude oil transferred during the lightering operation, records identifying the reasons the lightering operation was not fully controlled.

46.8 Emergency lightering operation exemption.

The owner or operator of a lightering service shall be exempted from the requirements of ~~[46.1 through 46.9 Section 46.0]~~ of this regulation while carrying out emergency lightering operations, except for the requirements of 46.8.1 and 46.8.2 of this regulation.

46.8.1 The owner or operator of a lightering service that carried out emergency lightering operations shall submit a written notification to the Department within 24 hours of the completion of the emergency lightering operations. The notification shall include, at minimum, the following information.

46.8.1.1 A brief description of the emergency, which may be limited to the following:

46.8.1.1.1 The name, organization, and telephone number of the individual requesting the emergency lightering operation.

46.8.1.1.2 The name and location of ship to be lightered, and

46.8.1.1.3 The circumstances of concern.

46.8.1.2 The name, organization, and telephone number of the individual submitting the written notification.

46.8.1.3 The written notification may be submitted to the Department by fax or electronic mail.

46.8.2 The owner or operator of a lightering service that carried out emergency lightering operations shall submit a written report to the Department within 30 days following the completion of the emergency lightering operations. The report shall include, at minimum, the following information.

46.8.2.1 A brief description of the emergency, which may be limited to the following:

46.8.2.1.1 The name, organization, and telephone number of the individual requesting the emergency lightering operation.

46.8.2.1.2 The name and location of [the] ship to be lightered, and

46.8.2.1.3 The circumstances of concern.

46.8.2.2 The names or identifications of the service vessels involved in the emergency lightering operations.

46.8.2.3 The dates and times that the emergency lightering operations started and ended.

46.8.2.4 The total volume of crude oil transferred during the emergency lightering operations.

46.8.2.5 A certification by a responsible official as to the truth, accuracy, and completeness of the written report.

46.8.2.6 The name and signature of the responsible official certifying the written report.

46.9 Reporting requirements.

46.9.1 The owner or operator of a lightering service subject to ~~[46.1 through 46.9 Section 46.0]~~ of this regulation shall submit to the Department an initial compliance certification not later than 90 days after the effective date of ~~[46.1 through 46.9 Section 46.0]~~ of this regulation or upon [the] initial startup of [a] vapor balancing system for each service vessel, whichever is later. The initial compliance notification shall provide, at a minimum, the following information.

46.9.1.1 The name, address, and telephone number of the owner or operator of the service vessel.

46.9.1.2 The name or identification of the service vessel.

46.9.1.3 A copy of the service vessel's vapor control system Approval Letter issued by or on behalf of the United States Coast Guard in accordance with 46 CFR 39.10-13 and 46 CFR 31.01-03 or United States Coast Guard approved equivalent.

46.9.1.4A copy of the service vessel's initial test certification demonstrating vapor tightness using the method in either paragraph (c)(1) or (c)(2) of 40 CFR 63.565.

46.9.2 Reports of excess emissions.

The owner or operator of a lightering service subject to ~~[46.1 through 46.9 Section 46.0]~~ of this regulation shall, for each occurrence of an excess emission, submit a report to the Department within 30 calendar days of becoming aware of such occurrence. Excess emissions can include[s], but are not limited to, failing to operate the vapor balancing system when practicable, inadvertently or knowingly venting VOCs from the vapor balancing system to the atmosphere during controlled lightering operations, conducting uncontrolled lightering operations on an Ozone Action Day during prohibited times, exceeding the maximum allowable uncontrolled lightering volume percentages in Table 46-1 of this regulation, etc. The report shall contain the following information, in addition to complying with any other reporting requirements required by the Department.

46.9.2.1 The name of the owner or operator of the lightering service.

46.9.2.2 The name or identification of the service vessel.

46.9.2.3 The date and time of first observation of the excess emission.

46.9.2.4 The cause and duration of the excess emission.

46.9.2.5 The corrective actions taken or the schedule to correct the conditions that caused the excess emission.

46.9.2.6 The estimated quantity of excess emission (pounds per lightering operation) and the operating data and calculations used in determining the magnitude of the excess emission.

46.9.3 The owner or operator of an existing lightering service subject to ~~[46.1 through 46.9 Section 46.0]~~ of this regulation shall submit its baseline volume to the Department before May 1, 2007.

46.9.4 Beginning on February 1, 2008 and annually thereafter, the owner or operator of an existing lightering service subject to ~~[46.1 through 46.9 Section 46.0]~~ of this regulation shall submit a report to the Department identifying the total volume of crude oil transferred for both controlled and uncontrolled lightering operations for each month of the previous calendar year.

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 6010 (7 Del. C. §6010)
7 DE Admin. Code 3511

Secretary's Order No. 2007-F-0015

A public hearing was held on Thursday, March 29, 2007, at 6:30 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Tidal Finfish Regulations for Summer Flounder for 2007. The Summer Flounder Fishery Management Plan details the annual process that the Summer Flounder Fishery Management Board, the Mid-Atlantic Fishery Management Council and the National Marine Fisheries Service are to use for conservation equivalency in the recreational summer flounder fishery. These agencies agreed at their joint meeting on December 12, 2006 that the states would implement conservation equivalent measures rather than a coastwide management program for summer flounder in 2007. The total allowable harvest quota has been reduced for 2007 in order to comply with the rebuilding schedule as mandated in the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006. As such, all coastal states will be required to reduce the number of summer flounder harvested by recreational anglers in 2007.

Delaware's harvest cap will be 76,608 fish in 2007, which represents a thirty-four percent reduction from the 116,000 fish target in 2006 (due to a slower than projected rebuilding in the stock). As such, a number of management options were considered by the Department, designed to achieve this reduction of Delaware's recreational harvest of summer flounder for 2007. These options included, but were not limited to, a minimum size limit that ranged from 18 to 17.5 inches in conjunction with creel limits that ranged from 1 to 4 fish per angle.

Additional options included a partial harvest season closure, designed to restrain the harvest in 2007 at or below the state's harvest limit.

Numerous members of the public attended this hearing on March 29, 2007, to voice their comments with regard to the Department's proposed changes to these regulations. Comments were received from the public, both at the actual hearing and during the post-hearing phase as well. Proper notice of the hearing was provided as required by law.

Subsequent to the public hearing of March 29, 2007, the Hearing Officer prepared her Report dated April 13, 2007, and that Report, including its attachments, is expressly incorporated herein to this Order.

Based on the record, including the public hearing record reviewed in the April 13, 2007 Hearing Officer's Report, the proposed regulation is adequately supported and is not arbitrary or capricious. The Report reviews and summarizes the record developed throughout this regulatory process, and recommends approval of the proposed regulation as a final regulation without modification. I agree with the Report and adopt it, along with its attachments, as part of this Order along with its reasons.

The proposed regulation is based upon sound scientific evidence, is consistent with State and Federal law, and is a reasoned regulation that will result in furthering the purposes of 7 **Del.C.** Ch. 60. In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary, adopts the proposed regulation as a final regulation, as set forth in the Attachment "A" to the Hearing Officer's Report;

2. The regulation amendments that are approved by this Order were developed consistent with the applicable law and regulatory standards and are adequately supported by technical analysis;

3. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;

4. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;

5. The Department held a public hearing in a manner required by the law and regulations;

6. The Department considered all timely and relevant public comments in making its determination;

7. Promulgation of these proposed amendments would allow Delaware to fulfill its requirement to cap the summer flounder recreational harvest at 76,608 fish for 2007, amounting to an approximate reduction of 29% from last year;

8. Based upon overwhelming public opinion concerning the same, Delaware will implement proposed Option #10 for the management of the summer flounder harvest, to wit: a limit of 4 flounder at 18 inches, with no closure for the 2007 season;

9. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

10. The Department's proposed regulation is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that

11. 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.

John A. Hughes, Secretary

3511 Summer Flounder Size Limits; Possession Limits (Formerly Tidal Finfish Reg. 4)

(Penalty Section 7 **Del.C.** §936(b)(2))

1.0 It shall be unlawful for any recreational fisherman to have in possession more than four (4) summer flounder at or between the place where said summer flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

2.0 It shall be unlawful for any person, other than qualified persons as set forth in section 4.0 of this

regulation, to possess any summer flounder that measure less than [~~seventeen (17)~~ **eighteen (18)**] inches between the tip of the snout and the furthest tip of the tail.

7 DE Reg. 1575 (5/1/04)

3.0 It shall be unlawful for any person while on board a vessel, to have in possession any part of a summer flounder that measures less than [~~seventeen (17)~~ **eighteen (18)**] inches between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed.

***Please Note: As the rest of the sections were not amended since the proposal in the March 2007 issue, they are not being published here. Please refer to the March 2007 Register, page 1405 (10 DE Reg. 1405) or contact the Division of Fish and Wildlife for more information.**

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 3581

Secretary's Order No. 2007-F-0014

A public hearing was held on Wednesday, February 21, 2007, at 6:30 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Tidal Finfish Regulation 3580 concerning commercial fishing for spiny dogfish. The proposed action is to re-open the commercial fishery in Delaware for the spiny dogfish (*Squalus acanthias*) in accordance with the latest revision of the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Spiny Dogfish, and in accordance with federal law, whichever is more restrictive. When federal seasons and catch limits are more restrictive than state limits or Atlantic States Marine Fisheries Commission limits, then federal limits shall apply under the proposed regulation.

For federal purposes, the fishery for spiny dogfish is split into two quota periods: May 1 through October 31, and November 1 through April 30, with an annual coastal quota of four (4) million pounds. The daily catch (possession limit) of spiny dogfish in federal waters is six hundred (600) pounds per day for participants in the spiny dogfish fishery. Under this proposal, when the federal quota is reached for any quota period, the federal fishery closes. It is proposed that the State of Delaware fishery will automatically close as well when the federal quota is reached, and the National Marine Fisheries Service declares the federal spiny dogfish fishery closed.

Numerous members of the public attended this hearing on February 21, 2007, voicing their concerns with regard to the Department's proposed changes to these regulations. Comments were received from the public, both at the actual hearing and during the post-hearing phase as well. Proper notice of the hearing was provided as required by law.

Subsequent to the public hearing of February 21, 2007, the Hearing Officer prepared her Report dated April 13, 2007, and that Report, including its attachments, is expressly incorporated herein to this Order.

Based on the record, including the public hearing record reviewed in the April 13, 2007 Hearing Officer's Report, the proposed regulation is adequately supported and is not arbitrary or capricious. The Report reviews and summarizes the record developed throughout this regulatory process, and recommends approval of the proposed regulation as a final regulation without modification. I agree with the Report and adopt it, along with its attachments, as part of this Order along with its reasons.

The proposed regulation is based upon sound scientific evidence, is consistent with State and Federal law, and is a reasoned regulation that will result in furthering the purposes of 7 **Del.C.** Ch. 60. In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary, adopts the proposed regulation as a final regulation, as set forth in the Attachment "A" to the Hearing Officer's Report;
2. The regulation amendments that are approved by this Order were developed consistent with the applicable law and regulatory standards and are adequately supported by technical analysis;

3. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
4. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
5. The Department held a public hearing in a manner required by the law and regulations;
6. The Department considered all timely and relevant public comments in making its determination;
7. Promulgation of these proposed amendments would reopen the spiny dogfish commercial fishery in accordance with existing federal requirements;
8. It has been determined that over-fishing of this stock is no longer taking place, and that there is significant biomass for harvest;
9. Other states have reopened their commercial fisheries for spiny dogfish recently;
10. With the promulgation of these proposed changes, no vessel may land in Delaware more than 600 pounds per day of spiny dogfish during either of the two federal quota periods (May 1 through October 31, and November 1 through April 30). Furthermore, if federal limits are more restrictive than Delaware limits, then federal limits apply in Delaware waters for closure periods on the daily take and landing of spiny dogfish per vessel;
11. When federal waters are closed to the taking of spiny dogfish, Delaware's fishery shall also be closed;
12. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
13. The Department's proposed regulation, as published in the February 1, 2007 *Delaware Register of Regulations*, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that
14. 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.

John A. Hughes, Secretary

3581 Spiny Dogfish; Closure of Fishery (Formerly Tidal Finfish Reg. 27)
(Penalty Section 7 Del.C. §936(b)(2))

* Please note that no changes were made to the regulation as originally proposed and published in the February 2007 issue of the *Register* at page 1285 (10 DE Reg. 1285). Therefore, the final regulation is not being republished. Please refer to the February 2007 issue of the *Register* or contact the Division of Fish and Wildlife for more information.

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION

1900 Board of Nursing

Statutory Authority: 24 Delaware Code, Section 1906(1) (24 Del.C. §1906(1))
24 DE Admin. Code 1900

ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, public hearings were held on February 21, 2007 and March 14, 2007 at scheduled meeting of the Delaware Board of Nursing (the "Board") to receive comments regarding proposed amendments to Regulation 15.0. Regulation 15.0 identifies crimes substantially related to the practice of nursing. The Board re-evaluated the list of offenses in Regulation 15.0 as the

result of statutory changes to 24 **Del.C.** §§1910 and 1914 which require more than 5 years to have elapsed since the applicant for licensure has discharged all imposed sentences with regard to the offenses in Regulation 15.0. The Board is proposing to delete a number of the offenses and/or to limit the consideration of certain offenses to felony convictions. The proposed regulation was published in the *Register of Regulations*, Vol. 10, Issue 7, January 1, 2007.

Summary of the Evidence and Information Submitted

No written comments were received. One comment was submitted by a Cathy Janvier a member of the public at the February 21, 2007 meeting; however, the comment was addressed to problems involving the implementation of criminal background checks beginning on July 1, 2007 and not the substance of the proposed amendments. No other public comments were received.

Findings of Fact With Respect to the Evidence and Information Submitted

There was no public comment received at the public hearings concerning the proposed amendments to the regulation. The Board finds that the amendments to the regulation are necessary in view of the limitation on the Board's statutory ability to waive criminal convictions in evaluating those convictions for purposes of licensure.

The Board previously had the ability to grant a waiver if it determined that an individual had made sufficient restitution. That discretion allowed the Board to take into consideration things such as the circumstances surrounding the commission of the crime, time elapsed since the conviction, the extent to which restitution has been made, the age of the individual at the time of the conviction and any other circumstances bearing on the sufficiency of the restitution for the offense. The waiver provision that is now applicable under to 24 **Del.C.** §§1910 and 1914 requires more than 5 years to have elapsed since the applicant for licensure has discharged all imposed sentences with regard to the offenses in Regulation 15.0.

The Board finds that some of the crimes that were originally determined to be substantially related were included due to the broad discretion previously afforded the Board in evaluating the criminal convictions of applicants for licensure. The Board finds that it is appropriate to remove certain crimes from the list and limit others to felony offenses only, as indicated in the proposed amendments, in view of the recently enacted five (5) year waiver provision with regard to crimes substantially related to the practice of nursing.

The Law

The Board's rulemaking authority is provided by 24 **Del.C.** §1906 (1).

Decision and Effective Date

The Board hereby adopts the changes to Regulation 15.0 be effective 10 days following publication of this order in the *Register of Regulations*.

Text and Citation

The text of the revised regulation remains as published in *Register of Regulations*, Vol. 10, Issue 7, January 1, 2007, without any changes, attached hereto.

IT IS SO ORDERED this _____ day of _____, 2007.

DELAWARE BOARD OF NURSING

Lucille Gambardella, R.N., Ph.D., APN Member, President
Pamela Zickafoose, R.N., Ed.D, RN Member, Vice President
Wanda Cohee, LPN, LPN Member
Robert Draine, Public Member
Joyce Edwards, Public Member
Martha Hopkins, Public Member

Margaret Ingram, LPN, LPN Member
David Mangler, RN, MS, RN Member
Cheryl Richter, RN, RN Member
Dr. James Vanderwall, Public Member
Rebecca Walker, RN, RN Member
Irene Washabau, LPN, LPN Member

* Please note that no changes were made to the regulation as originally proposed and published in the January 2007 issue of the *Register* at page 1127 (10 DE Reg. 1127). Therefore, the final regulation is not being republished. Please refer to the January 2007 issue of the *Register* or contact the Board of Nursing for more information.

A complete set of the rules and regulations for the Board of Nursing are available at:
<http://dpr.delaware.gov/boards/nursing/index.shtml>

DIVISION OF PROFESSIONAL REGULATION

2100 Board of Examiners in Optometry

Statutory Authority: 24 Del.C. §2104(a)(1); 24 DE Admin. Code 2100

ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on April 19, 2007 at a scheduled meeting of the Delaware Board of Examiners in Optometry to receive comments regarding the proposed changes to its Regulation 10.0 of its rules and regulations to allow for online renewal of licenses and online attestation of completion of continuing education ("CE") and provide for a post-renewal audit. In addition, the proposed changes revise the continuing education deadline to correspond with the license renewal deadline, so that the required CE's must be completed before June 30 of any odd numbered year, the same date that licenses must be renewed. These proposed changes were published in the *Register of Regulations*, Vol. 10, Issue 9, March 1, 2007.

The Board's authority to promulgate rules and regulations implementing or clarifying specific sections of Chapter 26 is set forth in 24 Del.C. §2104(1).

Summary of the Evidence and Information Submitted

No written comments were received. No public comments were received at the hearing.

Findings of Fact With Respect to the Evidence and Information Submitted

The Board carefully reviewed and considered the proposed changes to its rules and regulations. The Board has the authority to determine the means and timing of its continuing education audits and the terms during which continuing education must be earned. Under the new rules, the Board will continue to conduct random audits of licensees to ensure they are in compliance, and it will address continuing education and other deficiencies as appropriate under the circumstances of each individual case. The proposed changes allow licensees to renew their licenses online at any time of day. Although licensees are no longer required to submit continuing education documentation to the Division prior to license renewal, licensees must continue to keep the required records of their continuing education credits. This information will be necessary for verification of a licensee's continuing education attestation if he or she is selected for audit.

In summary, the Board finds that the public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to Board Regulation 10.0. The Board received no written or oral comments. Pursuant to 24 Del.C. §2104(1) the Board has statutory authority to promulgate regulations implementing and clarifying specific statutory sections of its statute. The amendments to these Rules carry out the provisions of 24 Del.C. §§2112 and 2121 with regard to license renewal

and continuing education requirements.

Decision and Effective Date

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

Text and Citation

The text of the rules and regulations remain as published in *Register of Regulations*, Vol. 10, Issue 9, March 1, 2007. The revised rules and regulations are attached hereto.

SO ORDERED this Nineteenth day of April, 2007.

DELAWARE BOARD OF EXAMINERS IN OPTOMETRY

Sonja P. Biddle, O.D., President

Nicole Anderson-Easton, Public Member

Ruth Banta, Public Member

Charles Simon, O.D.

* Please note that no changes were made to the regulation as originally proposed and published in the March 2007 issue of the *Register* at page 1408 (10 DE Reg. 1408). Therefore, the final regulation is not being republished. Please refer to the March 2007 issue of the *Register* or contact the Board of Optometry for more information.

A complete set of the rules and regulations for the Board of Optometry are available at:
<http://dpr.delaware.gov/boards/optometry/index.shtml>

DIVISION OF PROFESSIONAL REGULATION

3500 Board of Examiners of Psychologists

Statutory Authority: 24 Delaware Code, Section 3506(a)(1) (24 **Del.C.** §3506(a)(1))
24 **DE. Admin. Code** 3500

ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on April 2, 2007 at a scheduled meeting of the Delaware Board of Examiners of Psychologists to receive comments regarding the proposed changes to its rules and regulations to allow for online renewal of licenses and online attestation of completion of continuing education ("CE") and provide for a post-renewal audit. In addition, the proposed changes specify the number of continuing education hours required in the first renewal period for new licensees, to clarify the information to be submitted to the Board when applying for licensure, and to implement the statutory changes to the reciprocity provisions. Finally, the proposed changes revise the continuing education deadline to correspond with the license renewal deadline to correspond, so that the required CE's must be completed before July 31 of any odd numbered year, the same date that licenses are renewed. These proposed changes to the Board's rules and regulations affected Regulations 5.0, 10.0 and 13.0, and were published in the *Register of Regulations*, Vol. 10, Issue 8, February 1, 2007. They were republished in the *Register of Regulations*, Volume 10, Issue 9, March 1, 2007.

The Board's authority to promulgate rules and regulations implementing or clarifying specific sections of Chapter 26 is set forth in 24 **Del.C.** §3506(a)(1).

Summary of the Evidence and Information Submitted

No written comments were received. No public comments were received at the hearing.

Findings of Fact with Respect to the Evidence and Information Submitted

The Board carefully reviewed and considered the proposed changes to its rules and regulations. The Board has the authority to determine the means and timing of its continuing education audits and the terms during which continuing education must be earned. Under the new rules, the Board will continue to conduct random audits of licensees to ensure they are in compliance, and it will address continuing education and other deficiencies as appropriate under the circumstances of each individual case. The proposed changes allow licensees to renew their licenses online at any time of day. Although licensees are no longer required to submit continuing education documentation to the Division prior to license renewal, licensees must continue to keep the required records of their continuing education credits. This information will be necessary for verification of a licensee's continuing education attestation if he or she is selected for audit.

In summary, the Board finds that the public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to Board Regulations 5.0, 10.0 and 13.0. The Board received no written comments and one oral comment on the proposed amendments. Pursuant to 24 **Del.C.** §3506(a)(1) the Board has statutory authority to promulgate regulations clarifying specific statutory sections of its statute. The amendments to these Rules clarify the provisions of 24 **Del.C.** §§3508-9 and 3511 with regard to renewal of licensure and licensure qualifications and reciprocity. The amendments also clarify the requirements of 24 **Del.C.** §3513 with respect to license renewal and late renewal.

Decision and Effective Date

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

Text and Citation

The text of the rules and regulations remain as published in *Register of Regulations*, Vol. 10, Issue 8, March 1, 2007. The revised rules and regulations are attached hereto.

SO ORDERED this Second day of April, 2007.

DELAWARE BOARD OF EXAMINERS OF PSYCHOLOGISTS

Dr. Merris Hollingsworth, President
Dr. Gary Johnson, Vice-President
Dr. Gordon DiRenzo, Secretary
Dr. Martha Boston, Professional Member
Hollis Anglin, Public Member
Frank Szczuka, Public Member
Joan McDonough, Public Member
Dr. Joseph B. Keyes, Professional member

* Please note that no changes were made to the regulation as originally proposed and published in the February 2007 issue of the *Register* at page 1295 (810 DE Reg. 1295). Therefore, the final regulation is not being republished. Please refer to the February 2007 issue of the *Register* or contact the Board of Examiners of Psychologists for more information.

A complete set of the rules and regulations for the Board of Examiners of Psychologists are available at:

[http://regulations.delaware.gov/AdminCode/title24/
3500%20Board%20of%20Examiners%20of%20Psychologists.shtml#TopOfPage](http://regulations.delaware.gov/AdminCode/title24/3500%20Board%20of%20Examiners%20of%20Psychologists.shtml#TopOfPage)

FINAL REGULATIONS

DEPARTMENT OF TRANSPORTATION DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 17 Delaware Code Section 507; Chapters 1 and 5
(17 Del.C. §507, Chps. 1 and 5)

ORDER

Utilities Manual Regulations

1. Background

The Department of Transportation proposed a revision of its Utilities Manual, and pursuant to notice that appeared in the January issue of the *Delaware Register of Regulations* at page 1139 and the March issue of the *Delaware Register of Regulations* at page 1415. Public comment periods were held January 1, 2007 through January 31, 2007 and again March 1, 2007 through March 31, 2007. The Delaware Department of Transportation through its Transportation Solutions - Utilities Section developed these revisions to the current regulations for the installation, adjustment, and maintenance of utility lines and appurtenances within the rights-of-way of Delaware's highways. These regulations define the requirements that apply to utility accommodation along or within the rights-of-way of State-controlled highways, and State-maintained streets and roads within suburban developments or within the incorporated limits of a municipality. The proposed revision updates the current DelDOT Utilities Design Manual, previously made effective in October 1995.

Public Comments:

There were two public comments received with respect to the allowance of polyethylene-based material for uncased natural gas pipelines crossing highways. The utilities request the option to use polyethylene-based material instead of steel for uncased pipeline crossings under highways without application for exception.

Agency Response:

DelDOT is currently evaluating the use of these types of casings, however, it is not prepared to approve them without an application for exception at this time. Wording is added to the regulations stating that High Density Polyethylene (HDPE) is under evaluation as an uncased carrier for natural gas.

2. Decision to Amend the Regulation

The Secretary hereby determines that it is appropriate to adopt the revised Utility Manual in the form previously made available for public comment, without further changes at this time, except as to the piping evaluation issue noted above.

3. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 17 Del.C. Chapters 1 and 5 on April 20th, 2007. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 20th day of April 2007.

Department of Transportation

Carolann Wicks, Secretary of Transportation

Division of Transportation Solutions Utilities Manual

*Please Note: Due to the size of the final regulation, it is not being published here. A PDF version is available at the website listed below:

<http://regulations.delaware.gov/register/may2007/final/dotutilities.pdf>
(Adobe Acrobat Reader required)

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

EXECUTIVE ORDER
NUMBER NINETY-SEVEN

RE: Creating The Enhanced Public Access Technology Task Force

WHEREAS, Delaware state and local governments have made tremendous strides in recent years providing access to citizens through technology by enhancing e-Government services and increasing the amount of public information available through electronic formats; and

WHEREAS, government agencies have utilized technology to enhance public access to employment opportunities, programs in the areas of education, health, employment training and environmental protection, and government operations in the executive, judicial and legislative branches; and

WHEREAS, citizens continue to strive to more fully participate in government and a more creative and extensive use of technology can assist public officials in conveying more timely and accurate information to Delawareans; and

WHEREAS, an informed and engaged citizenry is vital to the effectiveness of state and local government and essential for continuous improvement in the quality of life of Delawareans; and

WHEREAS, additional access to the multitude of educational and cultural programs through higher education institutions as well as the Delaware secondary school system will enrich our communities and better prepare our children for future educational challenges; and

WHEREAS, the State of Delaware benefits from stronger, healthier communities and Delaware's vast array of civic and community organizations provide a variety of programs and services that citizens can participate in through electronic media and technology; and

WHEREAS, the use of technology may enhance access to a spectrum of public information resources and media services, and it is in the best interest of both citizens and government to explore all opportunities through public/private partnerships and public/public partnerships to utilize technology to provide additional access to education and community programs as well as the policy discussions and decisions at the state and local government levels.

NOW, THEREFORE, I, RUTH ANN MINNER, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order that:

1. The Enhanced Public Access Technology Task Force (the "Task Force") is hereby created.
2. The members of the Task Force shall consist of the following:
 - a. The Director of the Office of Management and Budget;
 - b. The Chief Information Officer of the State of Delaware;
 - c. The Director of the Delaware Economic Development Office;
 - d. A representative of the Office of the Governor;
 - e. A representative of each of the public institutions of higher education;
 - f. A representative of the Delaware League of Local Governments;
 - g. Two members of the Delaware House of Representatives appointed by the Governor, one to be appointed from each Caucus;
 - h. Two members of the Delaware Senate appointed by the Governor, one to be appointed from each Caucus; and
 - i. Three members who shall be appointed by the Governor.All members shall serve at the pleasure of the Governor.

GOVERNOR'S EXECUTIVE ORDERS

3. The Chairperson shall be appointed from among the members of the Task Force and shall serve at the pleasure of the Governor.

4. The Task Force shall develop recommendations for providing Delaware citizens with enhanced access to education and community programs, state and local government, and timely and accurate information about public policy issues and decisions through the use of technology, particularly electronic media, such as public access television and internet broadcast services. The Task Force shall explore all options available, including the development of partnerships with public agencies as well as partnerships with new and existing private entities to provide such access and services.

5. The Task Force shall submit its recommendations to the Governor, the Speaker of the House and the President Pro Tempore of the Senate by September 1, 2007.

Approved: March 27, 2007

Ruth Ann Minner, Governor

ATTEST:

Harriet Smith Windsor, Secretary of State

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL DIVISION OF AIR AND WASTE MANAGEMENT PUBLIC NOTICE

Delaware State Implementation Plan for Attainment of the 8-Hour Ozone National Ambient Air Quality Standard, Revision for Establishment of 2008 and 2009 Mobile Source Emission Budgets

Secretary's Order No. 2007-A-0013

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") under 29 **Del.C.** §§8001 *et seq.*, the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced matter.

The Department is delegated certain responsibilities by the United States Environmental Protection Agency ("EPA") under its authority vested in the federal Clean Air Act, as amended, 42 *U.S.C.* §§7401 *et seq.* ("CAA"). EPA delegated to the Department to submit Delaware's State Implementation Plan ("SIP"), which the Department prepares, and periodically revises in order to determine Delaware's compliance with the CAA and its regulations. EPA reviews and approves the final Delaware SIP and its revisions.

EPA requires that a public hearing be held before any approval of a SIP revision. On February 22, 2007, the Department held a duly noticed public hearing on the proposed SIP revision, and Phil Wheeler of the Department's Division of Air and Waste Management, Air Quality Management Section developed the record for the proposed revision of the SIP. The proposed SIP revision assigns on-road mobile emissions budgets for each of Delaware's counties as part of the EPA designated Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE moderate non-attainment area for the 8 hour ozone National Ambient Air Quality Standard ("NAAQS") as set forth in Section 176 of the CAA and EPA's regulations at 40 C.F.R. Sections 51 and 93. The Department used the EPA mobile emissions computer models, "Mobile 6.2" and "Peninsula Demand Model" to calculate future vehicle miles traveled in 2008 and 2009. The models also calculate the type of highways and roads traveled based upon the eleven different federal highway classifications. The Department calculated the projection emissions of volatile organic compounds ("VOCs") and nitrogen oxide ("NOx") based upon EPA vehicle type. The Department relied upon a travel demand model used by the Delaware Department of Transportation that included numerous data inputs, including vehicular travel patterns, vehicle ownership, and the locations of the population and employers. The result was projected VOCs and NOx emissions from the mobile sources for each county for 2008 and 2009.

There were no public comments and the Department's presiding hearing officer, Robert P. Haynes, recommended approval of the proposed revised SIP, as set forth in the February 1, 2007, *Delaware Register of Regulations*. I agree that the proposed revision should be approved as the Department's revision of the SIP.

In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary hereby approves the SIP revision, as published as a proposed revision in the February 1, 2007 *Delaware Register of Regulations*.
2. The Department shall have this Order published in the *Delaware Register of Regulations* and in newspapers in the same manner as the notice of the proposed revision.

John A. Hughes, Secretary

Delaware State Implementation Plan for Attainment of the 8-Hour Ozone National Ambient Air Quality Standard, Revision for Establishment of 2008 and 2009 Mobile Source Emission Budgets

This document assigns the on-road mobile source emissions budgets for each county in Delaware as part of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE moderate non-attainment area for the 8 hour ozone National Ambient Air Quality Standard (NAAQ). S Section 176 of the Clean Air Act (42 USC 7506) and Title 40 Parts 51 and 93 of the Code of Federal Regulations are the basis for the authority to establish mobile emission budgets in the Delaware State Implementation Plan (SIP) to attain the ozone standard. The on-road mobile source emissions budgets will be made a part of the State Implementation Plan to attain the 8 hour ozone standard by the year 2009 and to reach further reasonable progress towards attaining the standard by 2008. Therefore, the tables

GENERAL NOTICES

below will assign budgets for each year and for each county. The mobile source emissions are projected for these years using the USEPA mobile emission model, "Mobile 6.2" for calculating emission factors and the "Peninsula Travel Demand Model" for calculating future vehicle miles traveled (VMT).

Mobile 6.2 calculates emission factors for each USEPA vehicle type traveling on designated federal highway classifications road types in Delaware. Depending on the county, Delaware has up to 11 different federal highway classifications for its roads. There are two pollutants that are calculated using the mobile computer model. Volatile organic compounds (VOC) and nitrogen oxide (NO_x) emission factors are generated from the Mobile 6.2 computer model. These pollutants are modeled because they are the precursors to form ground level ozone. A sample emission factor output for New Castle County for nitrogen oxides is listed below, for the projection year of 2009.

New Castle County
Projected 2009 Mobile Emission Factors Nitrogen Oxides (NO_x) Grams/Mile
USEPA Vehicle Type*

Federal Highway Class.	LDGV	LDGT 1-2	LDGT 3-4	HDGV	LDDV	LDDT	HDDV	MC
Other Principal Arterial-Rural	0.51	0.37	0.42	0.38	0.19	0.23	0.22	3.35
Minor Arterial-Rural	0.54	0.39	0.44	0.42	0.20	0.25	0.25	2.75
Major Collector-Rural	0.55	0.39	0.45	0.44	0.21	0.26	0.27	2.79
Minor Collector-Rural	0.57	0.41	0.47	0.48	0.22	0.28	0.30	2.90
Local-Rural	0.83	0.60	0.70	1.08	0.37	0.51	0.66	4.21
Interstate-Urban	0.52	0.38	0.43	0.39	0.19	0.23	0.23	3.19
Other Freeway & Expressways-Urban	0.51	0.38	0.42	0.39	0.19	0.23	0.23	3.41
Other Principal Arterial-Urban	0.55	0.39	0.45	0.44	0.21	0.26	0.27	2.79
Minor	0.57	0.41	0.47	0.48	0.22	0.28	0.31	2.90
Collector-Urban	0.57	0.41	0.47	0.49	0.22	0.28	0.31	2.91
Local	0.82	0.59	0.69	1.08	0.37	0.51	0.66	4.21

*Description of vehicle types is at the end of this document

A travel demand model for the State is maintained by the Delaware Department of Transportation. The model applies a variety of data regarding roadway network conditions, vehicular travel patterns, automobile ownership, and the location of population and employment sites. The model follows the "traditional four-step process" of trip generation, distribution, mode split, and assignment that is commonly used throughout the transportation planning industry. A similar table as above is generated for VMT according to USEPA vehicle type and federal highway classifications. The two matrices are incorporated to calculate tons per-day emissions for each pollutant.

There are numerous input criteria that go into the mobile model that affect the calculations. The major inputs are the vehicle emission control programs and clean fuel standards that are currently used or will be used for controlling and reducing vehicle emissions. They include: National Low Emission Vehicle Program and Tier 2 Motor Vehicle Controls (light duty vehicles), reformulated gas program, low sulfur gasoline program, ultra-low sulfur diesel fuel program, heavy duty engine control program beginning in 2007 reducing particulate matter and in 2010 reducing nitrogen oxides to their lowest levels. The State also has since 1983 inspected vehicles for tailpipe emissions. Currently as part of the vehicle emission inspection a vehicle on-board diagnostic system is checked for any diagnostic trouble codes which if present requires the vehicle to be repaired.

The following tables assign the on-road mobile emission budgets for milestone years of 2008 and 2009 for each county in Delaware.

2008 On-road Vehicle Mobile Emission Budgets for Delaware
(Emission in tons per day, VMT in miles per day)

Pollutant	Kent	New Castle	Sussex	DE Total
VOC	4.14	10.61	7.09	21.84
NOX	9.68	21.35	12.86	43.89
VMT	5,520,573	16,917,040	8,450,950	30,888,563

2009 On-road Vehicle Mobile Emission Budgets for Delaware
(Emission in tons per day, VMT in miles per day)

Pollutant	Kent	New Castle	Sussex	DE Total
VOC	3.95	9.89	7.05	20.89
NOX	9.04	19.23	11.93	40.2
VMT	5,703,033	17,122,179	8,541,828	31,367,040

Supporting documents, including Mobile 6.2 input, output and data files as well as spreadsheet calculation files, can be obtained by request in writing to Philip Wheeler, Air Quality Management Section, 156 South State Street, Dover, Delaware 19904 or e-mail Philip.Wheeler@state.de.us.

Description of Vehicle Types

LDGV	Light-Duty Gasoline Vehicles (Passenger Cars)
LDGT 1-2	Light-Duty Gasoline Trucks 1 (0-6,000 lbs. GVWR, 0-3,750 lbs. LVW) Light-Duty Gasoline Trucks 2 (0-6,000 lbs. GVWR, 3,751-5,750 lbs. LVW)
LDGT 3-4	Light-Duty Gasoline Trucks 3 (6,001-8,500 lbs. GVWR, 0-5,750 lbs. ALVW) Light-Duty Gasoline Trucks 4 (6,001-8,500 lbs. GVWR, 5,751 lbs. and greater ALVW)
HDGV	Heavy-Duty Gasoline Vehicles (8,501-80,000 lbs. GVWR)
LDDV	Light-Duty Diesel Vehicles (Passenger Cars)
LDDT	Light-Duty Diesel Trucks (0-8,500 lbs. GVWR)
HDDV	Heavy-Duty Diesel Vehicles (8,501-80,000 lbs. GVWR)
MC	Motorcycles

GVWR – Gross Vehicle Weight Rating

LVW – Loaded Vehicle Weight

ALVW – Adjusted Loaded Vehicle Weight

DIVISION OF AIR AND WASTE MANAGEMENT
PUBLIC NOTICE

1. Title of the Regulations:

Delaware's 2002 Base Year Ozone State Implementation Plan (SIP) Emissions Inventory for Volatile Organic Compounds (VOC), Nitrogen Oxides (NO_x), and Carbon Monoxide (CO); and SIP For Attainment of the 8-Hour Ozone National Ambient Air Quality Standard (NAAQS), Reasonable Further Progress and Attainment Demonstration.

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

The Clean Air Act Amendments of 1990 (CAA) requires Delaware to submit to the U.S. Environmental Protection Agency (EPA) by June 15, 2007 a SIP revision that contains Delaware's 2002 base year ozone

emissions inventory, and that:

- Demonstrates that Delaware has fulfilled the CAA requirements for Reasonable Further Progress (RFP) and Attainment Demonstration (AD) under the 8-hour ozone NAAQS,
- Demonstrates that with all existing and proposed controls, Delaware will meet VOC and NO_x emission reduction RFP requirements in 2008, and VOC and NO_x emission reduction AD requirements in 2009, and
- Demonstrates that the entire Philadelphia-Wilmington-Atlantic City non-attainment area will attain the 8-hour ozone standard in 2009.

DNREC has developed a 2002 base year ozone emissions inventory that quantifies 2002 VOC, NO_x, and CO emissions levels from all sources in the state (i.e., electric generating units, point sources, non-point sources, and on-and-off-road mobile sources). DNREC has also developed a proposed RFP and AD SIP revision, which build on measures taken over the past 30+ years under the 1-hour ozone NAAQS. The RFP and AD SIP revision detail the post-2002 control measures that DNREC and the EPA have adopted that reduce VOC and NO_x emissions and, based on the 2002 base year inventory and these control measures, has projected the level at which Delaware's VOC and NO_x emissions will be in 2009. The proposed SIP evaluates these 2009 emission levels, along with similar projections done by other states within the region, and uses modeling and other analysis techniques to predict air quality levels in 2009. Based on all of this information DNREC concludes that both Delaware and the entire Philadelphia-Wilmington-Atlantic City ozone non-attainment area will come into attainment with the 8-hour ozone NAAQS by 2009. In addition, the proposed SIP revision identifies the control measures in this proposed SIP will also serve as maintenance measures for maintaining the attainment status of the 1-hour ozone NAAQS, confirms Delaware's 2008 and 2009 mobile source budgets for transportation conformity determinations, and ensures that any future use of Emission Reduction Credits (ERCs) certified under Regulation No. 34, Emission Banking and Trading Program is consistent with, and will not interfere with any calculation or provision of the SIP.

3. Possible Terms of the Agency Action:
None

4. Statutory Basis or Legal Authority to Act:
7 Delaware Code, Chapter 60

5. Other Regulations That May be Affected by the Proposal:
None

6. Notice of Public Comment:

The public comment period for this proposed SIP revision will extend through at least June 1, 2007. Interested parties may submit comments in writing during this time frame to: Frank Gao, Air Quality Management Section, 156 S. State St., Dover, DE 19901, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on May 24, 2007, beginning at 6:00 PM in the DNREC auditorium at the Richardson and Robbins Building, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:
Ron Amirikian (302) 739-9402 April 12, 2007
Email address: ronald.amirikian@state.de.us

***Please Note: Due to the size of the notice it is not being published here. A PDF version is available at the website listed below:**

[http://regulations.delaware.gov/may2007/general notice/SIP.pdf](http://regulations.delaware.gov/may2007/general_notice/SIP.pdf) Delaware 2002 BaseYear
Ozone SIP Emission Inventory

DELAWARE RIVER BASIN COMMISSION NOTICE OF PUBLIC HEARING AND BUSINESS MEETING

The Delaware River Basin Commission will hold a public hearing and business meeting on Thursday, May 10, 2007 beginning at 10:15 a.m. at the Commission's offices, 25 State Police Drive, West Trenton, New Jersey. For more information visit the DRBC web site at www.drbc.net or contact Pamela M. Bush, Esq., Commission Secretary and Assistant General Counsel, at 609-883-9500 extension 203.

DEPARTMENT OF AGRICULTURE HARNESS RACING COMMISSION NOTICE OF PUBLIC HEARING

The Delaware Harness Racing Commission, pursuant to 3 Del.C. §10005, proposes to change its Rules 3, 4 and 6. The Commission will hold a public hearing on the proposed rule changes on June 12, 2007. 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 May 1, 2007.

The proposed changes are for the purpose of updating Rules 3, 4 and 6 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 Racing Commission office.

DEPARTMENT OF EDUCATION

The Department of Education will hold its monthly meeting on Thursday, May 17, 2007 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF MEDICAID AND MEDICAL ASSISTANCE NOTICE OF PUBLIC COMMENT PERIOD Employee Education About False Claims Act

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**), pursuant to 42 CFR §447.205, and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, the proposed provides notice to the public that the Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) has filed a Title XIX Medicaid State Plan Amendment (SPA) with the Centers for Medicare and Medicaid Services (CMS) to comply with the mandated provisions of the Deficit Reduction Act (DRA) of 2005 (Public Law 109-171) pertaining to Employee Education About False Claims Recovery.

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

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

DEPARTMENT OF INSURANCE**NOTICE OF PUBLIC COMMENT PERIOD****1216 Military Sales Practices**

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

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

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

DEPARTMENT OF INSURANCE**NOTICE OF PUBLIC COMMENT PERIOD****1217 Unfair Discrimination in Life Insurance, Annuities and Health Insurance on the Basis of Physical or Mental Impairment**

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

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

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

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF WATER RESOURCES****NOTICE OF PUBLIC HEARINGS****Brief Synopsis of the Subject, Substance, and Issues**

The Department of Natural Resources and Environmental Control (DNREC) plans to conduct two public hearings to gather comments on the proposed Pollution Control Strategy for the Inland Bays including the

proposed **Regulations of the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay, and Little Assawoman Bay Watersheds**. The proposed Strategy includes both voluntary and regulatory actions which need to be implemented in order to achieve the nitrogen and phosphorus load reductions required by the Total Maximum Daily Loads for these watersheds. The proposed regulations would impact multiple sources of nutrients including point sources, stormwater, and onsite wastewater treatment and disposal systems.

Notice of Public Comment

Two public hearings for the proposed **Regulations of the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay Watersheds** will be held. One hearing will be held at 6:00 PM on Wednesday, June 13, at the Millsboro Senior Center, 322 Wilson Highway, Millsboro, Delaware. A second hearing will be held at 6:00 PM on Thursday, June 14, at the Georgetown CHEER Community Center, 20520 Sand Hill Road, Georgetown, Delaware.

The hearing record for these proposed Regulations will remain open until 4:30 PM, Friday, June 29, 2007. Please send written comments to Katherine Bunting-Howarth, Division of Water Resources, Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, DE 19901; facsimile: (302) 739-7864; email: (katherine.howarth@state.de.us). All written comments must be received by 4:30 PM, Friday, June 29, 2007. Electronic submission is preferred.

Copies of the proposed regulations and technical support documents for these watersheds are available by mail from Maryann Pielmeier, DNREC, DWR, Watershed Assessment Section, 820 Silver Lake Blvd., Suite 220, Dover, DE 19904-2464, via telephone by calling (302) 739-9939, via e-mail by contacting maryann.pielmeier@state.de.us, or from the DNREC website at the following URL: <http://www.dnrec.state.de.us/water2000/Sections/Watershed/ws/>

DEPARTMENT OF STATE**DIVISION OF PROFESSIONAL REGULATION****1800 Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners****NOTICE OF PUBLIC HEARING**

The Delaware Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners ("Board"), in accordance with 29 **Del.C.** Chapter 101 and 24 **Del.C.** §1806(a)(2), proposes changes and additions to its regulations. By these changes and additions, the Board establishes the process and requirements for obtaining the Master HVACR license and the Master HVACR Restricted license, as those terms are defined in 24 **Del.C.** §1802(11) and (12), respectively. Various non-substantive structural, grammatical, typographic, and stylistic changes are also included.

PLEASE NOTE: Individuals who qualify for licensure without taking the examination pursuant to 24 **Del.C.** §1821(f) **must** complete and submit the "Grandfathered HVACR License Application" prior to June 30, 2007. The application may be found at <http://www.dpr.delaware.gov/boards/plumbers/hvacrforms.shtml>. After June 30, 2007, licensure may only be obtained according to the process and requirements outlined in 24 **Del.C.** Chapter 18, Subchapter III and these regulations.

A public hearing is scheduled for Tuesday, June 12, 2007 at 9:00 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Board care of Judy Letterman at the above address. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Judy Letterman at the above address or by calling (302) 744-4504.

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

DIVISION OF PROFESSIONAL REGULATION**2500 Board of Pharmacy****NOTICE OF PUBLIC HEARING**

The Delaware Board of Pharmacy, in accordance with 29 **Del.C.** Chapter 101 and 24 **Del.C.** §2509, proposes amendments to its regulation 2.0. Specifically, the amendments to 2.0 **Grounds for Disciplinary Proceeding** codify the Board's position that, in good faith and upon reasonable belief, a Pharmacist may withhold a suspected forged prescription for release to law enforcement without fear of disciplinary action by the Board. Minor grammatical, typographic, and stylistic changes are also included.

The Board previously originally proposed such an amendment, which appeared in the *Delaware Register of Regulations*, Volume 10, Issue 10, at page 1553 on April 1, 2007. In response to written and oral comments received at its April 18, 2007, meeting, the Board decided to modify the previous proposal. The Board's modified proposal is contained herein and supersedes the prior proposal.

A public hearing is scheduled for Wednesday, June 20, 2007 at 10:00 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Board care of Judy Letterman at the above address. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Judy Letterman at the above address or by calling (302) 744-4504.

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

DIVISION OF PROFESSIONAL REGULATION**3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals****NOTICE OF PUBLIC HEARING**

The Delaware Board of Mental Health and Chemical Dependency Professionals, in accordance with 29 **Del.C.** Chapter 101 and 24 **Del.C.** §3006(a)(1), proposes amendments to its Regulations 5.0 and 6.0. By these amendments, the Board establishes the regulations governing the licensure of Marriage and Family Therapists and Associate Marriage and Family Therapists. Minor grammatical, typographic, or stylistic changes are also included.

A public hearing is scheduled for Wednesday, June 27, 2007 at 12:00 noon in the second floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Board care of Timothy E. Oswell at the above address. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Timothy E. Oswell at the above address or by calling (302) 744-4530.

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

OFFICE OF THE STATE BANK COMMISSIONER**Notice Of Proposed Adoption Of A Regulation Of The State Bank Commissioner**

The State Bank Commissioner proposes to adopt new Regulation 2106/2208 ("Guidance on Nontraditional Mortgage Product Risks"). This proposed regulation parallels a Guidance jointly issued by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision and the National Credit Union Administration, and is being adopted to provide regulatory consistency between mortgage brokers and mortgage lenders regulated under Chapters 21 and 22 respectively of Title 5 of the **Delaware Code** that are not affiliated with a bank holding company or an insured financial institution, and the financial institutions that are subject to that federal Guidance. The State Bank Commissioner would adopt the proposed new Regulation 2106/2208 on or after June 6, 2007. Other regulations issued by the State Bank Commissioner are not affected by this proposal. The State Bank

Commissioner is issuing this regulation in accordance with Title 5 of the **Delaware Code**.

A copy of the proposed new regulation is published in the *Delaware Register of Regulations*. A copy is also on file in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE 19901 and is available for inspection during regular office hours. Copies are available upon request.

Interested parties are invited to comment or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner as to whether this proposed new regulation should be adopted, rejected or modified. Written materials submitted will be available for inspection at the above address. Comments must be received at or before the public hearing scheduled for 10:00 a.m. June 6, 2007.

A public hearing on the proposed regulation will be held in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE 19901 on Wednesday June 6, 2007, commencing at 10:00 a.m. This notice is issued pursuant to the requirements of Subchapter III of Chapter 11 and Chapter 101 of Title 29 of the **Delaware Code**.

PUBLIC SERVICE COMMISSION

NOTICE OF RESCHEDULED PUBLIC HEARING AND EXTENSION OF PERIOD OF TIME FOR SUBMITTING WRITTEN COMMENTS

By PSC Order No. 7142 (March 20, 2007), the Public Service Commission proposes to revise its current rules related to the granting, denying, and revoking of Certificates of Public Convenience and Necessity to water utilities under 26 **Del.C.** §203C. In Order No. 7142, the Commission proposed a new set of rules that would, if adopted, supersede the Commission's current rules. The Commission published notice of its proposed rule changes in the *Delaware Register of Regulations* on April 1, 2007. See 10 **DE Reg.** 1563-1580 (Apr. 1, 2007). The Commission also previously published in the *Delaware Register of Regulations*, and *The News Journal*, and *Delaware State News* newspapers notices of its proposed amendments.

In the prior notices, the Commission announced that written comments on the new rules could be filed until May 4, 2007 and that the Commission would hold a public hearing on the new proposed rules on Wednesday, May 18, 2007. **The Commission has rescheduled the public hearing to Tuesday, June 5, 2007. The hearing will still be held at the Commission's Dover office beginning at 10:00 o'clock a.m. The Commission's office is located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, DE 19904. The Commission has also extended the deadline for the submission of written comments until on or before Friday, May 18, 2007.** The manner for submitting written comments remains as set forth in Order No. 7142 and as outlined at 10 DE Reg. 1637-38 (Apr. 1, 2007). Order No. 7142 is available at the Commission's website at <http://depssc.delaware.gov>.

If you have any inquiries concerning this rescheduling of the public hearing and the deadline for filing written comments, contact the Commission at (800) 282-8574 (toll-free in Delaware) or (302) 739-4247 (including Text Telephone). You can also send your inquiries by Internet e-mail to andrea.maucher@state.de.us.

DEPARTMENT OF TRANSPORTATION

DIVISION OF TRANSPORTATION SOLUTIONS

NOTICE OF PUBLIC COMMENT PERIOD

Revisions to Delaware Manual on Uniform Traffic Control Devices

Under Title 17 of the **Delaware Code**, Sections 134 and 141, as well as 21 **Delaware Code** Chapter 41, the Delaware Department of Transportation (DelDOT), is seeking to adopt a Delaware version of the Federal Manual on Uniform Traffic Control Devices (MUTCD). Thus far the Department has drafted changes to Parts 2, 3, 4, 5, and 10 of the Federal MUTCD. The remaining portions of the MUTCD (Parts 1, 6, 7, 8, and 9) will be reviewed and revised at a later date.

The Department will take written comments on the draft changes to the Delaware MUTCD from May 1, 2006 through May 31, 2006.

Copies of the Draft Delaware MUTCD can be obtained by reviewing or downloading a PDF copy at the following web address: <http://www>.

Questions or comments regarding this document should be directed to:

Donald Weber, P.E.

Assistant Director of Transportation Engineering

Division of Transportation Solutions

Delaware Department of Transportation

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