
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 September 15, 2009.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to § 1134 of this title.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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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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
November 1	October 15	4:30 p.m.
December 1	November 16	4:30 p.m.
January 1	December 15	4:30 p.m.
February 1	January 15	4:30 p.m.
March 1	February 15	4:30 p.m.

DIVISION OF RESEARCH STAFF

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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 EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 742

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

742 Compensation of School District and Charter School Personnel Under Federal Projects

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 **DE Admin. Code** 742 Compensation of School District and Charter School Personnel Under Federal Projects to clarify local school districts and charter schools must follow the federal U.S. Office of Management and Budget's processes for compensation of personnel under federal projects.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 2, 2009 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The regulation and amendments address compensation for personnel under federal projects which has an impact on student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses personnel compensation not equity issues.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation does not contribute to students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses compensation for personnel under federal projects not students' legal rights.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision making at the local board and school level.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making and authority and accountability for addressing the subject to be regulated will remain in the same entity.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation will be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.
9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the regulation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There is no additional cost to the State and to the local school boards of compliance with the regulation.

742 Compensation of School District and Charter School Personnel Under Federal Projects

1.0 Use of Federal Funds

- 1.1 A school district or charter school may use federal funds to:
 - 1.1.1 Employ additional administrative, supervisory and teaching personnel, or other necessary personnel beyond those allocated in **Delaware Code**, Title 14, in order to implement a federally supported project.
 - 1.1.2 Extend the employment of a ten or eleven month employee through the eleventh and twelfth month for purposes of conducting a federally supported program. Part time assignments shall be paid a pro rata share.
 - 1.1.3 Employ teachers of the school district or charter school during the school year for additional hours each week to support such federally supported programs.
 - 1.1.4 Employ full time instructional personnel who are qualified for administrative or supervisory positions to carry on administrative or supervisory activities of a federally supported program beyond the regular school day or school week.
 - 1.1.5 Pay a salary equal to the combined state and local salary of other persons in similar assignments at the same rank.
 - 1.1.6 Pay an hourly rate for a part time assignment as an amount pro-rated against the annual salary for the same rank and assignment and in accordance with the qualifications of the individual so assigned and in accordance with previous sections of this statement.

8 DE Reg. 884 (12/1/04)

2.0 A School District or Charter School Shall Not

- 2.1 Supplant funds for a local or state position by substituting federal funds for payment of that position.
- 2.2 Pay a salary to cover paid vacation days during intended federal employment when that federal employment is an extension of a ten or eleven month school year as assigned and paid by the state.

3 DE Reg. 755 (12/1/99)

8 DE Reg. 884 (12/1/04)

3.0 For Federal Project Proposals that Require the Approval of the Department of Education, the Applicant Shall

- 3.1 Describe any new or additional position, align it with a recognized rank as described in **Delaware Code** Title 14 or in the case of a nonpublic school institution describe the position in terms of a rank already existing in the institution and assigned to comparable work.
- 3.2 Include in the benefits of the employee all of those benefits that accrue to an employee of the state or the local school district or charter school except that the benefit of the provisions of 14 **Del.C.** Ch. 14 shall not apply to any person whose salary is paid from federal funds in whole or in part.
- 3.3 Seek and obtain approval of the project through the Department of Education prior to the assignment of personnel for the assumption of duties and payment of wages or salary.

8 DE Reg. 884 (12/1/04)

4.0 Local School Districts Shall Comply with the Maximum Hourly Compensation Rates as Published by the Department of Education.

8 DE Reg. 884 (12/1/04)

5.0 Additional Requirement

All local school districts and charter schools shall be required to follow the U.S. Office of Management and Budget's OMB Circular A-87, specifically attachment B, Section 11, or any subsequent change thereto.

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 746

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

746 Criminal Background Check for Student Teaching

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education intends to amend 14 **DE Admin. Code** 746 Criminal Background Check for Student Teaching to delay the implementation date. The date is being changed because current state law does not enable the Delaware State Bureau of Identification to submit a request for a federal background check (28 CFR 50.12A and 28 CFR 20.33A 3). The Department will pursue a legislative change to accommodate the federal requirement. The Department continues to work with the district personnel directors, Delaware's higher education institutions, the State Police and State Bureau of Identification to ensure consistent implementation of this new requirement.

Currently nine school districts are requiring criminal background checks of student teachers voluntarily. By imposing the January 2011 date, this will allow legislation to be introduced and discussed, and to provide the time for the higher education institutions to establish implementation procedures. Depending on the timing of legislative action, the Department will work with the higher education institutions and districts/charter schools to move up the implementation date.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 2, 2009 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? This regulation is related to criminal background checks for student teachers and does not directly affect the student achievement as measured against state achievement standards.
2. Will the amended regulation help ensure that all students receive an equitable education? This regulation is related to criminal background checks for student teachers and does not directly ensure whether students receive an equitable education.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? This regulation is related to criminal background checks for student teachers and will help ensure students' health and safety is better protected.
4. Will the amended regulation help to ensure that all students' legal rights are respected? This regulation is related to criminal background checks for student teachers and does not directly affect that students' legal rights are respected.
5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? This regulation is related to criminal background checks for student teachers and preserves the necessary authority and flexibility of decision making at the local board and school levels.
6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The regulation is related to criminal background checks for student teachers and makes changes so as not to place unnecessary reporting or administrative requirements or mandates on decision makers at the local board or school levels.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The regulation is related to criminal background checks for student teachers and allows the higher education institutions to make the first level to determine suitability for placement in a public school to reduce administrative requirements at the district or school level.
8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? This regulation is related to criminal background checks for student teachers and is consistent with the implementation of other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? The regulation has been proposed with input from the higher education institutions, districts, State Police and State Bureau of Identification to help ensure this process is as efficient and less burdensome as possible.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There is not a cost to the state or local school boards for compliance with this regulation.

746 Criminal Background Check for Student Teaching

This regulation shall apply to candidates for a Student Teaching Assignment in a Delaware public school. Refer to 14 **DE Admin. Code** 745 Criminal Background Check for Public School Related Employment for the requirements and procedures related to criminal background checks for public school related employment in a Delaware public school.

1.0 Definitions

“Higher Education Institution” means the Delaware college or university that has a teacher preparation program that places candidates into Student Teaching Positions in a Delaware public school district or charter school.

“Student Teaching Position” means a structured, supervised learning experience for a student in a teacher education program in which the student teacher practices the skills being learned in the teacher education program and gradually assumes increased responsibility for instruction, classroom management, and other related duties for a class of students in a local school district or charter school. These skills are practiced under the direct supervision of the certified teacher who has official responsibility for the class.

2.0 Criminal Background Check Requirements and Procedures for Student Teaching Position Candidates

- 2.1 Effective January 1, 2011, any candidate for a Student Teaching Position in a public school district or charter school shall be required to have a criminal background check as prescribed through this regulation.
- 2.2 The higher education institution where candidates for Student Teaching Positions are enrolled shall require all candidates to complete a Release for Criminal Background Check Information form approved by the Department of Education as a part of the assignment process for a Student Teaching Position in a Delaware public school district or charter school.
- 2.3 The candidate for a Student Teaching Position in a Delaware public school district or charter school shall be subject to the following procedures:
 - 2.3.1 After notification by the higher education institution that he/she is a candidate for a Student Teaching Position, the candidate shall present him/herself to State Bureau of Identification personnel at one of the Delaware State Police Troops that processes such criminal background checks or at an on site appointment arranged by the higher education institution.
 - 2.3.2 The candidate shall cooperate in all respects with this criminal background check process, or his/her application cannot be accepted. On completion of the procedure, the candidate will be given a Verification Form of Processing by the State Bureau of Identification, which may be shown to the candidate's placing higher education institution as proof that the candidate has completed the procedure. The candidate should retain the Verification Form of Processing for his/her records.
 - 2.3.3 The candidate shall request the State Bureau of Identification send original versions of the criminal background check to both the candidate and higher education institution.
- 2.4 All costs associated with obtaining a criminal background check shall be paid for by the person seeking a student teaching position placement.

12 DE Reg. 1306 (04/01/09)**3.0 Procedures for Higher Education Institutions, Public School Districts and Charter Schools for the Determination of Suitability for Candidates in Student Teaching Positions.**

- 3.1 The higher education institution where the candidate is enrolled and that was sent an original copy of the completed criminal background check shall make the initial determination for suitability for student teaching placement. The criteria for determining the suitability for student teaching placement shall be at the discretion of the higher education institution and may vary among the various higher education institutions in Delaware.
 - 3.1.1 If a determination is made to deny a candidate placement into a student teaching position based upon the higher education institution's review of the criminal history, the higher education institution may provide for an appeal process.
- 3.2 Upon the initial determination for suitability for the candidate to be placed in a public school, the higher education institution liaison responsible for overseeing Student Teaching Position placements shall confirm the receipt of the original complete criminal background check and send a copy of such to the district superintendent or charter school director of the Delaware school district or charter school considering the person as a candidate for a Student Teaching Position.
- 3.3 Each school district and charter school shall make the final determination of suitability for placement of a candidate in a Student Teaching Position in its school.
 - 3.3.1 Each school district and charter school shall establish the process and criteria for determining suitability for placement of a candidate in a Student Teaching Position in its school(s).
 - 3.3.2 The criteria for determining the suitability and subsequent placement of a candidate in a student teaching position may vary among the districts and charter schools. In addition, a school district or charter school may have criteria for student teaching placement that differs from the criteria for public school employment.
 - 3.3.3 The school district or charter school shall provide the candidate's higher education institution the decision to place or deny a candidate in a Student Teaching Position placement in writing.

- 3.4 Candidates for student teaching may have criminal background checks from other states accepted, if all of the following conditions are met;
- 3.4.1 The criminal background check shall have been conducted within the previous twelve (12) months and include a federal criminal background check;
 - 3.4.2 The criminal background check shall be sent directly from the criminal background check agency in the other state to the higher education institution;
 - 3.4.3 The out of state candidate shall sign a release to allow the higher education institution receiving the out of state criminal background check and the reference to confirm their receipt, disclose their contents and forward them, subject to the same disclosure regulations that apply to Delaware criminal background checks.

4.0 Procedures for Maintaining Criminal Background Check Information

- 4.1 All information and records pertaining to criminal background checks and this regulation shall be maintained in a confidential manner including, but not limited to, the following:
- 4.1.1 Access to criminal background check records, letters of reference accompanying out of state criminal background checks, and determination of suitability shall be limited to the higher education institution office responsible for student teacher assignments and one person designated to assist in the processing of criminal background checks; and the district superintendent or charter school director and the district or charter school chief personnel officer responsible for the determination of suitability in the placing district or charter school. These persons shall be required to sign an agreement to keep such information confidential and employ proper precautions to insure that interoffice communications remain confidential;
 - 4.1.2 All such records shall be kept in locked, fireproof cabinets;
 - 4.1.3 No information from such records shall be released without the signed approval of and the appropriate signed release of the candidate or person placed in a Student Teaching Position.
- 4.2 The higher education institution may dispose of the criminal background check in a secure manner no earlier than six (6) months after the student graduates from the higher education institution.

5.0 Penalties

The higher education institution officer responsible for student teacher assignments shall report to the appropriate police authorities evidence of any person who knowingly provides false, incomplete or inaccurate criminal history information or who otherwise knowingly violates this regulation.

6.0 Subsequent Criminal History Information

- 6.1 Subsequent criminal history on a person in a Student Teaching Position may be sent by the State Bureau of Identification to the higher education institution.
- 6.2 The higher education institution where the candidate is enrolled shall be required to send any subsequent criminal history information received to the school district or charter school where the candidate is engaged in student teaching activities.
- 6.3 The district or charter school where the person is in a Student Teaching Position may consider any subsequent criminal history received for the person's continued suitability for the Student Teaching Position.

12 DE Reg. 329 (09/01/08)

12 DE Reg. 1306 (04/01/09)

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 Del.C. §122(b))
14 DE Admin. Code 1105

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

1105 School Transportation

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 1105 School Transportation, Section 20.0 Bus Replacement Schedules only. The amendment changes the mandatory replacement age of a school bus from 12 years to 14 years. The change was mandated in Section 410 of the Grants-In-Aid House Bill 295 of the 145th General Assembly. A change was made last February to increase the minimum mileage and/or age a bus may be on the road before replacement. The mandatory replacement age of a bus was not changed at that time. The National Association of State Directors of Pupil Transportation Services provided a position paper in 2002. The suggested lifetimes under normal operating conditions was stated to be 12 to 15 years. The position paper also noted the importance of mileage factors, which the State currently and continues to take into consideration.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before November 2, 2009 to Susan Haberstroh, Education Associate, Regulation Review, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation relates to the number of years for which a bus must be replaced and does not directly affect student improvement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation relates to the number of years for which a bus must be replaced and does not directly affect equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation relates to the number of years for which a bus must be replaced and should not affect safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation relates to the number of years for which a bus must be replaced and does not directly affect a student's legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amended regulation relates to the number of years for which a bus must be replaced and preserves the necessary authority and flexibility of decision making at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation does not place unnecessary reporting or administrative requirements or mandates on local decision makers.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability remains the same.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation is related to the number of years for which a bus must be replaced and is not an impediment to other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is not a less burdensome method for addressing the purpose of this regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no additional costs to the state.

1105 School Transportation

(Break in Continuity of Sections)

20.0 Bus Replacement Schedules

- 20.1 The time begins for a new bus when it is placed in service. A bus shall have the required mileage prior to the start of the school year. Once a bus is placed in service for the school year, it will not be replaced unless it is unable to continue service due to mechanical failure.
- 20.2 The following age and mileage requirements apply:
- 20.2.1 42th 14th year shall be replaced (it may then be used as a spare); or
 - 20.2.2 190,000 miles no matter age of bus; or
 - 20.2.3 9 years and 130,000 miles; or
 - 20.2.4 May be replaced after 10 years.
- 20.3 Contractors shall be reimbursed for their eligible school buses for the annual allowances permitted by the Formula. New (unused) buses placed in service in a year following their manufacture shall begin their 7 years of capital allowances with the rate specified for the year of manufacture and continue in year increments until completed.
- 20.4 School buses purchased with state allocated transportation funds may be used by the school districts for purposes other than transportation of pupils to and from school. This type of use shall be at the district's expense and shall occur only during a time when the bus is not making its normal school run.
- 20.5 In accordance with the Attorney General's opinion of June 18, 1974, regarding the use of buses purchased from State allocated transportation funds for purposes other than the regular transportation of pupils to and from school, the provisions of Title 14, Section 1056, School Property, Use, Control and Management, shall apply.

12 DE Reg. 1086 (02/01/09)

***Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:**

[1105 School Transportation](#)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

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

PUBLIC NOTICE

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding the Delaware Temporary Assistance for Needy Families (TANF) program's Contract of Mutual Responsibility.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware

19720-0906 or by fax to (302) 255-4425 by October 31, 2009.

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

Summary of Proposed Change

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Delaware Temporary Assistance for Needy Families (TANF) program's Contract of Mutual Responsibility. The proposed change adds a new section to policy establishing timely participation requirements for clients referred to the Transitional Work Program.

Statutory Authority

- Social Security Act §402(a)(1)(A)(i), Eligible States; State Plan
- 31 Del.C. §512, Administration
- 31 Del.C. §518, Failure To Comply With Job Placement, Education, Training, Work Eligibility, Parenting Or Personal Responsibility Requirements

Summary of Proposed Change

DSSM 3017, Other CMR Elements: The Transitional Work Program (TWP) is a new mandatory program for TANF parents and caretakers who as a result of physical or mental disabilities have been determined to be unable to work in an unsubsidized employment setting. The program will assist clients through assessment, case planning, and case management leading to employment when appropriate or to application for federally funded disability programs. TWP participants who fail to complete specified tasks within specified time frames, without good cause, are subject to a sanction that reduces their TANF grant by \$50.00. The sanction increases \$50.00 every month until the grant is closed or all past due TWP activities are completed.

~~3017 Other CMR Elements~~ Additional CMR Elements

When staff has reason to believe that the family needs other services to become self-sufficient, these services will be identified and specified in the Contract of Mutual Responsibility. Additional family specific CMR elements will be identified and added to a TANF household's CMR. These elements may be identified by DSS, the family, or other agencies that are involved with the family.

3017.1 Transitional Work Program (TWP) Requirements

Parents and relative caretakers that the agency has determined are unemployable and unable to achieve self-sufficiency, because they are too physically or mentally disabled to work in an unsubsidized work may be required to enroll and participate in the Transitional Work Program.

The CMR and the TWP Employability Plan will establish time limits for the completion of TWP activities or goals.

3017.1.1 Sanctions for Not Meeting the TWP Requirements

The sanction for failure, without good cause, to meet the time limits established in the CMR and the TWP Employability Plan will be an initial \$50.00 reduction in TANF benefits. This reduction will increase each month by \$50.00, either until all activities which exceed the time limits established in the CMR and TWP employability plan are completed or the case is closed.

3017.1.2 Curing TWP Sanctions

The sanction will end when all activities which exceed the time limits established in the CMR and TWP Employability Plan are completed.

3017.2 Division of Social Services (DSS) Identified CMR Elements

When staff has reason to believe that the family needs other services to become self-sufficient, these services

will be identified and specified in the Contract of Mutual Responsibility.

3017.2.1 Sanctions for Not Meeting Division of Social Services Identified CMR Elements

The sanction for failure, without good cause, to comply with DSS identified elements in the Contract of Mutual Responsibility will be an initial \$50.00 reduction in TANF benefits. This reduction increases each month by \$50.00, either until there is compliance or the case is closed. The case worker will give the client written notification of what s/he has to do to be in compliance.

3017.2.2 Curing Division of Social Services Identified CMR Sanction Penalties

The sanction will end when the client has met the requirements as listed in the sanction notification.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Chapters 60 and 63, (7 Del.C., Chs.60 & 63)

7 DE Admin. Code 1302

REGISTER NOTICE

SAN # 2009-05

1. Title of the Regulations:

Delaware *Regulations Governing Hazardous Waste* (DRGHW)

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

In order for the State of Delaware to maintain authorization from the U. S. Environmental Protection Agency (EPA) to administer its own hazardous waste management program, the State must maintain a program that is equivalent to and no less stringent than the Federal program. To accomplish this, the State is proposing to make miscellaneous changes to the DRGHW that correct existing errors in the hazardous waste regulations, add clarification or enhance the current hazardous waste regulations.

3. Possible Terms of one Agency Action:

None

4. Statutory Basis Or Legal Authority To Act:

Amendments to DRGHW are proposed and amended in accordance with the provisions found at 7 Delaware Code, Chapters 60 and 63.

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

None

6. Notice of Public Comment:

The public hearing on the proposed amendments to DRGHW will be held on Thursday October 22, 2009 starting at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

7. Prepared By:

Bill Davis, Environmental Scientist, Solid and Hazardous Waste Management - (302) 739-9403

Amendments To Delaware Regulations Governing Hazardous Waste

ID #	Description
1a	Delaware Change: Transporter Permit Requirement
1b	Delaware Change: Exception Report DNREC notification clarification
1c	Delaware Change: Performance Track program
1d	Delaware Change: Insurance for Used Oil Transporters
1e	Delaware Change: Used Oil correction
1f	Delaware Change: 24 hours vs. 1 Day clarification
1g	Delaware Change: Contingency Plan clarification
1h	Delaware Change: Permit Modification List

NOTE: For the purposes of this amendment package only those sections of the hazardous waste regulations shown herein are affected. The remaining sections of the *Delaware Regulations Governing Hazardous Waste* are not affected and are unchanged.

1302 Regulations Governing Hazardous Waste

AMENDMENT 1a:

Transporter Permit Requirement

Section 262.12 EPA Identification Numbers.

(a) A generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Secretary.

(b) A generator who has not received an EPA identification number may obtain one by applying to the Secretary using "RCRA Subtitle C Site Identification Form", EPA Form 8700-12. Upon receiving the request, the Secretary will assign an EPA identification number to the generator.

(c) A generator must not offer his hazardous waste to transporters that have not received an EPA identification number and a Delaware hazardous waste transporter permit or to treatment, storage, or disposal facilities that have not received an EPA identification number.

(d) A generator must submit a subsequent "RCRA Subtitle C Site Identification Form", EPA Form 8700-12 whenever there is a change in name, mailing address, contact person, contact address, telephone number, ownership, type of regulated waste activity, or changes in the description of regulated wastes managed or permanently ceases the regulated waste activity. This subsequent notification must be submitted to the Secretary no less than 10 days prior to implementation of the change(s).

AMENDMENT 1b:

Exception Report DNREC notification clarification

Section 262.42 Exception Reporting.

(a) A generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within thirty five (35) days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste, and if it has not been delivered the generator must identify the shipment and report it to the State in which the shipment originated.

(b) A generator must submit an Exception Report to the DNREC within 5 calendar days if he has not received a copy of the manifest/shipping paper with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter, ~~and the~~ The generator must also notify the State in which the manifest designated facility is located and the State to which the shipment may have

been delivered. The Exception Report must include:

- (1) A legible copy of the manifest for which the generator does not have confirmation of delivery;
- (2) A cover letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts.

AMENDMENT 1c:

Deletion of Performance Track Program

Section 262.34 Accumulation time.

* * * * *

(j) Reserved A member of the Performance Track Program who generates 1000 kg or greater of hazardous waste per month (or one kilogram or more of acute hazardous waste) may accumulate hazardous waste on-site without a permit or interim status for an extended period of time, provided that:

- (1) The generator accumulates the hazardous waste for no more than 180 days; and
- (2) The generator first notifies the Regional Administrator and the DNREC Secretary in writing of its intent to begin accumulation of hazardous waste for extended time periods under the provisions of this section. Such advance notice must include:

- (i) Name and EPA ID number of the facility, and specific date when the facility will begin accumulation of hazardous wastes for extended periods of time in accordance with this section; and
- (ii) A description of the types of hazardous wastes that will be accumulated for extended periods of time, and the units that will be used for such extended accumulation; and
- (iii) A statement that the facility has made all changes to its operations, procedures, including emergency preparedness procedures, and equipment, including equipment needed for emergency preparedness, that will be necessary to accommodate extended time periods for accumulating hazardous wastes; and

(iv) **Reserved**

- (3) The waste is managed in:
 - (i) Containers, in accordance with the applicable requirements of Subparts I, AA, BB and CC of DRGHW Part 265 and DRGHW 264.175; or
 - (ii) Tanks, in accordance with the applicable requirements of Subparts J, AA, BB and CC of DRGHW Part 265, except for §§ 265.197(c) and 265.200; or
 - (iii) Drip pads, in accordance with Subpart W of DRGHW Part 265; or
 - (iv) Containment buildings, in accordance with Subpart DD of DRGHW Part 265; and
- (4) The quantity of hazardous waste that is accumulated for extended time periods at the facility does not exceed 30,000 kg; and

(5) The generator maintains for a period of at least three years the following records at the facility for each unit used for extended accumulation times:

- (i) A written description of procedures to ensure that each waste volume remains in the unit for no more than 180 days, a description of the waste generation and management practices at the facility showing that they are consistent with the extended accumulation time limit, and documentation that the procedures are complied with; or
- (ii) Documentation that the unit is emptied at least once every 180 days; and

(6) Each container or tank that is used for extended accumulation time periods is labeled or marked clearly with the words "Hazardous Waste," and for each container the date upon which each period of accumulation begins is clearly marked and visible for inspection; and

(7) The generator complies with the requirements for owners and operators in Subparts C and D in DRGHW Part 265, with § 265.16, and with §268.7(a)(5). In addition, such a generator is exempt from all the requirements in Subparts G and H of Part 265, except for §§ 265.111 and 265.114; and

(8) The generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants, or contaminants released to the environment prior to its recycling, treatment, or disposal; and

(9) The generator includes the following with its Performance Track Annual Performance Report, which must be submitted to the Regional Administrator and the DNREC Secretary:

- (i) Information on the total quantity of each hazardous waste generated at the facility that has been

managed in the previous year according to extended accumulation time periods; and

(ii) Information for the previous year on the number of off-site shipments of hazardous wastes generated at the facility, the types and locations of destination facilities, how the wastes were managed at the destination facilities (e.g., recycling, treatment, storage, or disposal), and what changes in on-site or off-site waste management practices have occurred as a result of extended accumulation times or other pollution prevention provisions of this section; and

(iii) Information for the previous year on any hazardous waste spills or accidents occurring at extended accumulation units at the facility, or during off-site transport of accumulated wastes; and

(iv) **Reserved**

(k) **Reserved** If hazardous wastes must remain on site at a Performance Track member facility for longer than 180 days due to unforeseen, temporary, and uncontrollable circumstances, an extension to the extended accumulation time period of up to 30 days may be granted at the discretion of the DNREC Secretary on a case-by-case basis.

(l) **Reserved**

(1) If a generator who is a member of the Performance Track Program withdraws from the Performance Track Program, if the Regional Administrator terminates a generator's membership, or if use of the §262.34(j) provisions is terminated pursuant to §262.34(l)(2) the generator must return to compliance with all other applicable hazardous waste regulations for those waste being managed pursuant to §262.34(j) as soon as possible, but no later than 90 days after the date of withdrawal or termination.

(2) The use of the §262.34(j) provisions for accumulating hazardous wastes for extended periods of time by Performance Track member facilities may be terminated by the DNREC Secretary for noncompliance with the requirements of these regulations.

AMENDMENT 1d:

Insurance for Used Oil Transporters

Part 263 - Standards Applicable to Transporters of Hazardous Waste

Section 263.10 Scope.

(a) These regulations establish standards which apply to persons transporting hazardous waste within the United States if the transportation requires a manifest under Part 262, or transporters of Used Oil within the State of Delaware.

Section 263.106 Insurance requirements.

(a) All transporters must be in compliance with all motor carrier insurance requirements set by Federal DOT 49 CFR Part 387.

(b) Transporters who transport Used Oil shall at all times maintain commercial automobile liability insurance with a combined single limit of at least \$1,000,000 with MCS-90 endorsement. Used Oil waste transporters shall submit to DNREC a Certificate of Insurance with MCS-90 endorsement demonstrating compliance with this regulation.

Part 279 - Standards for the Management of Used Oil

Subpart E - Standards for Used Oil Transporter and Transfer Facilities

Section 279.40 Applicability.

(d) Other applicable provisions. Used oil transporters who conduct the following activities are also subject to other applicable provisions of this part as indicated in paragraphs (d)(1) through (5) (6) of this section:

(1) Transporters who generate used oil must also comply with Subpart C of this part;

(2) Transporters who process or re-refine used oil, except as provided in §279.41, must also comply with Subpart F of this part;

(3) Transporters who burn off-specification used oil for energy recovery must also comply with Subpart G of this part;

(4) Transporters who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in §279.11 must also comply with Subpart H of this part; and

(5) Transporters who dispose of used oil must also comply with Subpart I of this part.

(6) Transporters of used oil must also comply with Part 263 of these regulations.

AMENDMENT 1e:

Used Oil correction

Section 279.22 Used oil storage.

Used oil generators are subject to all applicable Spill Prevention, Control and Countermeasures (40 CFR Part 112) in addition to the requirements of this subpart. Used oil generators are also subject to the **Delaware Regulations Governing Underground Storage Tanks** (UST) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this subpart.

(a) Storage units. Used oil generators shall not store used oil in units other than tanks, containers, or units subject to regulation under Parts 264 or 265 of these regulations.

(b) Condition of units. Containers and aboveground tanks used to store used oil at generator facilities must be:

(1) In good condition (no severe rusting, apparent structural defects or deterioration); and

(2) Not leaking (no visible leaks); and

(3) ~~Always be e~~closed during storage, except when it is necessary to add or remove oil.

(c) Labels.

(1) Containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil".

(2) Fill pipes used to transfer used oil into underground storage tanks at generator facilities must be labeled or marked clearly with the words "Used Oil".

(d) Response to releases. Upon detection of a release of used oil to the environment that is not subject to the requirements of the **Delaware Regulations Governing Underground Storage Tanks** (UST) and which has occurred after the effective date of Delaware's recycled used oil management program, a generator must perform the following cleanup steps:

(1) Stop the release;

(2) Contain the released used oil;

(3) Clean up and manage properly the released used oil and other materials; and

(4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

AMENDMENT 1f:

24 hours vs. 1 day clarification

Section 264.1086 Standards: Containers.

(c) Container Level 1 standards.

(4) The owner or operator of containers using Container Level 1 controls shall inspect the containers and their covers and closure devices as follows:

(iii) When a defect is detected for the container, cover, or closure devices, the owner or operator shall make first efforts at repair of the defect within ~~one calendar day~~ 24 hours after detection and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous waste shall be removed from the container and the container shall not be used to manage hazardous waste until the defect is repaired.

Section 265.1087 Standards: Containers.

(c) Container Level 1 standards.

(4) The owner or operator of containers using Container Level 1 controls shall inspect the containers and their covers and closure devices as follows:

(iii) When a defect is detected for the container, cover, or closure devices, the owner or operator shall make first efforts at repair of the defect with in ~~one calendar day~~ 24 hours after detection, and repair shall be completed as soon as possible but no later than 5 calendar days after detection. If repair of a defect cannot be completed within 5 calendar days, then the hazardous waste shall be removed from the container and the container shall not be used to manage hazardous waste until the defect is repaired.

AMENDMENT 1g:

Contingency Plan clarification (delete comma)

Section 265.52 Content of Contingency Plan.

(a) The contingency plan must describe the actions facility personnel must take to comply with §265.51 and §265.56 in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

(b) If the owner or operator has already prepared a Spill Prevention, Control, and countermeasures (SPCC) Plan in accordance with 40 CFR Part 112 or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this part.

(c) The plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to §265.37.

(d) The plan must list names, addresses (office and home), and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see §265.55), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.

(e) The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list and a brief outline of its capabilities.

(f) The plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).

Section 264.52 Content of contingency plan.

(c) The plan must list names, addresses (office and home), and telephone numbers (office and home) of all persons qualified to act as emergency coordinator (see §264.55), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates. For new facilities, this information must be provided to the Secretary at the time of certification, rather than at the time of permit application.

AMENDMENT 1h:
Permit Modification List

Section 122.42 Permit modification at the request of the permittee.

(i) ~~Reserved Permit modification list.~~

The Secretary must maintain a list of all approved permit modifications and must publish a notice once a year in a Statewide newspaper that an updated list is available for review.

DIVISION OF FISH AND WILDLIFE

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

Register Notice
SAN # 2009-16

1. Title of the Regulation:
3900 Wildlife Regulations

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

This action will extend the rabbit hunting season from its current ending date of February 15th to the last day of February or the last Saturday of February should February end on a Sunday. This season extension was requested by Delaware hunters who have lost some rabbit hunting opportunities over the years due to conflicts with deer hunting seasons. This short season extension should not have a significant impact on the well being of the rabbit population.

3. Possible Terms of the Agency Action:
N/A

4. Statutory Basis or Legal Authority to Act:
7 Delaware Code, Chapter 1, Sections 102 & 103

5. List of Other Regulations That May Be Affected By the Proposal:
None

6. Notice of Public Comment:

This regulatory change will be presented at a public hearing on December 2, 2009 beginning at 6:30 p.m., DNREC Auditorium, 89 Kings Highway, Dover, Delaware. The hearing record for these proposed Regulations will remain open until 4:30 p.m.. Thursday December 3, 2009. Written comments for the hearing record should be addressed to Kenneth Reynolds, 6180 Hay Point Landing Road, Smyrna, DE 19977 or to Kenneth.Reynolds@state.de.us. The record will remain open for written public comment until 4:30 p.m..December 3, 2009.

7. Prepared By:

Kenneth M. Reynolds, 6180 Hay Point Landing Road, Smyrna, DE 19977
Kenneth.Reynolds@state.de.us
(302) 735-3600

3900 Wildlife*(Break in Continuity of Sections)***4.0 Seasons (Formerly WR-4)**

(Penalty Section 7 Del.C. §103(d))

4.1 Season Dates.

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

4.2 General.

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

4.3 Protected Wildlife.

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

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

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

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

4.4 Beaver.

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

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

4.5 Bullfrogs.

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

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

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

4.6 Crows.

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

4.7 Gray Squirrel.

4.7.1 Season. Gray squirrel may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of gray squirrel: from September 15 (September 14, if September 15 is a Sunday) through the first Saturday in February. Squirrel hunting shall be unlawful during the November deer firearms season. When squirrel season overlaps with a firearms deer season, squirrel may be hunted when hunter orange is displayed in accordance with § 718 of Title 7.

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

4.8 Opossum.

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

4.9 Pheasant.

- 4.9.1 Season. Male pheasant may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of pheasant: from the Monday that immediately precedes Thanksgiving through the first Saturday in February, provided that during a deer firearms season hunter orange is displayed in accordance with §718 of Title 7.
- 4.9.2 Female Pheasant. It shall be unlawful for any person to hunt or possess any female pheasant at any time, except as permitted on game preserves, by licensed game breeders or as otherwise permitted by law.
- 4.9.3 Male Pheasant Limit. It shall be unlawful for any person to hunt or possess more than two (2) male pheasants in any one day during the pheasant season, except as permitted by law.
- 4.9.4 Scientific or Propagating Purposes. It shall be unlawful for any person to possess pheasants for scientific and propagating purposes without a valid permit from the Director.
- 4.9.5 Game Preserves. Nothing in this regulation shall be construed so as to limit the number or sex of pheasants that may be harvested by any one person on licensed game preserves.

4.10 Quail.

- 4.10.1 Season. Bob white quail may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of bobwhite quail: from the Monday that immediately precedes Thanksgiving through the first Saturday of February, provided that during a deer firearms season hunter orange is displayed in accordance with § 718 of Title 7.
- 4.10.2 Limit. It shall be unlawful for any person to take more than six (6) quail in any one day.

4.11 Rabbit.

- 4.11.1 Season. Rabbits may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of rabbits: from the Monday that immediately precedes Thanksgiving through ~~February 15th~~, the last day of February or the last Saturday of February if February ends on a Sunday provided that during a deer firearms season hunter orange is displayed in accordance with § 718 of Title 7.
- 4.11.2 Limit. It shall be unlawful for any person to take more than four (4) rabbits in any one day.

4.12 Raccoon.

- 4.12.1 Trapping Season. Raccoon may be trapped in accordance with the statutes and regulations of the State of Delaware governing the trapping of raccoon: from December 1 through March 10 (March 20 on embanked meadows) in New Castle County; and from December 15 through March 15 in Kent and Sussex counties. The season is open throughout the year on private land, except on Sundays, in eastern New Castle and Kent counties pursuant to § 786 of Title 7 and Section 4(b) of WR-2.
- 4.12.2 Hunting Season. Raccoon may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of raccoon: from September 1 (September 2, if September 1 is a Sunday) through October 31 for chase only whereby it shall be unlawful to kill raccoon and opossum; from November 1 through the last day of February; and from March 1 through March 31 for chase only whereby it shall be unlawful to kill raccoon and opossum. The season is open throughout the year on private land in eastern New Castle and Kent counties, except on Sundays, pursuant to § 786 of Title 7.
- 4.12.3 Notwithstanding subsection 4.3.2 of this section, it shall be unlawful for any person to hunt raccoon or opossum during any period when it is lawful to hunt deer with a firearm, except that it shall be lawful to hunt raccoon from 7:00 p.m. until midnight during the December and January firearm deer seasons.

4.13 Red Fox.

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

- 4.14 Ruffed Grouse.
It shall be unlawful for any person to hunt for ruffed grouse during any period of the year.
- 4.15 Snapping Turtles.
- 4.15.1 Season. It shall be unlawful for any person to hunt for snapping turtles during any period of the year, except between and including June 15 and May 15.
- 4.15.2 Size. It shall be unlawful for any person to sell, offer for sale or kill any snapping turtle with a carapace length of less than eight inches, measured on the curvature.
- 4.16 Terrapin.
- 4.16.1 Season. It shall be unlawful for any person to hunt for diamondback terrapin during any period of the year, except between and including September 1 and November 15.
- 4.16.2 Limit. It shall be unlawful for any person to take more than four (4) diamondback terrapin in any one day.
- 3 DE Reg. 289 (8/1/99)**
3 DE Reg. 1738 (6/1/00)
6 DE Reg. 536 (10/1/02)
8 DE Reg. 352 (8/1/04)
11 DE Reg. 334 (09/01/07)

***Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:**

[3900 Wildlife](#)

DIVISION OF SOIL AND WATER CONSERVATION

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

REGISTER NOTICE SAN #2009-19

1. Title of the Regulations:

5103 Delaware Coastal Management Program Federal Consistency Policies and Procedures

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

The Delaware Coastal Management Program, as dictated by the National Oceanic and Atmospheric Administration (NOAA), must routinely update its policies to maintain the authority to manage the coastal resources of Delaware and evaluate federal activities, permits and plans to the maximum extent to ensure practicable consistency by those pursuing these actions.

The proposed changes to the existing Federal Consistency Policies reflect recently updated or newly promulgated regulations and statutes of the State of Delaware. The policies added, modified or removed from this Federal Consistency Policy Document were selected for their ability to protect, preserve, restore, and develop Delaware's coastal resources in the most environmentally sensitive manner. All of the policies contained within the Federal Consistency Policy document have been promulgated and adopted (i.e. they are existing regulations, statutes and/or Executive Orders). There are no new regulations being introduced through this process. The update and changes to the Delaware Federal Consistency Policies are considered a Routine Program Change under the NOAA Statute (15 CFR 923.84(a)).

3. Possible Terms of the Agency Action:

N/A

4. Statutory Basis or Legal Authority to Act:

15 CFR Part 930 - Federal Consistency with Approved Coastal Management Programs
15 CFR 923.84(a) - Routine Program Changes to the Coastal Management Program

5. Other Regulations That May Be Affected by the Proposal:

N/A

6. Notice of Public Comment:

The public hearing will be held on October 28, 2009 at 6 pm at the St Jones Reserve located at 818 Kitts Hummock Road, Dover, Delaware 19901. Written comments may be mailed to Bonnie Arvay, Delaware Coastal Programs, 89 Kings Highway, Dover, Delaware, 19901.

7. Prepared By:

Bonnie Arvay 302-739-9283 August 28, 2009
Email address: bonnie.arvay@state.de.us

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

[5103 Delaware Coastal Management Program Federal Consistency Policies and Procedures](#)

DEPARTMENT OF SAFETY AND HOMELAND SECURITY DIVISION OF STATE POLICE

Statutory Authority: 24 Delaware Code, Section 2311 (24 Del.C. §2311)
24 DE Admin. Code 2300

PUBLIC NOTICE

2300 Pawn Brokers, Secondhand Dealers and Scrap Metal Processors

Notice is hereby given that the Department of Safety and Homeland Security, Division of State Police, in accordance with 24 Del.C. Section 2311 proposes to amend adopted Rule 3.0 – Revocations and Emergency Suspensions. This amendment describes its intent to issue a revocation or emergency suspension of Pawnbrokers, Secondhand Dealers, and Scrap Metal Processors. If you wish to view the complete amendment, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by October 31, 2009, to Delaware State Police, Detective Licensing, P.O. Box 430, Dover, DE, 19903.

1.0 Licensing

- 1.1 Any individual applying for a pawnbroker, secondhand dealer or scrap metal processor license under Title 24 Chapter 23 must meet and maintain the following qualifications:
 - 1.1.1 Must not be convicted of any felony within 5 years of application date; and
 - 1.1.2 Must not have been convicted of any misdemeanor involving theft or fraud within 5 years of application date; and
 - 1.1.3 Must not have been convicted of any misdemeanor involving drugs within 3 years of application date.
- 1.2 A license for a pawnbroker, secondhand dealer or scrap metal processor will not be issued if there is a pending charge as listed in Section 1.1.1, 1.1.2, or 1.1.3.
- 1.3 The individual applying for a pawnbroker, secondhand dealer or scrap metal processor under Title 24 Chapter 23 must also meet the following qualifications:
 - 1.3.1 Must be at least 18 years of age; and

- 1.3.2 Must have a valid Delaware Business License; and
- 1.3.3 Physical location of business must be in the State of Delaware; and
- 1.3.4 Appropriate taxes must be filed to the State of Delaware and the United States of America; and
- 1.3.5 License must be prominently displayed within the business along with the Delaware Business License.
- 1.4 The individual applying for licensure under Title 24 Chapter 23 must complete the following for approval:
 - 1.4.1 Applicant must appear in person at the Delaware State Police Criminal Investigative Unit (CIU) at Troop 2, Troop 3 or Troop 4 in their respective county, to submit the initial application. Licenses will be renewed annually. Renewal applications may be submitted via mail; and
 - 1.4.2 Any and all applications required by the Delaware State Police CIU; and
 - 1.4.3 Submit fingerprints, if requested to confirm the status or existence of a Delaware (CHRI) criminal history. The Director of the State Bureau of Identification (SBI) determines the fee for this process.
- 1.5 Notification of a change of address for the business during the license year must be made to the Delaware State Police CIU at Troop 2, Troop 3 or Troop 4.

2.0 Notification of Arrest

- 2.1 Anyone licensed under Title 24 Chapter 23 shall notify the Delaware State Police CIU within five (5) days of being arrested for a misdemeanor or felony crime. Failure to do so may result in the suspension or revocation of any pawnbroker, secondhand dealer, or scrap metal processor license.

3.0 Revocations and Emergency Suspensions

- 3.1 ~~The Director of State Bureau of Identification (SBI) shall have the power authority to issue suspend the revocation or emergency suspension of any individual licensed under Title 24 Chapter 23 that violates the Chapter or the promulgated Rules & Regulations.~~
- 3.2 ~~The Director of SBI shall issue an emergency suspension due to:~~
 - 3.2.1 ~~Any conduct of the applicant deemed to be a threat to public safety; and/or~~
 - 3.2.2 ~~Any felony arrest; and/or~~
 - 3.2.3 ~~Any arrest of a misdemeanor involving the crime of theft, receiving stolen property, fraud related charges, or any crime involving drugs.~~
- 3.3 ~~The Director of SBI shall issue the revocation of any applicant due to:~~
 - 3.3.1 ~~Any conduct of the applicant deemed to be a threat to public safety; and/or~~
 - 3.3.2 ~~Any felony conviction; and/or~~
 - 3.3.3 ~~Any conviction of a misdemeanor involving the crime of the ft, re ceiving stolen property, fraud related charges, or any crime involving drugs.~~
- 3.4 ~~The Director of SBI must give written notice to the applicant stating the intent of revocation or an emergency suspension and the grounds therefore.~~
 - 3.4.1 ~~Any applicant that has been revoked or suspended is entitled to a hearing before the Pawnbrokers hearing Committee.~~
 - 3.4.1.1 ~~The Pawnbrokers Hearing Committee will be comprised of a DSP Executive Staff Member and the DSP CIU Troop Commander or Designee in respective county of business. The Director of SBI and a representative of the Attorney General's Office may attend but not vote.~~
 - 3.4.2 ~~Anyone requesting a hearing shall notify the Director of SBI, in writing, within 30 days from the revocation or emergency suspension and the hearing shall be scheduled within 30 days of the filing of the request.~~
- 3.5 ~~Anyone whose license has been revoked cannot be reinstated. The applicant must follow the standard licensing application process to apply for a new license.~~

PROPOSED REGULATIONS

- 3.1 The Director of State Bureau of Identification (SBI) shall have the authority to suspend any individual licensed under Chapter 23 of Title 24 of the Delaware Code on an emergency basis if the Director has good cause to believe that the individual:
- 3.1.1 Has engaged in any conduct that is an imminent threat to public safety;
- 3.1.2 Has been arrested for a felony crime; or
- 3.1.3 Has been arrested for a misdemeanor crime involving theft, receiving stolen property, fraud, or any crime involving drugs.
- 3.2 Any individual whose license is suspended on an emergency basis by the Director shall be entitled to a hearing before the Superintendent of State Police or his designee within thirty (30) days if the individual requests a hearing in writing within ten (10) calendar days of the date of the notice of the emergency suspension. At the hearing, the individual will have the right to counsel, the right to present evidence and to examine and cross examine witnesses. The hearing will not be subject to the case decision requirements of the Administrative Procedures Act. After the hearing, the Superintendent or his designee may either lift the emergency suspension, or continue the suspension until the resolution of the criminal charge(s) and will notify the individual in writing of the decision.
- 3.3 If the individual whose license is suspended on an emergency basis is not convicted of the crime because the charge is nolle prossed or otherwise dismissed by the court, or if the individual no longer poses an imminent threat to public safety, then the individual may apply in writing to the Director to lift the suspension administratively. The individual has the burden to prove that the basis for the emergency suspension no longer exists.
- 3.4 If the individual whose license is suspended on an emergency basis is convicted of the crime, or continues to pose imminent threat to public safety, then the Director may issue a notice of intent to revoke the license. If the individual makes a written request for a hearing within ten (10) days of the date of the notice, the matter will be heard before the Superintendent or his designee. At the hearing, the individual will have the right to counsel, to present evidence, and to examine and cross-examine witnesses. The hearing will not be governed by the case decision requirements of the Administrative Procedures Act.
- 3.5 If the hearing officer determines that there is good cause to revoke the license, then he/she shall so notify the individual in writing. There shall be no further appeal within the Department of Safety and Homeland Security.
- 3.6 Any individual whose license has been revoked cannot be reinstated. Revocation may be a ground for denying the individual's application for a new license, depending upon the reason for the revocation and the lapse of time.

11 DE Reg. 687 (11/01/07)

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
1000 Board of Pilot Commissioners

Statutory Authority: 23 Delaware Code, Section 102 (23 Del.C. §102)
 24 DE Admin. Code 1000

PUBLIC NOTICE

Under Title 23 of the **Delaware Code**, Section 102, as well as 29 **Delaware Code** Chapter 101, the Delaware Board of Pilot Commissioners is empowered to adopt regulations concerning the practice of pilotage on the Bay and River Delaware and the tributaries thereof. The Commission has now drafted revisions to its existing Pilot regulations. A copy of the proposed changes accompanies this notice.

Two of these changes do not require comment, and are hereby adopted.

The first, a revision of Section 4.0, is changed to reflect changes in 23 Del.C. Section 115 regarding the license renewal date.

The second revision, at Section 5.6.1, is changes to reflect a previously approved training facility's name and address change.

The third change requires the provision of an opportunity for public comment, regarding a proposed notice requirement for medical waivers sought from the United States Coast Guard.

The Commission will take written comments on the draft changes to the Board of Pilot Commissioners Regulations from October 1, 2009 through December 11, 2009. In addition, the Commission will hold a public hearing for the receipt of comments on these changes at its next regularly scheduled meeting, December 11, 2009, at the Cannon Building, Conference Room A, 861 Silver Lake Boulevard, Dover, DE 19901, at 1:00 p.m.

Questions or comments regarding the proposed changes should be directed to: Judy Letterman, Administrator, Cannon Building, Conference Room A, 861 Silver Lake Boulevard, Dover, DE 19901 (302) 677-7312 (telephone) (302) 739-2711 (fax); judy.letterman@state.de.us.

1000 Board of Pilot Commissioners

1.0 Delaware licensed Bay and River Pilots are required to be familiar with the 23 Del.C. Ch. 1. Pilots §100 through 138.

2.0 Original License

- 2.1 An examination shall be given to apprentices upon completion of their apprenticeship to determine their qualifications for licenses. The written examination shall be based on knowledge required to be learned by the apprentice during his/her apprenticeship.
- 2.2 No license shall be issued to any Pilot for any route for which he/she has not made required trips and passed required examination.
- 2.3 No original license will be issued for anything less than the route from entrance of Delaware Bay to Newbold Channel, and Chesapeake & Delaware Canal. All these licenses must be maintained through your pilot career.
- 2.4 The Board of Pilot Commissioners shall issue endorsements for any tributaries of the Bay and River Delaware to any Delaware licensed Pilot who has passed examination for same.

3.0 To Raise License

Fourth Class Pilots shall demonstrate their knowledge to the Commission of the thorough understanding of vessel "squat" and other deep vessel handling characteristics prior to being licensed as a Third Class Pilot.

4.0 Renewal of License

Pilot Licenses are to be issued on anniversary of their original date from October 24, 1967, to comply with Delaware law.

5.0 All Delaware Licensed Pilots must:

- 5.1 Maintain all licenses they have in hand as of 5 May 1986 throughout the remainder of their Pilot career.
- 5.2 Hold a valid radar certificate. ARPA certification is also required.
- 5.3 Provide a copy of all licenses and certificates to the Commission Secretary.
- 5.4 Notify the Commission Secretary on the form provided each Pilot that the "Rules of the Nautical Road" have been read.
- 5.5 Any pilot who fails to exercise his or her profession for any consecutive 90-day period is forbidden from piloting vessels. Such pilot may resume piloting vessels only upon certification to the Board that he or she has made such refresher trips over the route as shall be deemed necessary by the Board to assure that he or she *is fully* familiar with conditions along the route. Refresher trips shall be made in the company of a first class pilot.

5.6 Attend at least (40) hours of approved education every five (5) years. The course or courses of study shall total not less than 40 hours of formal training on subjects relating to navigation and piloting. All such courses may be taken at an approved education facility. The Board of Pilot Commissioners shall approve all courses before enrollment.

5.6.1 The courses listed here are now approved by the Board and will continue to be approved until further notice:

Ship Handling, Port Revel
Centre De Port Revel
38136 St. Pierre de Bressieux
France

Maritime Institute of Technology
5700 Hammonds Ferry Road
Linthicum Heights, MD 21090

SCI Maritime Training
241 Water Street
New York, NY 10038

South Hampton Institute
Newtown Road, Warsash Hampshire
England

Star Center Simulation Training Assessment & Research (STAR) Center
2 West Dixie Highway
Dania Beach, FL 33004

Tidewater Navigation
Norfolk, VA

5.7 Attend and complete at least once every five (5) years a Bridge Resource Management ("BRM") course recommended and approved by this Board or by the American Pilots Association. Classroom or simulator hours spent in attendance at a BRM course will count towards satisfaction of the requirement of subparagraph "E", above. All licensed pilots shall have passed and approved BRM course prior to July 1997.

6 DE Reg. 635 (11/01/02)

6.0 Pilots must pass a designated physical examination every year within 120 days before their date of license renewal. ~~Results of the examination shall be reported on the form provided each Pilot approved by the Board.~~ Examinations may also be ordered by the Board for any Pilot at any time for any cause. In addition, each Pilot shall report to the Commission concerning the Pilot's request for a waiver from the United States Coast Guard for any medical condition, as permitted by Federal regulation, as well as the results of any such waiver request. The initial report to the Commission shall be made at the same time that the waiver request is made to the Coast Guard, and the report of the Coast Guard's decision on the waiver request shall be provided to the Commission within three business days of the Pilot's receipt of the waiver decision.

7.0 In order to be granted a license renewal, any Pilot licensed by this Commission is and shall be required:

- 7.1 To have rendered pilotage service to not less than 52 vessels in the course of the year preceding the year for which the renewal of such license is sought; and
- 7.2 To furnish to this Commission, in writing, not later than the time when application is made to this Commission for the renewal of such license, a list of all pilotages, during the period of the license whose renewal is sought, giving:
 - 7.2.1 The name of the vessel.
 - 7.2.2 The date of pilotage.
- 7.3 Provided however, that this requirement shall be proportionally reduced in number, or eliminated, upon presentation of proof in form and substance satisfactory to the Commission, that during the year about to be concluded, the applicant for renewal was engaged in administrative duties connected with pilotage on the Bay and River Delaware, or was duly assigned and engaged in administrative assignments for the benefit of said pilotage, or was temporarily disabled from the performance of this duties as a Pilot or other reason deemed satisfactory to the Commission.
- 7.4 In the event that the requirement for 52 pilotages is reduced or eliminated to the satisfaction of the Commission, a number of refresher trips may be required before renewal is granted.

8.0 Docking, Undocking, and Anchoring of Vessels

- 8.1 When a vessel is docking or anchoring, a Delaware licensed pilot shall remain on the bridge, attentive to duty, until the vessel has at least one ship's line secure to the dock, or until the vessel is anchored properly and firmly within a designated anchorage area.
- 8.2 Nonetheless, nothing in these Rules shall prevent the Master of a vessel from employing the services of a docking master.

9.0 Casualty Reports

- 9.1 It shall be the personal responsibility of all Pilots licensed by this Commission to make reports of all casualties, collisions, groundings, etc. These reports shall be made to the Division of Professional Regulation's Chief Investigator, with a copy sent to the Commission's liaison to the Investigator. All such reports must be made within five days of the occurrence, except that any marine casualty involving oil spillage, pollution, or death must also be reported by telephone, facsimile transmission, or telegram to the Investigator and Commission liaison within twenty-four hours of the occurrence, to be followed thereafter by the written report. Failure to make such reports within the required time frame may result in disciplinary proceedings.
- 9.2 Pilots licensed by this Commission are also required to furnish the Investigator and Commission liaison with a copy of all written reports the pilot makes to the U. S. Coast Guard relating to any occurrence through the pilot's licensed route of all casualties, collisions, or groundings. These pilots must provide the Investigator and the Commission liaison with copies of any Coast Guard findings based on these reports.

10.0 Commission Recommendations

It is suggested that, in the event any of the Pilots licensed by this Commission consider it unwise for a ship which he has boarded to get under way or leave a dock either due to weather or tide conditions, and the master of the ship insists on getting under way, the Pilot should refuse to assume his duties until such a time as it is in his opinion safe to proceed.

11.0 Offshore Trip Experience Requirement for Second Class Pilots

- 11.1 Under the provisions of 23 Del.C. §113(b), no person shall be eligible for licensure as a first class pilot by this Board, until that person has served at least one year in each of the lower classes.

- 11.2 While holding a second or third class license, all pilots must make at least two inward bound trips on vessels rated over 100,000 summer deadweight tons, on the southeastern approach lane from "D" buoy to at least the Delaware Capes. Each such trip must be made while accompanied by a pilot holding a first class license for the Bay and River Delaware issued by either this Board or the Pennsylvania Navigation Commission. At least one of these trips must be made during darkness. Second class pilots must furnish proof of the se trips to the Board at least thirty days prior to being granted their first class pilot license.

6 DE Reg. 635 (11/01/02)

12.0 Service Requirement for Advancement from License Class to a Higher License Class

- 12.1 Under 23 Del.C. §113(b), a licensed pilot must serve at least one year in each of the previous lower pilot license classifications before the pilot is entitled to a first class license, permitting the pilot to provide pilotage services for "ships or vessels of any practical draft of water." 23 Del.C. §112(1). Using the plain meaning rule of legislative interpretation, the term "serve" as used in Section 113(b) means to actively engage in the pilot profession during a full one-year term, and not merely to hold a current license for twelve months.
- 12.2 For example, if a pilot is unavailable for pilotage assignments during a one-year term, the total time for which the pilot was unavailable shall not be counted toward the one-year requirement. This circumstance will then affect the pilot's license renewal date, at the completion of the total one-year term.

6 DE Reg. 635 (11/01/02)

OFFICE OF THE STATE BANK COMMISSIONER

Statutory Authority: 5 Delaware Code, Section 121(b), 2112 & 2417;
 (5 Del.C. §§121(b), 2112 & 2417)
 5 DE Admin. Code 2101, 2201 and 2401

Notice of Proposed Amendments to Regulations of the State Bank Commissioner

Summary

The State Bank Commissioner proposes to amend Regulation 2101 ("Mortgage Loan Brokers Operating Regulations") and Regulation 2201 ("Licensed Lenders Operating Regulations") by adding references in each of those regulations to two other regulations that are applicable to both licensed mortgage brokers and licensed lenders. These other two regulations (2107/2208 "Guidance on Nontraditional Mortgage Product Risks" and 2108/2209 "Statement on Subprime Mortgage Lending") were adopted after the effective dates of Regulations 2101 and 2201 and need to be referenced in the sections dealing with the regulations each licensed office must maintain or possess.

The State Bank Commissioner also proposes to amend Regulation 2401 ("Mortgage Loan Originator Licensing") by completely replacing the existing Regulation 2401 with an entirely new regulation. This proposed amended regulation implements a completely revised Chapter 24 of Title 5 of the Delaware Code dealing with the licensing of mortgage loan originators. See, the Delaware S.A.F.E. Mortgage Licensing Act of 2009, 77 Delaware Laws, Chapter 96. This statute was enacted to comply with the requirements of the United States Secure and Fair Enforcement for Mortgage Licensing Act of 2008, U.S. Public Law 110-289. The regulation establishes new criteria and procedures relating to, among other things, license applications, exemptions, denials, suspensions, revocations, enforcement, record keeping and reporting that are consistent with both the Delaware and federal statutes.

The State Bank Commissioner would adopt the proposed amended Regulations 2101, 2201, and 2401 on or after November 3, 2009. 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 amended regulations 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 these proposed amended regulations 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. Tuesday, November 3, 2009.

Public Hearing

A public hearing on the proposed regulations will be held in the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, DE 19901 on Tuesday, November 3, 2009, 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.

2101 Mortgage Loan Brokers Operating Regulations 5 Del.C. §2102(b) and §2112

Formerly Regulation No.: 5.2112.0001

Effective Date: November 12, 1999

1.0 Application of Chapter

- 1.1 Chapter 21 of Title 5 of the **Delaware Code** governs persons who broker extensions of credit secured by a first or second mortgage on any one-to-four family residential owner-occupied property intended for personal, family, or household purposes. Chapter 21 of Title 5 of the **Delaware Code** does not apply to the brokering of commercial mortgage loans, including a first or second mortgage on any income producing property that does not fall into the aforementioned definition.

2.0 Maintenance of Copies of Applicable Regulations

- 2.1 All licensees shall conduct business in compliance with Chapter 21 of Title 5 of the **Delaware Code**, and all regulations issued thereunder. Each office licensed under Chapter 21 of Title 5 of the **Delaware Code** shall maintain copies of all applicable regulations. These regulations include:
 - 2.1.1 Regulation 2101 (formerly 5.2112.0001) - Mortgage Loan Brokers Operating Regulations;
 - 2.1.2 Regulation 2102 (formerly 5.2111(a).0002) - Mortgage Loan Brokers Minimum Requirements for Content of Books and Records;
 - 2.1.3 Regulation 2103 (formerly 5.2115.0003) - Mortgage Loan Brokers Itemized Schedule of Charges;
 - 2.1.4 Regulation 2104 (formerly 5.2113.0004) - Mortgage Loan Brokers Minimum Disclosure Requirements;
 - 2.1.5 Regulation 2105 (formerly 5.2111(b).0005) - Report of Delaware Loan Volume;
 - 2.1.6 Regulation 2106 (formerly 5.2111/2210/2906.0006) - Report of Delaware Assets; and
 - 2.1.7 Regulation 2107/2208 Guidance on Nontraditional Mortgage Product Risks;
 - 2.1.8 Regulation 2108/2209 Statement on Subprime Mortgage Lending; and
 - 2.1.79 Regulation 101 (formerly 5.141.0001.NC) - Retention of Financial Institution Records.
- 2.2 The manager and staff of each office shall familiarize themselves with all of the aforementioned regulations. The licensee shall inform the Office of the State Bank Commissioner if copies of the regulations are lost or misplaced and replacements will be furnished. Failure to maintain the aforementioned regulations shall constitute a violation of both §2111(a) of Title 5 of the **Delaware Code** and this regulation.

3.0 Fees for Examination and Supervisory Assessment

- 3.1 Mortgage Loan Broker licenses are subject to examination pursuant to § 2110 of Title 5 of the **Delaware Code**. The costs of such examinations are assessed to the licensees in accordance with §127(a) of Title 5 of the **Delaware Code**. A licensee shall remit payment not later than 30 days after the date of the invoice for the fees for examination. In addition, the Commissioner assesses annually each licensee a supervisory assessment, due and payable on August 1 each year, as provided in §127(b) of Title 5 of the **Delaware Code**. Failure of a licensee to remit timely payment of the examination fee or supervisory assessment will result in a penalty of 0.05 percent for each day that the examination fee or supervisory assessment shall remain unpaid after the due date, as provided in §127(a) and §127(b) of Title 5 of the **Delaware Code**.

4.0 Representations at Mortgage Loan Closings

- 4.1 At no time shall a mortgage loan close in the name of the mortgage loan broker except for the sole purpose of satisfying requirements for VA government loans.

3 DE Reg. 653 (11/01/99)

2201 Licensed Lenders Operating Regulations

5 Del.C. §2210(d)

Formerly Regulation No.: 5.2210(d).0001

Effective Date: November 12, 1998

1.0 Application of Chapter

- 1.1 Chapter 22 of Title 5 of the **Delaware Code** applies to consumer credit transactions, including, but not limited to, mortgage lending secured by one to four family residential, owner-occupied property intended for personal, family or household purposes.

2.0 Maintenance of Operating Regulations for Licensed Lenders

- 2.1 All licensees shall conduct business in compliance with Chapter 22 of Title 5 of the **Delaware Code**. Each office licensed under Chapter 22 of Title 5 of the **Delaware Code** shall possess copies of all applicable regulations. These regulations include:
- 2.1.1 Regulation 2201 (formerly 5.2210(d).0001) Licensed Lenders Operating Regulations;
 - 2.1.2 Regulation 2202 (formerly 5.2213.0002) Licensed Lenders Minimum Requirements for Content of Books and Records;
 - 2.1.3 Regulation 2203 (formerly 5.2218/2231.0003) Licensed Lenders Itemized Schedule of Charges;
 - 2.1.4 Regulation 2204 (formerly 5.2208.0004) Required Amount of Licensed Lender's Surety Bond or Irrevocable Letter of Credit;
 - 2.1.5 Regulation 2205 (formerly 5.2210(e).0005) Report of Delaware Loan Volume;
 - 2.1.6 Regulation 2206 (formerly 5.2111/2210/2906.0006) Report of Delaware Assets; and
 - 2.1.7 Regulation 2107/2208 Guidance on Nontraditional Mortgage Product Risks;
 - 2.1.8 Regulation 2108/2209 Statement on Subprime Mortgage Lending; and
 - 2.1.79 Regulation 101 (formerly 5.141.0001.NC) Retention of Financial Institution Records.
- 2.2 The manager and staff of each office shall familiarize themselves with all of the aforementioned regulations. The licensee shall inform the Office of the State Bank Commissioner if copies of the regulations are lost or misplaced and replacements will be furnished. Failure to maintain the aforementioned regulations shall constitute a violation of both §2213 of Title 5 of the **Delaware Code** and this regulation.

3.0 Fees for Examination and Supervisory Assessment

- 3.1 Licensed Lenders licensees are subject to examination pursuant to §2210 of Title 5 of the **Delaware Code**. The costs of such examinations are assessed to the licensees in accordance with §127(a) of Title 5 of the **Delaware Code**. A licensee shall remit payment not later than 30 days after the date of the invoice for the examination. In addition, the Commissioner annually assesses each licensee a supervisory assessment, due and payable on August 1 each year, as provided in §127(b) of Title 5 of the **Delaware Code**. Failure of a licensee to timely payment of this examination fee or supervisory assessment will result in a penalty of 0.05 percent for each day that the examination fee or supervisory assessment shall remain unpaid after the due date, as provided in §127(a) and §127(b) of Title 5 of the **Delaware Code**.

4.0 Mortgage Satisfaction/Security Interest

- 4.1 A licensee shall cause an entry of the satisfaction or performance of a debt or duty secured by a mortgage or conveyance in the nature of a mortgage on real estate to be made as required by Chapter 21 of Title 25 of the **Delaware Code**. A licensee shall take the necessary action(s) to discharge or release any other security interest for loans under Chapter 22 of Title 5 of the **Delaware Code** within sixty days from the date the debt secured by such other collateral or security interest is satisfied or performed. Failure of a licensee to take such action within the period prescribed will be a violation of this regulation.

5.0 Principal Reduction

- 5.1 No loan shall be made under the provisions of this Chapter that does not allow for a reduction of principal over the term of the loan unless it is a product available through federal governmental or quasi-governmental entities.

6.0 Credit Life and Credit Health Insurance

- 6.1 Any lender may offer credit life and health insurance to qualified borrowers. Such insurance transactions shall conform to all statutes of the Insurance Code of the State of Delaware as well as rules and regulations that the Insurance Commissioner may prescribe from time to time.
- 6.2 Every lender offering credit life and health insurance whose charges do not conform to those authorized in the Insurance Commissioner's Regulation 2501 (formerly regulation No. 5) shall maintain in each office a copy of a letter filed with the Insurance Commissioner requesting the deviated rate as well as approval by the Insurance Commissioner of the rate.
- 6.3 Credit life insurance refunds shall be calculated as of the date of death.
- 6.4 Credit health insurance payments received by the lender shall be applied to the account for the period the payment actually covers regardless of the date of receipt. Additional interest charges shall not accrue should payment be received after the payment due date.
- 6.5 The Office of the State Bank Commissioner shall provide a copy of the Insurance Commissioner's Regulation 2501 (formerly regulation No. 5) and any subsequent applicable regulations promulgated to each licensee.

7.0 Other Insurance

- 7.1 Any lender may require proof of insurance coverage for any loan secured by a motor vehicle, real property (real estate), or other collateral. Borrower has the right to submit any existing policy(s) naming lender as beneficiary as his/her interest may appear, provided such policy is acceptable to the lender as to coverage, prepaid term and the carrier meets required financial standards. Upon notification to the lender of cancellation of any policy for non-payment, lender may place coverage to secure his/her interest. Borrower shall be informed of such placement and any amount expended shall be due and payable by the borrower before a loan may be satisfied. Any lender may, if requested by the borrower, place such insurance coverage as is necessary to secure his/her interest at the inception of the loan.

- 7.2 A licensee may offer, but not require, such other insurance products as the State Bank Commissioner may, upon written approval, permit. No such insurance may be offered without the State Bank Commissioner's written approval.

8.0 Borrower-Signed Authorization for Insurance

- 8.1 Any insurance authorized by this regulation, other than the insurance coverage authorized by section 7.1 of this regulation, must be supported by a specific request signed by the borrower. This request shall be attached to or made a part of the application documents.

9.0 Purchase or Sale of Accounts by Licensed Lenders

- 9.1 A licensee shall not sell or otherwise transfer contracts to any person or corporation not licensed under Chapter 22 of Title 5 of the **Delaware Code**, except at the discretion of the State Bank Commissioner.
- 9.2 Purchasers shall be limited to collecting balances due under the existing contract terms and shall be bound by applicable Delaware laws regarding legal fees and usury statutes if a loan is subsequently refinanced.
- 9.3 This section shall not apply to:
- 9.3.1 The purchase or transfer of loan contracts between licensees under the same management or control;
- 9.3.2 The sale or transfer of a loan contract to an out-of-state affiliate for collection or for the convenience of a consumer;
- 9.3.3 The transfer of a loan contract by a licensee to any maker or person secondarily liable on the contract; and,
- 9.3.4 The sale of a participation or a whole loan to a federal, state, or local government agency, or to a federal or state regulated bank, savings and loan association, mortgage banking company, insurance company or investment banking firm or their subsidiaries.

10.0 Origination of Mortgage Loans for Resale

- 10.1 Solely for the purposes of the loan limitation provisions contained in the last sentence of Section 2228(a) of Title 5 of the **Delaware Code**, the term "loans" shall not be deemed to include loans secured by mortgages on real property located in this state (or secured by certificates of stock or other evidence of ownership interest in, and proprietary leases from corporations or partnerships formed for the purpose of cooperative ownership of real estate in this State) if such loans are originated by a licensee for resale and the licensee in fact sells, assigns or otherwise conveys its entire interest in the loan (except servicing if servicing is retained) within 120 days following the date the loan is made. Additional time may be granted at the discretion of the State Bank Commissioner.

2 DE Reg. 781 (11/01/98)

2401 Mortgage Loan Originator Licensing

5 Del.C. §§121(b), 2422

Effective Date: Proposed

4.0 Definitions

For the purposes of this regulation, the following definitions apply unless the context otherwise requires:

"Commissioner" means the State Bank Commissioner or the Commissioner's designee.

"Exempt organization" means any insurance company, banking organization, bank holding company, federal credit union, national bank, state bank, federal savings bank, or any bank, trust company, savings bank, savings and loan association or credit union or any affiliate or subsidiary of the

preceding entities organized under the laws of any state, or any instrumentality created by the United States or any state with the power to make mortgage loans.

"**Mortgage loan**" has the same meaning as that term is defined by 5 **Del.C.** §2101(4).

"**Mortgage loan originating**" means providing services to a customer of an originating entity by soliciting, negotiating, explaining or finalizing the terms of a mortgage loan; provided, however, that the term "soliciting" shall mean the discussion of a mortgage loan product or products with a customer or potential customer, but shall not be deemed to mean the taking of customer information or the referral of a customer or the customer's information to a person who engages in mortgage loan originating; provided further that a mortgage loan originator shall not be deemed to include any person who provides clerical or secretarial services or provides legally related services that are not provided directly by an attorney relating to mortgage loan originating activities of an originating entity.

"**Mortgage loan originator**" and "**MLO**" mean any person employed by or affiliated with an originating entity, who engages in mortgage loan originating in this State irrespective of how such person is compensated by the originating entity, or any person who, as an originating entity or any substantial equity owner of an originating entity, engages in mortgage loan originating in this State with respect to residential property; provided that "affiliated with an originating entity" shall mean any person who is an independent contractor and is compensated by such originating entity in whole or in part, either directly or indirectly. An MLO shall not mean any person who is an originating entity, or any substantial equity owner of an originating entity, or any officer or manager of an originating entity that supervises the activities of MLOs and does not communicate directly with the customers of the originating entity.

"**Originating entity**" means a person or entity licensed pursuant to 5 **Del.C.** Chapters 21 or 22.

"**Person**" means an individual.

"**Statute**" means 5 **Del.C.** Chapter 24.

2.0 Exemptions

- 2.1 The statute and this regulation shall not apply to a person employed by an exempt organization or by a subsidiary or affiliate of an exempt organization, or to a person under an exclusive contract with an exempt organization or with a subsidiary or affiliate of an exempt organization to the extent that the person is acting within the scope of the person's employment or contract and the scope of the charter, license, authority, approval or certificate of the exempt organization or its affiliate or subsidiary; provided however, that any such affiliate or subsidiary licensed by the Commissioner pursuant to 5 **Del.C.** Chapters 21 or 22 shall provide an educational program or courses for its employees or persons under exclusive contract who engage in mortgage loan originating that are the substantial equivalent, as determined by the Commissioner, of the educational requirements applicable to mortgage loan originators required by the statute.
- 2.2 Neither the statute nor this regulation shall require an attorney at law in good standing in this State who engages in mortgage loan originating to meet the licensing or education requirements prescribed by the statute.
- 2.3 No employee of, or person affiliated with, an exempt organization shall be subject to the licensing or education requirements of the statute due solely to that employee or person assisting in the performance of any business activities of a mortgage broker or lender licensed under 5 **Del.C.** Chapters 21 or 22 respectively that is controlled by, or is a subsidiary of, the exempt organization.
- 2.4 No employee of, or person affiliated with, an originating entity shall be subject to the licensing or education requirements of the statute due solely to that employee or person assisting in the performance of the business activities of the originating entity that are incidental to the performance of any mortgage loan originating activities performed by the originating entity.

3.0 License Required

- 3.1 No person shall engage in mortgage loan originating without first being licensed by the Commissioner as an MLO pursuant to the statute and this regulation, unless otherwise exempt; provided however that:

- 3.1.1 ~~a person who was employed by or affiliated with an originating entity as an MLO prior to the effective date of the statute and who has submitted a license application and required fees by March 31, 2009 may continue to engage in mortgage loan originating on a temporary basis until that person is licensed as an MLO or is notified by the Commissioner that the application has been denied; and~~
- 3.1.2 ~~a person who is initially employed by or affiliated with any originating entity as an MLO on or after the effective date of the statute and who has submitted a license application and required fees may engage in mortgage loan originating on a temporary basis until the person is licensed as an MLO or notified by the Commissioner that the application has been denied.~~
- 3.2 Licenses shall not be transferable or assignable.
- 3.3 An MLO shall not be simultaneously employed by, or affiliated with, more than one originating entity or exempt organization.
- 3.4 Every person licensed under the statute and this regulation shall be a financial institution for purposes of Part I of Title 5 of the ~~Delaware Code~~.

4.0 Applications

- 4.1 Any person seeking an initial license to engage in mortgage loan originating shall submit an application to the Commissioner as soon as practicable after employment by an originating entity. The application shall contain such information, and be submitted on such forms and in such manner as the Commissioner may designate.
- 4.2 Any person seeking to renew an existing license as an MLO shall submit an application to the Commissioner at least 30 days before the expiration of the existing license. The application shall contain such information, and be submitted on such forms and in such manner as the Commissioner may designate. A renewal application that is not received by that time shall be treated as an application for an initial license and shall be subject to the investigation fee.
- 4.3 All applications must be submitted with the multi-state automated system processing fee. The initial application must also be submitted with the investigation fee.
- 4.4 No application shall be deemed complete until the Commissioner has received all required information, documents and fees.
- 4.5 If an application is determined by the Commissioner to be incomplete, the Commissioner shall send written notification to the applicant indicating the items that must be addressed to continue the application review process. If the Commissioner does not receive a complete response fully addressing all such items within 30 days of the sending of such notice, the Commissioner may consider the application withdrawn.
- 4.6 Any person seeking an initial license following withdrawal of an application shall submit a new application that includes all information, documents and fees required for an initial license.
- 4.7 The Commissioner may require additional information in connection with any application.

5.0 Fees

- 5.1 An investigation fee of \$250.00 is to be submitted with the initial application and is non-refundable.
- 5.2 A multi-state automated licensing system processing fee of \$30.00 (or such other amount as the system may charge) is to be submitted with all applications and is non-refundable.
- 5.3 An annual license fee of \$250.00 is to be submitted upon the approval of an application and must be received before a license certificate is issued. The annual license fee shall not be reduced if the license is issued for less than one year; becomes inactive; or is surrendered, suspended, canceled or revoked prior to its expiration.

6.0 Issuance of License

- 6.1 ~~The Commissioner shall issue a license to an applicant upon finding that the applicant's general character, fitness and educational qualifications are such as to warrant belief that the applicant will engage in mortgage loan originating honestly, fairly and efficiently within the purposes of the statute.~~
- 6.2 ~~Upon approving a license application, the Commissioner shall:~~
 - 6.2.1 ~~issue a numbered certificate attesting to that licensing;~~
 - 6.2.2 ~~transmit a copy of the license certificate to the applicant;~~
 - 6.2.3 ~~transmit a notice of the application's approval and a copy of the license certificate to the originating entity that employs the MLO, or with which the MLO is affiliated; and~~
 - 6.2.4 ~~maintain copies of the license certificate and notice of approval.~~

7.0 Denial of License

- 7.1 ~~The Commissioner may deny a license to an applicant upon finding that the applicant:~~
 - 7.1.1 ~~does not possess sufficient general character, fitness and education qualifications to warrant belief that the applicant will engage in mortgage loan originating honestly, fairly and efficiently within the purposes of the statute;~~
 - 7.1.2 ~~has been convicted of a felony;~~
 - 7.1.3 ~~has had a registration or license revoked by the Commissioner or a regulatory person or entity of another state or the federal government that regulates persons engaging in mortgage loan originating;~~
 - 7.1.4 ~~has been a director, partner, or substantial equity owner of an originating entity that has had a registration or license revoked by the Commissioner or a regulatory person or entity of another state or the federal government that regulates the originating entity;~~
 - 7.1.5 ~~has been an employee, officer or agent of, or a consultant to, an originating entity that has had a registration or license revoked by the Commissioner or a regulatory person or entity of another state or the federal government that regulates the originating entity where the person has been found by the Commissioner, or by such similar regulatory person or entity, to bear responsibility in connection with that revocation;~~
 - 7.1.6 ~~has failed to comply with any supervisory letter, directive or order of the Commissioner or of a regulatory person or entity of another state or the federal government; or~~
 - 7.1.7 ~~has failed to pay the State or the Commissioner any money when due.~~
- 7.2 ~~If the Commissioner makes a preliminary determination to deny an application, the Commissioner shall promptly send the applicant a written notice to that effect stating the grounds for that determination. The applicant may request that the Commissioner hold a hearing to reconsider the determination in accordance with the 29 ~~Del.C.~~ Chapter 101.~~
- 7.3 ~~When a determination to deny a license application has become final, the Commissioner shall promptly send the originating entity with which the applicant is employed or affiliated a written notice that the application was denied and that the applicant may not engage in mortgage loan originating in this State.~~

8.0 Suspension and Revocation of License

- 8.1 ~~The Commissioner may suspend or revoke a license upon finding that:~~
 - 8.1.1 ~~the licensee has violated any provision of Title 5 of the ~~Delaware Code~~, any rule or regulation of the Commissioner, or any law, rule or regulation of this State, another state, or the federal government pertaining to mortgage lending, brokering or loan originating;~~
 - 8.1.2 ~~any fact or condition exists which, if it had existed at the time of the original application for the license, would have warranted the Commissioner to refuse to issue the initial license; or~~
 - 8.1.3 ~~the licensee has committed a crime against the laws of this State or any other state or of the United States involving moral turpitude or fraudulent or dishonest dealing, or a final judgment has been entered against the licensee in a civil action upon grounds of fraud, misrepresentation or deceit.~~

- 8.2 Any suspension order issued after notice and a hearing may include as a condition of reinstatement that restitution be made to consumers of fees or other charges which have been improperly charged or collected as determined by the Commissioner.
- 8.3 The Commissioner may temporarily suspend any license pending the issuance of a final order as provided in ~~29 Del.C.~~ Chapter 101.
- 8.4 If the Commissioner makes a preliminary determination to suspend or revoke a license, the Commissioner shall promptly send the licensee a written notice to that effect stating the grounds for that determination. The licensee may request that the Commissioner hold a hearing to reconsider the determination in accordance with the ~~29 Del.C.~~ Chapter 101.
- 8.5 Except as provided in section 8.3, no license shall be suspended or revoked except after notice and an opportunity for the licensee to request a hearing in accordance with ~~29 Del.C.~~ Chapter 101.
- 8.6 The Commissioner shall have authority to reinstate a suspended license or to issue a new license to an MLO whose license has been revoked if no fact or condition then exists which would have warranted the Commissioner to refuse to issue an initial license.

9.0 Considerations Relating to Denial, Suspension, and Revocation

- 9.1 In making a determination to deny, suspend, or revoke a license, the Commissioner may consider, among other things, the applicant's or licensee's employment history; educational background; financial responsibility; history of complaints or consumer abuse relating to real estate or lending transactions; regulatory fines and enforcement actions; revocation, suspension or denial of licenses, certifications, authorizations or registrations by any state or federal governmental agency; and criminal convictions.
- 9.2 A person shall be deemed to have been convicted of a crime if that person has pled guilty or nolo contendere before a court or magistrate, or has been found guilty by the decision or judgment of a court or magistrate or by the verdict of a jury, irrespective of the pronouncement or suspension of sentence.
- 9.3 A conviction shall not require the Commissioner to deny, suspend or revoke a license:
- 9.3.1 if the conviction has been set aside, reversed or otherwise abrogated by lawful judicial process;
 - 9.3.2 if the person has received a pardon from the President of the United States or the governor or other pardoning authority of the jurisdiction where the conviction occurred, or has received a certificate of good conduct granted by a board of parole pursuant to provisions of an executive law to remove the disability the statute and this regulation because of that conviction; or
 - 9.3.3 if the Commissioner determines that the conviction does not disqualify the person from holding a license.

40.0 Inactive Status

- 40.1 A license is not effective during any period when an MLO is not employed by, or affiliated with, an originating entity. The license of such MLO shall be immediately placed in inactive status until the Commissioner receives a written notice of the MLO's new employment or affiliation with an originating entity.
- 40.2 An MLO with an inactive license shall continue to take all required education courses, pay all required fees and assessments, maintain all required records, and file all required reports as if the license had remained in an active status.
- 40.3 An MLO with an inactive license may submit an application to the Commissioner for renewal of a license with that same status. The application shall request such information, and be submitted on such forms and in such manner as the Commissioner may designate.

41.0 Records and Reports

- 41.1 Every MLO shall promptly notify the Commissioner of the following:
- 41.1.1 any change of primary residence address;

- 11.1.2 any pending felony charges or conviction;
 - 11.1.3 any pending charges or conviction for any crime involving financial services, a financial services related business, fraud, false statements or omissions, consumer deception, theft or wrongful taking of property, bribery, perjury; forgery or extortion;
 - 11.1.4 cessation of employment or affiliation with an originating entity;
 - 11.1.5 the initiation, settlement, or resolution of any complaint, action or proceeding against the MLO by a state or federal governmental unit or self regulatory organization in connection with a financial services related activity or business or involving fraud, misrepresentation, consumer deception, theft or perjury; and
 - 11.1.6 the initiation, settlement or resolution of any other civil action or proceeding against the MLO in connection with a financial services related activity or business or involving fraud, misrepresentation, consumer deception, or theft.
- 11.2 Every MLO shall obtain certificates evidencing satisfactory completion of the education requirements for each education period under the statute and provide copies to the Commissioner and the MLO's originating entity. The MLO shall retain those certificates for six years.

42.0 Surrender of License

- 12.1 A license may be surrendered only by the person named on the license certificate. The originating entity that employs an MLO or with which an MLO is affiliated may not surrender the license of that MLO.
- 12.2 A license shall be surrendered by submitting to the Commissioner a written notice in such form and manner as the Commissioner may designate.
- 12.3 If the surrender occurs after the Commissioner issues a determination to suspend or revoke a license, the Commissioner may proceed against the MLO as if the surrender had not occurred.

43.0 Expiration of Licenses

- 13.1 All licenses expire on December 31 of each year; provided, however, that if a renewal application is received prior to that date, a license shall remain in effect until the Commissioner has made a determination on that application.
- 13.2 Whenever a license expires, the Commissioner shall send the licensee a written notice of that expiration stating that the licensee may no longer engage in mortgage loan originating in this State.
- 13.3 If a license expires after the Commissioner issues a determination to suspend or revoke that license, the Commissioner may proceed against the MLO as if the expiration had not occurred.

44.0 Duration of License

- 14.1 Every license shall remain in force and effect until it expires, becomes inactive, or is suspended, surrendered, or revoked.
- 14.2 Whenever a license ceases to be effective for any reason:
 - 14.2.1 the Commissioner shall send a written notice to that effect to the originating entity for which the licensee had been providing services stating that the licensee may not engage in mortgage loan originating in this State; and
 - 14.2.2 the obligations of any pre-existing lawful contract between the licensee and any person or entity and the licensee's civil or criminal liability for acts committed while the license was in effect shall not be affected in any way.

45.0 Duties of Originating Entities

- 15.1 No originating entity shall permit any person to engage in mortgage loan originating on its behalf who does not have a license in effect under the statute and this regulation, except for persons who are allowed to engage in mortgage loan originating on a temporary basis pursuant to the statute and this regulation. In order to allow a person to engage in mortgage loan originating on such a temporary

basis, the originating entity must have a notice from the Commissioner stating that the person has submitted a license application as required by this regulation.

- 15.2 An originating entity shall retain for six years copies of the education course completion certificates of the MLOs who are employed or affiliated with it. If an originating entity also maintains the original education certificates of an MLO, the originating entity shall provide those originals to the MLO when the MLO terminates employment or affiliation.
- 15.3 When an MLO ceases to be employed by or affiliated with an originating entity, the originating entity shall promptly send the Commissioner written notice stating the name and residence address of the MLO, the termination date of that employment or affiliation, and the reasons for the termination.
- 15.4 Every originating entity shall display at the location where an MLO is providing mortgage loan originating services copies of the license certificates of the MLOs who are employed affiliated with the originating entity at that location.
- 15.5 Every originating entity shall require that the license number of the MLO performing mortgage loan originating services with respect to a mortgage loan application is recorded on that application.

16.0 Multi-State Automated Licensing System

The administrator of a multi-state automated licensing system in which the Commissioner participates is authorized to act on behalf of the Commissioner to process applications, to collect payments, to receive information and to maintain records related to the administration of the statute and this regulation.

1.0 Definitions

For the purposes of this regulation, the following definitions apply unless the context otherwise requires:

“Commissioner” means the State Bank Commissioner.

“Depository institution” has the same meaning as in § 3 of the United States Federal Deposit Insurance Act, and includes any credit union.

“Dwelling” has the same meaning as in §103(v) of the United States Truth in Lending Act.

“Federal banking agencies” means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

“Immediate family member” means a spouse, child, sibling, parent, grandparent or grandchild. This includes step-parents, step-children, step-siblings, and adoptive relationships.

“Individual” means a natural person.

“Loan processor or underwriter” means an individual who performs clerical or support duties as an employee at the direction of an individual subject to the supervision and instruction of a person licensed, or exempt from licensing under Chapters 21 or 22 of Title 5 of the **Delaware Code**.

a. For purposes of this definition, ‘clerical or support duties’ may include subsequent to the receipt of an application:

1. the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and
2. communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

b. An individual engaging solely in loan processor or underwriter activities, shall not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator.

“Mortgage loan originator” means an individual who for compensation or gain or in the expectation of compensation or gain:

-
- a. takes a residential mortgage loan application; or
 - b. offers or negotiates terms of a residential mortgage loan;
 - c. but does not include:
 - 1. an individual engaged solely as a loan processor or underwriter, except as otherwise provided in §3.2.
 - 2. a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with Delaware law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; and
 - 3. a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in §101(53D) of Title 11, United States Code.

“Nationwide Mortgage Licensing System and Registry” means the mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators.

“Nontraditional mortgage product” means any mortgage product other than a 30 year fixed rate mortgage.

“Person” means a natural person, corporation, company, limited liability company, partnership, association, or other entity.

“Real estate brokerage activity” means any activity that involves offering or providing real estate brokerage services to the public, including:

- a. acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;
- b. bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;
- c. negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction);
- d. engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and
- e. offering to engage in any activity, or act in any capacity, described in a., b., c., or d. of this definition.

“Registered mortgage loan originator” means any individual who:

- a. meets the definition of mortgage loan originator and is an employee of:
 - 1. a depository institution;
 - 2. a subsidiary that is:
 - A. owned and controlled by a depository institution; and
 - B. regulated by a federal banking agency; or
 - 3. an institution regulated by the Farm Credit Administration; and
- b. is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

“Residential mortgage loan” means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling.

“Residential real estate” means any real property located in Delaware, upon which is constructed, or intended to be constructed, a dwelling.

“Statute” means the Delaware S.A.F.E. Mortgage Licensing Act of 2009, 5 Del.C. Ch. 24, as amended.

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“Unique identifier” means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

2.0 Exemptions

The following are exempt from the statute and this regulation:

- 2.1 registered mortgage loan originators, when acting for an entity that is:
 - 2.1.1 a depository institution;
 - 2.1.2 a subsidiary that is:
 - 2.1.2.1 owned and controlled by a depository institution; and
 - 2.1.2.2 regulated by a federal banking agency; or
 - 2.1.3 an institution regulated by the Farm Credit Administration;
- 2.2 any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;
- 2.3 any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual’s residence; and
- 2.4 a licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney’s representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator.

3.0 License and Registration Required

- 3.1 Unless specifically exempted from the statute and this regulation, an individual shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this State without first obtaining and then annually maintaining a license issued by the Commissioner under the statute and this regulation.
- 3.2 A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter without first obtaining and then annually maintaining a license issued by the Commissioner under the statute and this regulation.
- 3.3 Each licensed mortgage loan originator must register with the Nationwide Mortgage Licensing System and Registry and maintain a valid unique identifier.
- 3.4 Licenses shall not be transferable or assignable.
- 3.5 Every person licensed under the statute and this regulation shall be a financial institution for purposes of Part I of Title 5 of the **Delaware Code**.

4.0 Applications

- 4.1 Any person seeking an initial license to engage in the business of a mortgage loan originator with respect to any dwelling located in this State shall submit an application to the Commissioner through the Nationwide Mortgage Licensing System and Registry. All such applicants shall furnish to that System information concerning the applicant’s identity, including:
 - 4.1.1 fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a state, national and international criminal history background check; and
 - 4.1.2 personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of a authorization for that System and the Commissioner to obtain:
 - 4.1.2.1 an independent credit report obtained from a consumer reporting agency described in §603(p) of the United States Fair Credit Reporting Act; and
 - 4.1.2.2 information related to any administrative, civil or criminal findings by any governmental jurisdiction.

- 4.2 Any individual seeking to renew an existing license to engage in the business of a mortgage loan originator with respect to any dwelling located in this State shall submit an application to the Commissioner through the Nationwide Mortgage Licensing System and Registry at least 30 days before the expiration of the existing license. A renewal application that is not received by that time shall be treated as an application for an initial license and shall be subject to the investigation fee, but not the pre-licensing education and testing requirements.
- 4.3 All applications shall contain such information, and be submitted on such forms and in such manner as the Commissioner may designate. The Commissioner may change and update application forms as the Commissioner deems appropriate. The Commissioner may also require additional information in connection with any particular application.
- 4.4 All applications must be submitted with the annual license fee and the Nationwide Mortgage Licensing System and Registry processing fee. Initial applications must also be submitted with the investigation fee.
- 4.5 No application shall be deemed complete until the Commissioner has received all required information, documents and fees.
- 4.6 If the Commissioner determines that an application is incomplete, the Commissioner shall send written notification to the applicant indicating the items that must be addressed to continue the application review process. If the Commissioner does not receive a complete response fully addressing all such items within 30 days after sending that notice, the Commissioner may consider the application withdrawn.
- 4.7 Any person seeking an initial license following withdrawal of an application shall submit a new application that includes all information, documents and fees required for an initial license.

5.0 Fees

- 5.1 An investigation fee of \$250.00 must be submitted with the application for an initial license. This fee is non-refundable.
- 5.2 An annual license fee of \$250.00 must be submitted with all applications. This fee shall be refunded if the application is denied, but shall not be reduced or refunded in any amount if the license is issued for less than one year; or is surrendered, suspended, canceled or revoked prior to its expiration.
- 5.3 A Nationwide Mortgage Licensing System and Registry processing fee of \$30.00 (or such other amount as that System may charge) must be submitted with all applications. This fee is non-refundable.

6.0 Issuance of Initial License

- 6.1 The Commissioner shall issue a mortgage loan originator license only upon finding, at a minimum, that:
- 6.1.1 The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacating of a revocation shall not be deemed a revocation.
- 6.1.2 The applicant has not been convicted of, or pled guilty or no longer contest to, a felony in a domestic, foreign, or military court:
- 6.1.2.1 during the 7-year period preceding the date of the application for licensing and registration; or
- 6.1.2.2 at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, breach of trust, or money laundering;
- 6.1.2.3 provided that any conviction that has been pardoned shall not be a conviction for the purposes of this section.
- 6.1.3 The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the applicant will operate as a mortgage loan originator honestly, fairly, and efficiently within the purposes of the statute and this regulation. For purposes of this section, applicants have demonstrated that they

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are not financially responsible when they have shown a disregard in the management of their own financial condition. A determination that an applicant has not shown financial responsibility may include, but not be limited to:

- 6.1.3.1 current outstanding judgments, except judgments solely as a result of medical expenses;
 - 6.1.3.2 current outstanding tax liens or other government liens and filings;
 - 6.1.3.3 foreclosures within the past three years;
 - 6.1.3.4 a pattern of seriously delinquent accounts within the past three years; or
 - 6.1.3.5 failure to pay the State or the Commissioner any money when due.
- 6.1.4 The applicant has completed the pre-licensing education requirements described in §8.0.
 - 6.1.5 The applicant has passed a written test that meets the test requirements described in §9.0; and
 - 6.1.6 The applicant has met the surety bond requirements described in §12.0.

7.0 Denial of Initial License

- 7.1 If the Commissioner refuses to issue an initial license, the Commissioner shall notify the applicant in writing of that refusal, of the reasons for the refusal, and of the applicant's right to request a hearing; provided however, the Commissioner shall retain any investigation or other fee charged for the expense of processing an initial application, notwithstanding that the application was rejected.
- 7.2 The Commissioner shall send a copy of the notice to the applicant at that individual's last known mailing address by certified mail, return receipt requested. If the applicant sends the Commissioner a written request for a hearing within 10 days of the notice's mailing date, the Commissioner shall then hold that hearing in accordance with Chapter 101 of Title 29 of the **Delaware Code**.

8.0 Pre-Licensing Education

- 8.1 To meet the pre-licensing education requirements of §6.1.4, an applicant must complete at least 20 hours of education that include:
 - 8.1.1 federal law and regulations – 3 hours;
 - 8.1.2 ethics, to include instruction on fraud, consumer protection, and fair lending issues – 3 hours; and
 - 8.1.3 lending standards for the nontraditional mortgage product marketplace – 2 hours.
- 8.2 All pre-licensing education courses must be approved by the Nationwide Mortgage Licensing System and Registry.
- 8.3 Pre-licensing education may be offered either in a classroom, online or by any other means and at any location approved by the Nationwide Mortgage Licensing System and Registry.
- 8.4 Any pre-licensing education courses specified in §8.1.1 to §8.1.3 that are approved by the Nationwide Mortgage Licensing System and Registry for any other state shall be accepted as credit towards completion of the pre-licensing education requirements in this State.
- 8.5 A person previously licensed under the statute and this regulation subsequent to the effective date of the statute and this regulation applying to be licensed again must have completed all of the continuing education requirements for the year in which the previous license was last held.

9.0 Testing

- 9.1 To meet the written test requirements of §6.1.5, an applicant must pass a written test developed by the Nationwide Mortgage Licensing System and Registry that adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:
 - 9.1.1 ethics;
 - 9.1.2 federal law and regulation pertaining to mortgage origination;
 - 9.1.3 state law and regulation pertaining to mortgage origination; and
 - 9.1.4 federal and state law and regulation, pertaining to fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

- 9.2 An applicant must achieve a score of at least 75 percent correct answers to the test questions for a passing grade.
- 9.3 The test must be administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry, and may be taken at any location approved by that System.
- 9.4 An applicant may take a test 3 consecutive times, with each consecutive test occurring at least 30 days after the preceding test.
- 9.5 After failing 3 consecutive tests, an applicant must wait at least 6 months before taking the test again.
- 9.6 A licensed mortgage loan originator who fails to maintain a valid license for a period of 5 years or longer must retake the test, not taking into account any time during which such individual is a registered mortgage loan originator.

10.0 License Renewal

- 10.1 The Commissioner shall renew a mortgage loan originator's license only upon finding, at a minimum, that:
 - 10.1.1 the mortgage loan originator continues to meet the minimum standards for initial license issuance under §6.0;
 - 10.1.2 the mortgage loan originator has satisfied the annual continuing education requirements described in §11.0; and
 - 10.1.3 the mortgage loan originator has paid all required fees for renewal of the license.
- 10.2 The Commissioner may refuse to renew a mortgage loan originator's license pursuant to §13.0.

11.0 Continuing Education

- 11.1 To meet the annual continuing education requirements of §10.1.2, a licensed mortgage loan originator must complete during every calendar year after initial licensing at least 8 hours of education that include:
 - 11.1.1 federal law and regulations – 3 hours;
 - 11.1.2 ethics, to include instruction on fraud, consumer protection, and fair lending issues – 2 hours; and
 - 11.1.3 lending standards for the nontraditional mortgage product marketplace – 2 hours.
- 11.2 All continuing education courses must be approved by the Nationwide Mortgage Licensing System and Registry.
- 11.3 Continuing education may be offered either in a classroom, online or by any other means and at any location approved by the Nationwide Mortgage Licensing System and Registry.
- 11.4 A licensed mortgage loan originator:
 - 11.4.1 except as provided in §11.8, may only receive credit for a continuing education course in the calendar year in which the course is taken; and
 - 11.4.2 may not take the same course in the same or successive calendar years to meet the annual requirements for continuing education.
- 11.5 A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of 2 hours credit for every 1 hour taught.
- 11.6 Any continuing education courses specified in §11.1.1 to §11.1.3 that are approved by the Nationwide Mortgage Licensing System and Registry for any other state shall be accepted as credit towards completion of the continuing education requirements in this State.
- 11.7 A licensed mortgage loan originator who subsequently becomes unlicensed must complete the continuing education requirements for the last year in which a license was held prior to issuance of a new or renewed license.
- 11.8 A mortgage loan originator who applies for a license renewal and meets the requirements of §10.1 and §10.3, but fails to complete the required continuing education credits by December 31 shall submit to

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the Commissioner by that date a specific plan for making up the deficiency of necessary credits by March 1 of the succeeding year.

- 11.8.1 Unless the Commissioner notifies the mortgage loan originator to the contrary by January 31, the plan shall be deemed accepted by the Commissioner and the mortgage loan originator's license will be renewed provisionally until March 15.
- 11.8.2 Not later than March 15, the mortgage loan originator shall submit to the Commissioner a written certification of completion of the plan that includes the title, date, and number of credits earned at each course.
- 11.8.3 The Commissioner may refuse to renew pursuant to §13.0 the license of a mortgage loan originator with a continuing education deficiency who fails to submit either the plan or certification required by this section.

12.0 Surety Bonds

- 12.1 All licensed mortgage loan originators and applicants for an initial license under the statute and this regulation shall file with the Commissioner an original corporate surety bond in a form satisfactory to the Commissioner in accordance the requirements of this section.
- 12.2 The surety bond for an applicant for an initial license shall be a minimum of \$25,000. The surety bond for a licensed mortgage loan originator shall be in a minimum amount in accordance with the following table based upon the volume of Delaware mortgage loans which that licensee originated for the year ending December 31 that precedes the effective year of the license. The amount of a surety bond that is effective for more than one year shall be adjusted as of December 31 of each year to ensure that the minimum required amount is maintained.

<u>Annual Volume of Delaware Mortgage Loans</u>	<u>Minimum Required Amount of Surety Bond</u>
<u>not more than \$11,000,000</u>	<u>\$25,000</u>
<u>\$11,000,001 - \$23,000,000</u>	<u>\$50,000</u>
<u>\$23,000,001 - \$35,000,000</u>	<u>\$75,000</u>
<u>\$35,000,001 - \$47,000,000</u>	<u>\$100,000</u>
<u>\$47,000,001 - \$59,000,000</u>	<u>\$125,000</u>
<u>\$59,000,001 - \$71,000,000</u>	<u>\$150,000</u>
<u>\$71,000,001 - \$83,000,000</u>	<u>\$175,000</u>
<u>\$83,000,001 and over</u>	<u>\$200,000</u>

- 12.3 The Commissioner may require a larger surety bond based upon the particular circumstances of the applicant or licensee.
- 12.4 No bond shall be accepted unless the following requirements are satisfied:
- 12.4.1 The aggregate value of the bond shall be equal to, or greater than, the amount determined in accordance with §12.2;
- 12.4.2 The term of the bond shall be commensurate with the license period or continuous;
- 12.4.3 The expiration date of the bond shall not be earlier than midnight of the date on which the license expires; and
- 12.4.4 The bond shall run to the State for the benefit of the Office of the State Bank Commissioner and for the benefit of all consumers injured by any wrongful act, omission, default, fraud or misrepresentation by the mortgage loan originator in the course of that individual's activity as such. Compensation under the bond shall be for amounts which represent actual losses and shall not be payable for claims made by business creditors, third-party service providers, agents or persons otherwise in the employ of the mortgage loan originator. Surety claims shall be paid to the Office of the State Bank Commissioner by the insurer not later than 90 days after receipt of a claim. Claims paid after 90 days shall be subject to daily interest at the legal rate. The aggregate liability of the

surety on the bond, exclusive of any interest which accrues for payments made after 90 days, shall in no event exceed the amount of such bond.

- 12.5 If a mortgage loan originator changes surety company or the bond is otherwise amended, the mortgage loan originator shall immediately provide the Commissioner with the amended original copy of the surety bond. No cancellation of an existing bond by a surety shall be effective unless written notice of its intention to cancel is filed with the Commissioner at least 30 days before the date upon which cancellation shall take effect.
- 12.6 The Commissioner may require potential claimants to provide such documentation and affirmations as the Commissioner may determine to be necessary and appropriate. In the event the Commissioner determines that multiple consumers have been injured by a mortgage loan originator, the Commissioner shall cause a notice to be published for the purpose of identifying all relevant claims.
- 12.7 When a surety company receives a claim against the bond of a mortgage loan originator, it shall immediately notify the Commissioner and shall not pay any claim unless and until it receives notice to do so from the Commissioner.
- 12.8 The Commissioner shall have a period of 2 calendar years after the effective date of cancellation or termination of the surety bond by the insurer to submit claims to the insurer.
- 12.9 A new bond shall be filed when an action is commenced on an existing bond.
- 12.10 Mortgage loan originators who are employees or exclusive agents of a licensee under Chapters 21 or 22 of Title 5 of the Delaware Code can use the surety bond of their employer or principal in lieu of their surety bond requirement under this section, if the surety bond of the employer or principal is in a minimum amount as provided in §12.2 based on the total annual volume of Delaware mortgage loans originated by all mortgage loan originators covered by that surety bond, that surety bond meets all the requirements of this section, and the employer or principal consents to that use. Licensees under those Chapters shall notify the Commissioner in writing of the names of the mortgage loan originators who are covered by their bond, and of any changes in that coverage.

13.0 Revocation, Suspension, Reprimand and Other Discipline

- 13.1 The Commissioner may revoke, suspend, condition, or refuse to renew any license, or publicly reprimand a licensee under the statute and this regulation upon finding that the licensee:
- 13.1.1 has violated or failed to comply with any provision of the statute; this regulation; any rule, regulation, order, or supervisory letter promulgated by the Commissioner under the authority of Title 5 of the Delaware Code; or any other law, rule or regulation of this State or the federal government;
- 13.1.2 has failed at any time to meet the requirements of §§6.0 or 10.0; or
- 13.1.3 has withheld information or made a material misstatement in an initial or renewal application for a license.
- 13.2 Whenever the Commissioner determines to take any action under this section, the Commissioner shall issue a written order that shall include a statement of the facts upon which the action is based and a notice that the licensee may request a hearing in accordance with Chapter 101 of Title 29 of the Delaware Code.
- 13.3 Except as provided in §13.4, an order under this section shall not become effective less than 10 days after its mailing date.
- 13.4 The Commissioner may issue an order under this section which shall become effective immediately upon issuance whenever in the opinion of the Commissioner, the public health, safety or welfare clearly requires emergency action and the Commissioner's order so states.
- 13.5 Upon its issuance, the Commissioner shall send a copy of the order to the licensee at that individual's last known mailing address by certified mail, return receipt requested.
- 13.5.1 If the licensee sends the Commissioner a written request for a hearing within 10 days of the order's mailing date, the Commissioner shall then hold a hearing in accordance with Chapter 101 of Title 29 of the Delaware Code, and except as provided in §13.4, the order then shall not become effective until the conclusion of the hearing.

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- 13.5.2 At the conclusion of the hearing, the Commissioner may affirm the order as originally issued, or modify, amend or rescind the order.
- 13.6 No action taken under this section shall in any way impair or otherwise affect either the obligations of any pre-existing lawful contract between the licensee and any person, or the licensee's civil or criminal liability.
- 13.7 If the expiration or surrender of a license occurs after the Commissioner issues a written order under §13.2, the Commissioner may proceed as if the expiration or surrender had not occurred.
- 13.8 The conditions that may be imposed pursuant to this section on a license and on the reinstatement of a suspended license may include the payment of restitution to consumers for fees or other charges that the licensee improperly charged or collected.

14.0 Information Challenges

- 14.1 A mortgage loan originator may challenge information that the Commissioner has entered into the Nationwide Mortgage Licensing System and Registry by submitting to the Commissioner a written statement that identifies the specific information being challenged and provides evidence that this information is incorrect.
- 14.2 Upon receipt of an information challenge, the Commissioner shall consider the merits of the challenge and issue a written preliminary determination.
- 14.3 Upon issuance, the Commissioner shall send a copy of the determination to the mortgage loan originator initiating the challenge at that individual's last known address by certified mail, return receipt requested.
- 14.4 The Commissioner's preliminary determination will be the final resolution of the challenge, unless the mortgage loan originator sends the Commissioner a written request for a hearing within 10 days of the mailing date of the preliminary determination. The Commissioner shall then hold that hearing in accordance with Chapter 101 of Title 29 of the **Delaware Code**; provided, however, that if the subject matter of the information at issue is a decision issued pursuant to such a hearing or by a court of competent jurisdiction, then the Commissioner shall only confirm that the decision was correctly entered into the Nationwide Mortgage Licensing System and Registry and inform the mortgage loan originator of that confirmation without holding a hearing.

15.0 Records and Reports

- 15.1 Every licensed mortgage loan originator shall promptly notify the Commissioner of the following:
- 15.1.1 any change of primary residence address;
- 15.1.2 any pending felony charges or conviction;
- 15.1.3 any pending criminal charges or conviction involving financial services, a financial services related business, fraud, dishonesty, breach of trust, false statements or omissions, consumer deception, theft, wrongful taking of property, identity theft, bribery, perjury, forgery, extortion, or money laundering;
- 15.1.4 cessation of employment or termination of affiliation with any person for whom the mortgage loan originator had been providing residential mortgage loan origination services;
- 15.1.5 the initiation, settlement, or other resolution of any complaint, litigation, administrative action, or other proceeding against the mortgage loan originator by any person, governmental unit or self-regulatory or organization involving residential mortgage loans, financial services, a financial services related business, fraud, dishonesty, breach of trust, false statements or omissions, consumer deception, theft, wrongful taking of property, identity theft, bribery, perjury, forgery, extortion, or money laundering;
- 15.1.6 the filing of any bankruptcy petition in which the mortgage loan originator is the debtor in the proceeding;
- 15.1.7 the entry of any judgment, tax lien, other government lien or similar filing against the mortgage loan originator; and

- 15.1.8 the initiation of any foreclosure action against the mortgage loan originator.
- 15.2 Every license issued on mortgage loan originator shall maintain a journal of residential mortgage loan applications, which shall include, at a minimum, the following information:
- 15.2.1 the full name and address of all proposed borrowers and co-borrowers;
- 15.2.2 the address of the residential real estate to be used as security for the loan;
- 15.2.3 the date the mortgage loan originator took the loan application for the mortgage loan;
- 15.2.4 the name and the unique identifier or other unique identifying number of the mortgage loan originator's employer or other person for whom the mortgage loan originator was providing residential mortgage loan origination services; and
- 15.2.5 the disposition of the loan application and date of disposition. The disposition of the application shall be categorized as either loan closed, loan denied, a application with drawn, application in process, or other (with an explanation provided).
- 15.2.6 The journal shall be kept current, updated no less frequently than every 10 business days.
- 15.3 All licensed mortgage loan originators who maintain their own surety bond coverage must keep copies of their bonds and also provide copies to their employer or other person for whom the mortgage loan originator was providing residential mortgage loan origination services.
- 15.4 All records required by this section shall be maintained for a period of five (5) years.

16.0 Surrender of License

A mortgage loan originator may surrender a license issued under the statute and this regulation by submitting a written notice of license surrender to the Commissioner or the Nationwide Mortgage Licensing System and Registry. A license may be surrendered only by the individual to whom the license was issued.

17.0 Expiration of Licenses

- 17.1 All licenses issued under the statute and this regulation expire on December 31 of each year; provided however, that if a renewal application is received prior to that date, the applicant may continue to act as a mortgage loan originator until the Commissioner has made a determination on that application.
- 17.2 Whenever a license expires, the Commissioner shall send the licensee a written notice of the expiration stating that the licensee may no longer engage in the business of a mortgage loan originator with respect to any dwelling located in this State.

18.0 Duration of License

- 18.1 Every license issued under the statute and this regulation shall remain in effect until it expires, or is surrendered, suspended, or revoked.
- 18.2 When a mortgage loan originator's Delaware license becomes ineffective, the Commissioner may send a written notice of that fact to the mortgage loan originator's employer or other person for whom the mortgage loan originator had been providing residential mortgage loan origination services.
- 18.3 Whenever a mortgage loan originator's Delaware license ceases to be effective for any reason, neither the obligations of any pre-existing lawful contract between the mortgage loan originator and any person, nor the mortgage loan originator's civil or criminal liability for acts committed while that license was in effect shall be affected in any way.

19.0 Nationwide Mortgage Licensing System and Registry

The administrator of the Nationwide Mortgage Licensing System and Registry is authorized to act on behalf of the Commissioner to process applications, to collect payments, to receive information and to maintain records related to the administration of the statute and this regulation.

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20.0 Examination Fees and Supervisory Assessments

- 20.1 The Commissioner may conduct investigations and examinations pursuant to §122 and §2417 of Title 5 of the **Delaware Code**.
- 20.2 The cost of such investigations and examinations is assessed in accordance with §127(a) and §2417(b)(6) of Title 5 of the **Delaware Code**. A person subject to investigation or examination shall remit payment not later than 30 days of the examination invoice.
- 20.3 The Commissioner shall assess each licensee under the statute and this regulation a supervisory assessment that is due and payable on August 1 of each year, in accordance with §127(b) of Title 5 of the **Delaware Code**.
- 20.4 Failure to remit timely payment of any examination fee or supervisory assessment will result in a penalty of 0.05 percent of the amount unpaid for each day the such fee or assessment remains unpaid after the due date, in accordance with §127(a) and §127 (b) of Title 5 of the **Delaware Code**, and may also result in license revocation, suspension or other disciplinary action under §13.0.

21.0 Unique Identifiers

The unique identifier of any individual originating a residential mortgage loan on a dwelling located in this State shall be clearly shown on all residential mortgage loan application forms for all such loans originated by that individual, and on all solicitations, advertisements, business cards, and websites listing the name of that individual.

22.0 Prohibited Acts And Practices

A person subject to the statute and this regulation shall not:

- 22.1 directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;
- 22.2 engage in any unfair or deceptive practice toward any person;
- 22.3 obtain property by fraud or misrepresentation;
- 22.4 solicit or enter into a contract with a borrower that provides in substance that the person subject to the statute and this regulation may earn a fee or commission through 'best efforts' to obtain a loan even though no loan is actually obtained for the borrower;
- 22.5 solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;
- 22.6 conduct any business covered by the statute and this regulation without holding a valid license as required under the statute and this regulation, or assist or aid and abet any person in the conduct of business under the statute and this regulation without a valid license as required under the statute and this regulation;
- 22.7 fail to make disclosures as required by the statute and this regulation and any other applicable federal or State law including regulations thereunder;
- 22.8 fail to comply with the statute and this regulation or rules or regulations promulgated under the statute, or fail to comply with any other federal or State law, including the rules and regulations thereunder, applicable to any business authorized or conducted under this the statute and this regulation;
- 22.9 make, in any manner, any false or deceptive statement or representation, or engage in 'bait and switch' advertising;
- 22.10 negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the Nationwide Mortgage Licensng System and Registry or in connection with any investigation or examination conducted by the Commissioner or another governmental agency;
- 22.11 make any payment, threat or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment threat or promise, directly or indirectly, to any appraiser of a property, for the

purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

22.12 collect, charge, attempt to collect or charge or use or propose any agreement purporting to collect or charge any fee prohibited by the statute and this regulation;

22.13 cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer; or

22.14 fail to truthfully account for monies belonging to a party to a residential mortgage loan transaction.

23.0 Transition

Pursuant to §2404(e) of the statute and Section 2 of 77 Delaware Laws Chapter 96, the Commissioner may annually renew any license issued pursuant to Chapter 24 of Title 5 of the **Delaware Code** as it existed immediately prior to the enactment of the statute until such time as the statute is fully implemented; and also issue new licenses pursuant to that prior chapter until the later of either July 31, 2010, or until the Nationwide Mortgage Licensing System and Registry develops the qualified written test required for initial license applicants as specified by §2408(a) of the statute and §9.0 of this regulation, and the System is fully able to process applications pursuant to the statute.

12 DE Reg. 818 (12/01/08)

EXECUTIVE DEPARTMENT

DELAWARE ECONOMIC DEVELOPMENT OFFICE

Statutory Authority: 29 Delaware Code, Section 5005(11), (29 **Del.C.** §5005(11))

1 DE Admin. Code 402

PUBLIC NOTICE

The State of Delaware, Delaware Economic Development Office hereby gives notice of its intention to adopt amended regulations pursuant to the General Assembly's delegation of authority to adopt such measures found at 29 **Del.C.** §5005(11) and in compliance with Delaware's Administrative Procedures Act, 29 **Del.C.** §10115. The proposed changes to regulations amend the fees for submitting an application for economic assistance under the Delaware Strategic Fund, to better reflect the actual cost to process those applications. Additionally, the proposed regulations to Award Approval and Standards will reflect actual practice and market conditions.

The Division solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty days (30) after these proposed amended regulations are promulgated in the *Delaware Register of Regulations*.

Any such submissions should be mailed or delivered to Lee Porter, Delaware Economic Development Office, 99 Kings Highway, Dover, DE 19901 by October 30, 2009.

402 Procedures Governing The Delaware Strategic Fund

(Break in Continuity of Sections)

4.0 Fees

4.1 Application Fees

4.1.1 A non-refundable fee of two hundred fifty dollars (\$250) shall accompany every Application before such Application shall be considered by the Authority. The fee shall be in the form of a check made payable to "The Delaware Economic Development Authority."

4.2 Closing Fees

PROPOSED REGULATIONS

- 4.2.1 ~~For loans or participations in any amount up to and including one hundred thousand dollars (\$100,000), a fee of one half percent (.5%) of the loaned amount shall be paid at closing.~~
- 4.2.2 ~~For loans or participations excess of one hundred thousand dollars (\$100,000) up to and including two hundred twenty five thousand dollars (\$225,000), a fee of one percent (1%) of the loaned amount shall be paid at closing.~~
- 4.2.3 ~~For loans or participations in excess of two hundred twenty five thousand dollars (\$225,000), a fee of one and one half percent (1.5%) of the loaned amount shall be paid at closing.~~
- 4.2.4 ~~The Application fee shall be credited toward the closing fee required to be paid under 4.2. In no event shall the closing fee and the Application fee total less than two hundred fifty dollars (\$250).~~
- 4.3 ~~Post Closing Fees~~
- 4.3.1 ~~Any fees or costs incurred by the Authority in connection with executing a document or granting a consent or waiver related to a Project after closing, including, without limitation, attorney fees, shall be paid by the Applicant.~~
- 4.3.2 ~~Any fees or costs incurred by the Authority for modifying or restructuring payment terms for financial assistance after closing, shall be paid by the Applicant.~~
- 4.3.3 ~~Closing documentation for all Projects shall contain the Applicant's covenant to pay the fees and costs described in 4.3.1 and 4.3.2.~~
- 4.4 ~~Waiver of Fees~~
- 4.4.1 ~~The foregoing fees shall, unless otherwise waived by the Authority in its sole discretion, be paid with respect to all financial assistance granted by the Authority.~~
- 4.1 ~~Application Fees:~~
- 4.1.1 ~~A non-refundable fee of two hundred fifty dollars (\$250) on Applications for requests of financing up to and including one hundred thousand dollars (\$100,000).~~
- 4.1.2 ~~A non-refundable fee of seven hundred fifty dollars (\$750) on Applications for requests of financing in excess of one hundred thousand dollars (\$100,000), up to and including one hundred fifty thousand dollars (\$150,000).~~
- 4.1.3 ~~A non-refundable fee of one thousand two hundred fifty dollars (\$1,250) on Applications for requests of financing in excess of one hundred fifty thousand dollars (\$150,000), up to and including two hundred fifty thousand dollars (\$250,000).~~
- 4.1.4 ~~A non-refundable fee of one thousand seven hundred fifty dollars (\$1,750) on Applications for requests of financing in excess of two hundred fifty thousand dollars (\$250,000), up to and including three hundred fifty thousand dollars (\$350,000).~~
- 4.1.5 ~~A non-refundable fee of two thousand two hundred fifty dollars (\$2,250) on Applications for requests of financing in excess of three hundred fifty thousand dollars (\$350,000), up to and including four hundred fifty thousand dollars (\$450,000).~~
- 4.1.6 ~~A non-refundable fee of two thousand seven hundred fifty dollars (\$2,750) on Applications for requests of financing in excess of four hundred fifty thousand dollars (\$450,000), up to and including five hundred fifty thousand dollars (\$550,000).~~
- 4.1.7 ~~A non-refundable fee of three thousand two hundred fifty dollars (\$3,250) on Applications for requests of financing in excess of five hundred fifty thousand dollars (\$550,000), up to and including six hundred fifty thousand dollars (\$650,000).~~
- 4.1.8 ~~A non-refundable fee of three thousand seven hundred fifty dollars (\$3,750) on Applications for requests of financing in excess of six hundred fifty thousand dollars (\$650,000), up to and including seven hundred fifty thousand dollars (\$750,000).~~
- 4.1.9 ~~A non-refundable fee of four thousand two hundred fifty dollars (\$4,250) on Applications for requests of financing in excess of seven hundred fifty thousand dollars (\$750,000), up to and including eight hundred fifty thousand dollars (\$850,000).~~
- 4.1.10 ~~A non-refundable fee of four thousand seven hundred fifty dollars (\$4,750) on Applications for requests of financing in excess of eight hundred fifty thousand dollars (\$850,000), up to and including nine hundred fifty thousand dollars (\$950,000).~~

- 4.1.11 A non-refundable fee of five thousand two hundred fifty dollars (\$5,250) on Applications for requests of financing in excess of nine hundred fifty thousand dollars (\$950,000), up to and including one million fifty thousand dollars (\$1,050,000).
- 4.1.12 A non-refundable fee of five thousand seven hundred fifty dollars (\$5,750) on Applications for requests of financing in excess of one million fifty thousand dollars (\$1,050,000), up to and including one million one hundred fifty thousand dollars (\$1,150,000).
- 4.1.13 A non-refundable fee of six thousand two hundred fifty dollars (\$6,250) on Applications for requests of financing in excess of one million one hundred fifty thousand dollars (\$1,150,000), up to and including one million two hundred fifty thousand dollars (\$1,250,000).
- 4.1.14 A non-refundable fee of six thousand seven hundred fifty dollars (\$6,750) on Applications for requests of financing in excess of one million two hundred fifty thousand dollars (\$1,250,000), up to and including one million three hundred fifty thousand dollars (\$1,350,000).
- 4.1.15 A non-refundable fee of seven thousand two hundred fifty (\$7,250) on Applications for requests of financing in excess of one million three hundred fifty thousand dollars (\$1,350,000), up to and including one million four hundred fifty thousand dollars (\$1,450,000).
- 4.1.16 A non-refundable fee of seven thousand seven hundred fifty dollars (\$7,750) on Applications for requests of financing in excess of one million four hundred fifty thousand dollars (\$1,450,000), up to and including one million five hundred fifty thousand dollars (\$1,550,000).
- 4.1.17 A non-refundable fee of eight thousand two hundred fifty dollars (\$8,250) on Applications for requests of financing in excess of one million five hundred fifty thousand dollars (\$1,550,000), up to and including one million six hundred fifty thousand dollars (\$1,650,000).
- 4.1.18 A non-refundable fee of eight thousand seven hundred fifty dollars (\$8,750) on Applications for requests for financing in excess of one million six hundred fifty thousand dollars (\$1,650,000), up to and including one million seven hundred fifty thousand dollars (\$1,750,000).
- 4.1.19 A non-refundable fee of nine thousand two hundred fifty dollars (\$9,250) on Applications for requests for financing in excess of one million seven hundred fifty thousand dollars (\$1,750,000), up to and including one million eight hundred fifty thousand dollars (\$1,850,000).
- 4.1.20 A non-refundable fee of nine thousand seven hundred fifty dollars (\$9,750) on Applications for requests for financing in excess of one million eight hundred fifty thousand dollars (\$1,850,000), up to and including one million nine hundred fifty thousand dollars (\$1,950,000).
- 4.1.21 A non-refundable fee of ten thousand dollars (\$10,000) on Applications for requests of financing in excess of one million nine hundred fifty thousand dollars (\$1,950,000). The fee shall be in the form of a check made payable to "The Delaware Economic Development Authority."
- 4.2 Modification Fees**
- 4.2.1 In any event in which a recipient of funding requests a modification to a previously awarded Application, a non-refundable fee of \$500 shall be due at the time of approval.
- 4.2.2 The fee shall be in the form of a check made payable to "The Delaware Economic Development Authority."
- 4.3 Waiver of Fees**-The foregoing fees shall, unless otherwise waived by the Authority in its sole discretion, be paid with respect to all financial assistance granted by the Authority.

(Break in Continuity of Sections)

18.0 SBIR Bridge Grant Assistance

18.1 Program Description

- 18.1.1 In order to encourage Delaware small businesses to participate in the federal Small Business Innovation Research ("SBIR") program, the Authority has set forth criteria to help maintain continuing SBIR program research and development. The purposes of the SBIR program are to (i) stimulate technological innovation; (ii) use small business to meet federal research and development needs; (iii) encourage the participation by disadvantaged and minority persons in

- technological innovation; and (iv) increase private sector commercialization of results derived from federal research and development.
- 18.1.1.1 The SBIR program is divided into three phases. The purpose of SBIR Phase I is to show: (i) that the Assisted Person can do high quality research and development; (ii) that the proposed effort is technically feasible; and (iii) that sufficient progress has been made to justify a much larger federal agency investment in an Assisted Person's project in connection with SBIR's Phase II. An SBIR Phase I Award can be as much as one hundred thousand dollars (\$ 100,000). The SBIR Phase II is the principal research and development effort, with a duration which normally does not exceed two years. Federal awards for SBIR Phase II are based upon the results of SBIR Phase I and the scientific and technical merit of the SBIR Phase II proposal. The object is to continue the research and development initiated under SBIR Phase I. An SBIR Phase II award can be as much as five hundred thousand dollars (\$500,000). However, the federal government is not obliged to fund any specific Phase II proposal. SBIR Phase III encourages small businesses to seek commercialization funding principally from the private sector (no Federal SBIR funding is provided).
- 18.1.1.2 The SBIR Bridge Grant Assistance program (the "Program") seeks to permit the Applicant to maintain its staff and continue its research pending SBIR Phase II approval, which may take as long as nine months after the submission of an SBIR Phase II proposal. Thus, a Program grant of financial assistance (an "Award") may be used to help cover the salaries of personnel after completion of Phase I and before Phase II monies become available. In addition, an Award may be used to help defray expenses connected with scientific research, patent search and applications, strategic and business plan development, market research, product planning and product development. Capital equipment and construction or modifications of facilities are not covered.
- 18.1.2 Award Approval and Standards
- 18.1.2.1 Findings. - In connection with the approval of an Award, the Authority shall make the findings and determinations required by 29 **Del.C.** §5055 with respect to the Applicant and the Project. The Authority shall apply the following standards in making such findings and determinations:
- 18.1.2.1.1 SBIR Participation. - In order to be eligible for an Award, an Applicant must establish that it has been granted an SBIR Phase I award and has submitted a proposal to the appropriate federal agency for, but has not yet received, SBIR Phase II funding.
- 18.1.2.1.2 Principal Place of Business Standard. - In determining whether an Applicant's principal place of business is in the State, an Applicant shall demonstrate to the Authority that its Delaware operation is either its sole operation or its primary business location.
- 18.1.2.1.3 Economic Benefit Standard. - When applying the "Economic Benefit Standard" the Authority will review the information submitted by an Applicant to determine whether the Project will tend to maintain or provide gainful employment within the State. The standards to be considered will include, but will not be limited to, the wages scale applicable to persons to be employed as a result of the research project, the economic situation in the State, the effect of the project on the tax base of the State, and of the county or municipality in which the project is to be located, and the expected effect that the research project will have on the development of new economic activity within the State.
- 18.1.2.1.4 Employment Standard. - The Authority shall require that an officer or principal of the Applicant certify to the Authority that the Applicant maintains a full-time equivalent of not more than one hundred (100) employees at the time of the Award.
- 18.1.3 Approval. - The Authority may, after applying the foregoing standards, approve a Project and provide an Award to an Applicant up to a maximum of fifty thousand dollars (\$50,000). ~~No more than three (3) Awards will be granted to an Applicant in any five (5) year period. The maximum amount of Awards an Applicant may receive in a lifetime is two hundred thousand dollars~~

~~(\$200,000).~~ No more than four (4) Awards will be granted to an Applicant in a rolling ten (10) year time per iod. Additional Awards may be granted by the Authority, but the Authority may, in its discretion, require repayment of such additional awards. An Award may be made, at the sole discretion of the Authority, in a lump sum or in installments. The specific conditions under which the Authority shall make an Award to an Applicant shall be set forth in a commitment letter between the Authority and the Applicant.

18.1.4 Post-Award Documentation. - The following documentation shall be required of all Applicants receiving Awards:

18.1.4.1 A summary of the work performed under the Award no later than August 31 of each of the five (5) years following the Award or otherwise as required by the Authority. Such summary shall include projections or documentation of any actual commercialization of the Project (such as patents obtained, new products developed, etc.) and any economic impact (in terms of employment and/ or sales impact with the company, etc.) of such commercialization.

18.1.4.2 Notification of Phase II SBIR award results immediately after the award is made or denied.

5 DE Reg. 1141 (11/1/01)

***Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:**

[402 Procedures Governing The Delaware Strategic Fund](#)

OFFICE OF MANAGEMENT AND BUDGET

Statutory Authority: 29 Delaware Code, Section 6303A(16), (29 Del.C. §6303A(16))

Public Notice

Freedom of Information Act Policy and Procedures

In accordance with procedures set forth in 29 Del.C. Ch. 11, Subch. III and 29 Del.C. Ch. 101, the Director of the Office of Management and Budget is proposing to adopt a regulation setting forth policy and procedures in dealing with requests from the public for information as set forth in 29 Del.C. Ch. 100, the Freedom of Information Act.

The Director of the Office of Management and Budget, or an employee of the Office of Management and Budget designated by the Director, will hold a public hearing at which members of the public may present comments on the proposed regulation on October 30, 2009 at 2:00 p.m. at the Delaware Office of Management and Budget, 122 William Penn Street, Room 133, Dover, DE, 19901. Additionally, members of the public may present written comments on the proposed regulation by submitting such written comments to Mr. Robert Scoglietti, Delaware Office of Management and Budget, 122 William Penn Street, Dover, DE, 19901. Written comments must be received on or before 12:00 p.m. on October 30, 2009. Members of the public may receive a copy of the proposed regulation at no charge by United States Mail by writing Mr. Robert Scoglietti at the address of the Delaware Office of Management and Budget set forth above.

Policy and Procedures for Responding to Requests from the Public for Information as set Forth In 29 Del.C. Chapter 100, The Freedom of Information Act.

1.0 Definitions

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

“Director” means the Director of the Delaware Office of Management and Budget.

PROPOSED REGULATIONS

“FOIA” means The Freedom of Information Act as established pursuant to Chapter 100 of Title 29 of the Delaware Code Annotated.

“FOIA Request” means a request to inspect public records pursuant to Section 10003, Chapter 100 of Title 29 of the Delaware Code Annotated.

“Office” means the Delaware Office of Management and Budget.

2.0 Enabling Legislation

Pursuant to 29 Del.C. §6 301A, the Office was established. The Office has authority to make regulations pursuant to 29 Del.C. §6303A(16). The Regulation is established in compliance with 29 Del.C. §10003(b).

3.0 Purpose

The purpose of this Regulation is to set forth the policy and procedures for responding to requests from the public for Information as set forth in 29 Del.C. Chapter 100.

4.0 Records Request, Response Procedures and Access

- 4.1 All FOIA Requests shall be made in writing to the Office, addressed to: Director of Policy and External Affairs, Office of Management and Budget, Haslet Building, 122 William Penn St., Dover, DE 19901. All FOIA Requests shall specifically identify in writing the records sought for review in sufficient detail to enable the Office to locate the records with reasonable effort. OMB shall provide reasonable assistance to the public in identifying and locating public records to which they are entitled access.
- 4.2 The Office shall respond, in writing, within seven working days of the receipt of a FOIA Request. Such response shall specify the name and telephone number of a contact person with respect to the FOIA Request and shall state whether the Office will permit inspection of the public records or, if it does not permit such inspection, stating the reason or reasons for such refusal. In the event the Office is unable to make lawfully requested records available for inspection within this period, the Office shall provide an expected time at which they will be made available.
- 4.3 Prior to disclosure, records will be reviewed to insure that those records or portions of records deemed non-public pursuant to 29 Del.C. §10002(g) are removed. In reviewing the records, all documents shall be considered public documents unless subject to one of the exceptions set forth in 29 Del.C. §10002(g).
- 4.4 After receiving the response of the Office to a FOIA Request, the requesting party shall contact the person specified in the written response thereto to schedule a mutually convenient date, time and place for the inspection of the public records.
- 4.5 All FOIA Requests shall be coordinated by the Policy and External Affairs section of the Office.
- 4.6 The Office will provide reasonable access for reviewing public records during regular business hours. The Office will make the requested records available unless the records or portions of the records are determined to be excluded from the definition of a “public record” pursuant to 29 Del.C. §10002(g).

5.0 Fees

- 5.1 Administrative Fees:
- 5.1.1 Charges for administrative fees include:
- 5.1.1.1 Staff time associated with processing FOIA Requests will include:
- 5.1.1.2 Locating and reviewing files;
- 5.1.1.3 Monitoring file reviews;
- 5.1.1.4 Generating computer records (electronic or print-outs);
- 5.1.1.5 Other work items as necessary per request.
- 5.1.2 Calculation of Administrative Charges:

5.1.2.1 Administrative charges will be billed to the requestor per quarter hour. These charges will be billed at the current, hourly pay grade rate, plus benefits (pro-rated for quarter hour increments) of the personnel performing the service. Administrative charges will be in addition to any copying charges.

5.1.2.2 Appointment Rescheduling/Cancellation - Requestors who do not reschedule or cancel appointments to view files at least one full business day in advance of the appointment may be subject to the administrative charges incurred by the Office in preparing the requested records. The Office will prepare an itemized invoice of these charges and mail to the requestor for payment.

5.2 Photocopying Fees - The following are charges for photocopies of public records made by Office personnel:

5.2.1 Standard Sized, Black and White Copies.

5.2.1.1 The first 20 pages of standard sized, black and white copied material shall be provided free of charge. The charge for copying standard sized, black and white public records for copies over and above 20 shall be \$0.25 per copied sheet. This charge applies to copies on the following standard paper sizes:

8.5" x 11"
8.5" x 14" and
11" x 17"

5.2.2 Oversized Copies/Printouts.

5.2.2.1 The charge for copying oversized public records shall be as follows:

18" x 22" \$2.00each
24" x 36" \$3.00each

5.2.3 Color Copies/Printouts

5.2.3.1 The charge for standard sized, color copies or color printouts shall be \$1.00 per sheet. This charge applies to copies on the following standard paper sizes:

8.5" x 11"
8.5" x 14" and
11" x 17"

5.2.4 Microfilm and/or Microfiche Printouts.

5.2.4.1 Microfilm and/or microfiche printouts, made by Office personnel on standard sized paper, will be calculated at \$0.50 per printed page.

5.3 Electronically Generated Records.

5.3.1 Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including, but not limited to: magnetic tape, diskette, or compact disc costs) and administrative costs.

5.3.2 In the event that requests for records maintained in an electronic format can be electronically mailed to the requestor, only the administrative charges in preparing the electronic records will be charged.

5.4 Payment.

5.4.1 Payment for copies and/or administrative charges will be due at the time copies are released to the requestor.

5.4.2 The Office may require pre-payment of copying and administrative charges prior to mailing copies of requested records.

6.0 Effective Date of this Regulation.

This Regulation will become effective 10 days after being published as a final regulation. Any and all FOIA Requests currently in process at the time of adoption will be subject to this Regulation.

Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. **[Bracketed Bold language]** indicates text added at the time the final order was issued. ~~**[Bracketed stricken through]**~~ indicates language deleted at the time the final order was issued.

Final Regulations

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

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

**DEPARTMENT OF AGRICULTURE
DELAWARE STANDARDBRED BREEDERS' FUND**

Statutory Authority: 20 Delaware Code, Section 4815(b)(3)b.2.D (29 **Del.C.** §4815(b)(3)b.2.D)
3 **DE Admin. Code** 502

ORDER**I. NATURE OF PROCEEDINGS**

Pursuant to its authority under 29 **Del.C.** §4815(b)(3)b.2.D and §10115, the State of Delaware, Department of Agriculture's Standardbred Breeder's Fund (herein "the Fund") proposed to amend its regulations. The Fund's purpose in proposing these amendments was designed to permit the caps on bonus money to be removed and correlating the three (3) year old payments to the national norm.

Notice of a public comment period of thirty (30) days on the Fund's proposed amendments was published in the *Delaware Register of Regulations* for May 1, 2009 as well as in two Delaware newspapers of general circulation in accordance with 29 **Del.C.** §10115. This is the Fund's Decision and Order adopting the proposed amended regulations.

II. PUBLIC COMMENTS

The Fund received no public comments in response to its notice of intention to adopt the proposed amended regulations.

III. FINDINGS AND CONCLUSIONS

The public was given the required notice of the Fund's intention to adopt the proposed amended regulations and was given ample opportunity to provide the Fund with comments opposing the Fund's plan. Thus, the Fund concludes that its consideration of the proposed amended regulations was entirely within its prerogatives and statutory authority and, having received no comments opposed to adoption, is now free to adopt the proposed amended regulations.

IV. ORDER

AND NOW this 8th day of July, 2009, it is hereby ordered that:

1. The proposed amendments to the Fund's regulations are adopted;
2. The text of the regulations shall be in the form attached hereto as Exhibit A;
3. The effective date of this Order is ten days from the date of its publication in the Delaware Register of Regulations in accordance with 29 **Del.C.** §10118(e); and
4. The Fund reserves to itself the authority to issue such other and further orders in this matter as may be just and proper.

IT IS SO ORDERED.

***Please note that no changes were made to the regulation as originally proposed and published in the May 2009 issue of the *Register* at page 1358 (12 DE Reg. 1358). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

<http://regulations.delaware.gov/register/october2009/final/13 DE Reg 496 10-01-09.htm>

THOROUGHBRED RACING COMMISSION

Section 4815(b)(3)(c)(3) (3 Del.C. §10005; 29 **Del.C.** §4815(b)(3)(c)(3))
3 DE Admin. Code 1001

ORDER

Pursuant to 29 Del.C §10108(c) and 3 Del.C. §10103, the Delaware Thoroughbred Racing Commission issues this Order adopting proposed amendments to the Commission's Rules. Following notice and a public hearing on September 22, 2009, the Commission makes the following findings and conclusions:

Summary of the Evidence

The Commission posted public notice of the proposed amendments in the September 1, 2009 *Register of Regulations* and for two consecutive weeks in *The News Journal* and *Delaware State News*. The Commission proposed to amend Section 11.0 Entries, Subscriptions, Delegations by amending existing Rule 11.4.1 Mutuel Entries by striking the last sentence to allow trainer-owned horses to be uncoupled, different owner entries.

The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony on September 22, 2009, at the public hearing on the proposed amendments to the Commission's Rules.

Findings of Fact and Conclusions

The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony on September 22, 2009, at the public hearing. No comments were received by writing. Comments received by testimony held in favor of the amendments.

The Commission concludes that the proposal to amend Section 11.0 Entries, Subscriptions, Delegations by amending existing Rule 11.4.1 Mutuel Entries by striking the last sentence to allow trainer-owned horses to be uncoupled, different owner entries should be adopted.

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

IT IS SO ORDERED this 22nd day of September 2009.

Bernard J. Daney, Chairman
W. Duncan Patterson, Secretary/Commissioner
Henry James Decker, Commissioner
Debbie Killeen, Commissioner
Edward Stegemeier, Commissioner

***Please note that no changes were made to the regulation as originally proposed and published in the September 2009 issue of the *Register* at page 343 (13 DE Reg. 343). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

[1001 Thoroughbred Racing Rules and Regulations](#)

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 314 and 1111 (18 **Del.C.** §§314 and 1111)
18 **DE Admin. Code** 607

607 Defensive Driving Course Discount (Automobiles and Motorcycles)

ORDER

Proposed changes to Regulation 607 relating to Defensive Driving Courses were published in the *Delaware Register of Regulations* on August 1, 2009. The comment period remained open until September 8, 2009. There was no public hearing on the proposed changes to Regulation 607. Public notice of the proposed changes to Regulation 607 in the *Register of Regulations* was in conformity with Delaware law.

Summary of the Evidence and Information Submitted

Comment was received from Property Casualty Insurers Association of America (PCI) and from the American Insurance Association (AIA). PCI expressed general support for the suggested changes and noted that PCI was a member of the working group that developed the changes. PCI expressed, however, the opinion that there should be no further changes to Regulation 607 that would increase the insurance discount given on insurance premiums. PCI additionally suggested that the courses be required to teach safety relative to motor homes and motorcycles. Additionally it was suggested that changes be made to two sections further clarifying when discounts take affect and that they cannot overlap. Finally PCI does not feel the on-line security issue has been fully resolved.

AIA had a suggestion relative to the application of the 15% discount for insureds who complete the refresher course more than three years after the anniversary date of the completion of the basic course. AIA believes making that discount effective on the completion date would be confusing and difficult for insurers.

Findings of Fact

Based on Delaware law and the record in this docket, I make the following findings of fact:

The requirements of the amended Regulation 607 best serve the interests of the public and of insurers and comply with Delaware law by creating more stringent requirements for course instructor certifications and requiring recertification of course providers. The amendments additionally enhance the minimum course requirements and create additional steps to assure the public that the insureds receiving credit for completion of the courses are, in fact, the persons who took the courses. The comments of PCI have validity, but do not rise to the level that would make it beneficial to further delay the much-needed implementation of the revisions to the existing regulation. AIA's

concern is understandable, however there are insurers that apply defensive driving discounts effective the completion date of the courses. The Department will keep an eye on the concerns of AIA and PCI and will adjust the Regulation if necessary.

Decision and Effective Date

Based on the provisions of 18 Del.C. §§314, 1111 and 29 Del.C. §§10113-10118 and the record in this docket, I hereby adopt Regulation 607 as amended and as may more fully and at large appear in the version attached hereto to be effective on October 11, 2009.

Text and Citation

The text of the proposed amendments to Regulation 607 last appeared in the *Register of Regulations* Vol. 13, Issue 2, pages 158-164.

IT IS SO ORDERED this 9th day of September 2009.

Karen Weldin Stewart, CIR-ML
Insurance Commissioner

***Please note that no changes were made to the regulation as originally proposed and published in the August 2009 issue of the *Register* at page 158 (13 DE Reg. 158). Therefore, the final regulation is not being republished. A copy of the final regulation is available at**

[607 Defensive Driving Course Discount \(Automobiles and Motorcycles\)](#)

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 1146

Secretary's Order No. 2009-A-0032

Amending 7 DE Admin. Code 1146 (Electric Generating Unit (EGU) Multipollutant Regulation Table 5-1)

Date of Issuance: September 1, 2009

Effective Date: October 10, 2009

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control (Department), the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced matter.

Procedural History

On February 22, 2009, the Department's issued Start Action Notice #2009-04, which approved Division of Air and Waste Management, Air Quality Management Section's (AQMS) request to begin the formal regulatory development process to amend 7 DE Admin. Code Regulation 1146 (Regulation). AQMS prepared a proposed

regulation revising Table 5-1 (Annual SO₂ Mass Emissions Limits) to increase the mass annual limits for Conectiv Delmarva Generation, Inc.'s (Conectiv) electric generation station's unit 5 (Facility) located in Edge Moor, New Castle County (Facility). The revision would increase the sulfur dioxide (SO₂) annual limit from 2,427 tons to 4,600 tons.

The Department had the proposed regulation published in the May 1, 2009 *Delaware Register of Regulations* and notice was published in newspapers of general circulation. The Department also provided public notice of a May 26, 2009 public hearing to be held in AQMS' office in Dover before presiding Hearing Officer Robert P. Haynes.

In a June 29, 2009 technical response memorandum (TRM) to Mr. Haynes, AQMS explained in detail the operational history and basis for the proposed amendment, namely, that the proposed amendment should not result in any actual increase in the Facility's air emissions of SO₂ under normal operating conditions. In the Hearing Officer's Report, dated August 25, 2009, (Report) and attached hereto as Appendix A, Mr. Haynes recommends the record include AQMS' TRM, the transcript and the hearing exhibits. Mr. Haynes reviewed the public comments on the proposed amendment, which raised certain questions that were answered by the TRM. Mr. Haynes found ample support in the recommended record for the proposed amendment. He recommends approval of the proposed amendment in Appendix B to the Report, which is the same proposed amendment as published in the May 1, 2009 *Delaware Register of Regulations*.

Findings

The Report recommends that the proposed regulation be adopted as reasonable and adequately supported on the recommended record developed. I agree with the Report and its recommendations and incorporate it as part of this Order. The reason for the proposed amendment was the resolution of litigation that challenged *Regulation 1146*, which imposed significant emissions limits on Delaware's largest sources of stationary air pollutants, namely, large electric generating units. Thus, resolving the challenge to *Regulation 1146* is an important benefit to Delaware because when the Department approved Regulation 1146 it cited the substantial pollution reductions, including lowering air emissions of sulfur dioxide by 53%, nitrogen oxide emissions by 24%, and mercury emissions by 82%. Thus, this state-wide significant environment benefit could be threatened if Regulation 1146 was successfully challenged on appeal by Conectiv.

I find that the Department's experts in AQMS explained in detail the reasons supporting the proposed amendment, which were the settlement of litigation between Conectiv and the Department that resolved Conectiv's appeal of the Department's *Regulation 1146*, as adopted by Secretary's Order No. 2006-A-0056 (November 15, 2006). Moreover, the Department's agreed to the settlement because its experts concluded that the proposed amendment would not result in any more emissions being released than under the current SO₂ limit that is subject to the amendment. The experts based their opinion on an analysis of the Facility's operating history and the economics of using low sulfur fuel oil to generate electricity.

I agree with the Department's experts and find that the proposed regulation is well-supported and reflects the terms of the reasonable settlement to resolve Conectiv's litigation of *Regulation 1146*. *Regulation 1146* was an important action the Department took to reduce air emissions of harmful pollutants from Delaware's largest stationary sources of air pollution, namely, large electric generating units. The settlement with Conectiv resolved the uncertainty that the Department face in the appeal that could have resulted in having *Regulation 1146* possibly overturned by the court. I also find that the Department's experts in AQMS have independently determined that the proposed revision under normal operating condition will not result in more SO₂ air emissions to occur. This forecast in little actual change in air emissions is reasonably based upon the experts' analysis of the Facility's operating history and the economics of burning low sulfur oil to generate electricity. Thus, the Department's experts conclude that the operating history and economics in the future will keep the Facility from operating a capacity level that will cause it to emit SO₂ anywhere near the higher 4,600 tons per year limit.

Regulation 1146 requires the Facility to burn low (.5%) sulfur residual oil, which will further protect the environment and impose operating restrictions on the Facility's use based upon economics versus other fuels used to generate electricity. The record also has information on the other terms of the settlement that support the amendment as beneficial to the environment, such as advancing the date for lower mercury emissions from the Facility. The Department's failure to approve of the proposed amendment could constitute possible grounds for

Conectiv to claim that the Department was not complying with the terms of the December 2008 settlement. The Department considers that the settlement is reasonable to resolve the litigation on mutually acceptable terms that will result in little risk of SO₂ emissions occurring more than in the current levels. Thus, I find that the proposed regulation should be adopted as reasonable and well-supported by the technical analysis in the record.

Conclusions

For the above-stated reasons, I conclude that the Department should approve as a final regulation the proposed amendment to Regulation 1146 to reflect the terms of the settlement of the litigation of Regulation 1146. Consequently, the following is ordered:

1. The Department, acting through this Order of the Secretary, hereby approves as a final regulation the proposed regulation that amends Table 5-1 and the record developed to support it, as described in the Report; and
2. The Department shall have this Order published in the *Delaware Register of Regulations* and in newspapers in the same manner as the notice of the proposed regulation and serve notice of this action upon those interested person as determined by the Department.

Collin P. O'Mara, Secretary

1146 Electric Generating Unit (EGU) Multi-Pollutant Regulation

(Break in Continuity of Sections)

Table 5-1
Annual SO₂ Mass Emissions Limits

Unit	Control Period SO₂ Mass Emissions Limit (tons)
Edgemoor 3	1391
Edgemoor 4	2410
Edgemoor 5	<u>2427 4600</u>
Indian River 1	1082
Indian River 2	1130
Indian River 3	1759
Indian River 4	3657
McKee Run	439

FINAL REGULATIONS

DEPARTMENT OF SAFETY AND HOMELAND SECURITY**DIVISION OF STATE POLICE****1300 BOARD OF EXAMINERS OF PRIVATE INVESTIGATORS & PRIVATE SECURITY AGENCIES**Statutory Authority: 24 Delaware Code, Section 1304(b)(3) (24 **Del.C.** §1304(b)(3))24 **DE Admin. Code** 1300**ORDER**

Pursuant to the Guidelines in 29 **Del.C.** §10118(a)(1)-(7), the Board of Examiners of Private Investigators and Private Security Agencies ("Board") hereby issues this Order. Following notice and a public hearing on the proposed adoption of amendments to Rules 1.0, 2.0, 7.0, 8.0 and 9.0 - the Board makes the following Findings and Conclusions:

Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposed adoption.
2. The Board expressed its desire to adopt the amendment to give clarification on the minimum requirements and on those wishing to be an approved instructor.

Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on proposed amendments. The written comments and oral testimony received are described in paragraph 1.
4. The Board finds that the adoption of this rule will give clarification on the minimum requirements and on those wishing to be an approved.
5. The Board finds that the adoption will have no adverse impact on the public.
6. The Board finds that the amendment is well written and describes its intent to adopt the rule to give clarification on the minimum requirements and on those wishing to be an approved.

Conclusion

7. The proposed rule adoption was published by the Board in accord with the statutory duties and authority as set forth in 24 **Del.C.** §1304 et seq. and, in particular, 24 **Del.C.** §1304(b)(3).
8. The Board deems this adoption necessary and expedient to the full and official performance of its duties under 24 **Del.C.** §1304 et. seq.
9. The Board concludes that the adoption of this rule will be in the best interests of the citizens of the State of Delaware.
10. The Board therefore adopts the amendment pursuant to 24 **Del.C.** § 1304(b)(3) and guidelines of 29 **Del.C.** §10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).
11. This adopted rule replaces in its entirety any former rule or regulation heretofore promulgated by the Board.
12. The effective date of this Order shall be October 11, 2009.
13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously on the 14th day of September, 2009.

Colonel Robert M. Coupe, Chairman

APPROVED AS TO FORM:

Michael Tupman, Esquire

Deputy Attorney General

September 14, 2009

***Please note that no changes were made to the regulation as originally proposed and published in the**

August 2009 issue of the *Register* at page 229 (13 DE Reg. 229). Therefore, the final regulation is not being republished. A copy of the final regulation is available at

[1300 Board of Examiners of Private Investigators & Private Insurance Agencies](#)

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
1000 Board of Pilot Commissioners

Statutory Authority: 23 Delaware Code, Section 102 (23 Del.C. §102)
24 DE Admin. Code 1000

ORDER

Under Title 23 of the **Delaware Code**, Section 102, as well as 29 **Delaware Code** Chapter 101, the Delaware Board of Pilot Commissioners is empowered to adopt regulations concerning the practice of pilotage on the Bay and River Delaware and the tributaries thereof. The Commission has now drafted revisions to its existing Pilot regulations. A copy of the proposed changes accompanies this notice.

Two of these changes do not require comment, and are hereby adopted.

The first, a revision of Section 4.0, is changed to reflect changes in 23 **Del.C.** §115 regarding the license renewal date.

The second revision, at Section 5.6.1, is changed to reflect a previously approved training facility's name and address change.

The third change requires the provision of an opportunity for public comment, regarding a proposed notice requirement for medical waivers sought from the United States Coast Guard.

The Commission will take written comments on the draft changes to the Board of Pilot Commissioners Regulations from October 1, 2009 through December 11, 2009. In addition, the Commission will hold a public hearing for the receipt of comments on these changes at its next regularly scheduled meeting, December 11, 2009, at the Cannon Building, Conference Room A, 861 Silver Lake Boulevard, Dover, DE 19901, at 1:00 p.m.

Questions or comments regarding the proposed changes should be directed to: Judy Letterman, Administrator, Cannon Building, Conference Room A, 861 Silver Lake Boulevard, Dover, DE 19901 (302) 677-7312 (telephone) (302) 739-2711 (fax); judy.letterman@state.de.us.

1000 Board of Pilot Commissioners

1.0 Delaware licensed Bay and River Pilots are required to be familiar with the 23 Del.C. Ch. 1. Pilots §100 through 138.

2.0 Original License

- 2.1 An examination shall be given to apprentices upon completion of their apprenticeship to determine their qualifications for licenses. The written examination shall be based on knowledge required to be learned by the apprentice during his/her apprenticeship.
- 2.2 No license shall be issued to any Pilot for any route for which he/she has not made required trips and passed required examination.
- 2.3 No original license will be issued for anything less than the route from entrance of Delaware Bay to Newbold Channel, and Chesapeake & Delaware Canal. All these licenses must be maintained through your pilot career.
- 2.4 The Board of Pilot Commissioners shall issue endorsements for any tributaries of the Bay and River Delaware to any Delaware licensed Pilot who has passed examination for same.

3.0 To Raise License

Fourth Class Pilots shall demonstrate their knowledge to the Commission of their thorough understanding of vessel "squat" and other deep vessel handling characteristics prior to being licensed as a Third Class Pilot.

4.0 Renewal of License

~~Pilot Licenses are to be issued on anniversary of their original date from October 24, 1967, to comply with Delaware law. The renewal date for Pilot Licenses is November 30, or the date determined by the Division of Professional Regulation, to comply with 23 Del.C. §115.~~

5.0 All Delaware Licensed Pilots must:

- 5.1 Maintain all licenses they have in hand as of 5 May 1986 throughout the remainder of their Pilot career.
- 5.2 Hold a valid radar certificate. ARPA certification is also required.
- 5.3 Provide a copy of all licenses and certificates to the Commission Secretary.
- 5.4 Notify the Commission Secretary on the form provided each Pilot that the "Rules of the Nautical Road" have been read.
- 5.5 Any pilot who fails to exercise his or her profession for any consecutive 90-day period is forbidden from piloting vessels. Such pilot may resume piloting vessels only upon certification to the Board that he or she has made such refresher trips over the route as shall be deemed necessary by the Board to assure that he or she *is fully* familiar with conditions along the route. Refresher trips shall be made in the company of a first class pilot.
- 5.6 Attend at least (40) hours of approved education every five (5) years. The course or courses of study shall total not less than 40 hours of formal training on subjects relating to navigation and piloting. All such courses may be taken at an approved education facility. The Board of Pilot Commissioners shall approve all courses before enrollment.

- 5.6.1 The courses listed here are now approved by the Board and will continue to be approved until further notice:

Ship Handling, Port Revel
Centre De Port Revel
38136 St. Pierre de Bressieux
France

Maritime Institute of Technology
5700 Hammonds Ferry Road
Linthicum Heights, MD 21090

SCI Maritime Training
241 Water Street
New York, NY 10038

South Hampton Institute
Newtown Road, Warsash Hampshire
England

Star Center Simulation Training Assessment & Research (STAR) Center
2 West Dixie Highway
Dania Beach, FL 33004

Tidewater Navigation

Mid-Atlantic Maritime Academy
Norfolk Virginia Beach, VA

- 5.7 Attend and complete at least once every five (5) years a Bridge Resource Management ("BRM") course recommended and approved by this Board or by the American Pilots Association. Classroom or simulator hours spent in attendance at a BRM course will count towards satisfaction of the requirement of subparagraph "E", above. All licensed pilots shall have passed and approved BRM course prior to July 1997.

6 DE Reg. 635 (11/01/02)

6.0 Pilots must pass a designated physical examination every year within 120 days before their date of license renewal, results of the examination shall be reported on the form provided each Pilot. Examinations may also be ordered by the Board for any Pilot at any time for any cause.

7.0 In order to be granted a license renewal, any Pilot licensed by this Commission is and shall be required:

- 7.1 To have rendered pilotage service to not less than 52 vessels in the course of the year preceding the year for which the renewal of such license is sought; and
- 7.2 To furnish to this Commission, in writing, not later than the time when application is made to this Commission for the renewal of such license, a list of all pilotages, during the period of the license whose renewal is sought, giving:
- 7.2.1 The name of the vessel.
- 7.2.2 The date of pilotage.
- 7.3 Provided however, that this requirement shall be proportionally reduced in number, or eliminated, upon presentation of proof in form and substance satisfactory to the Commission, that during the year about to be concluded, the applicant for renewal was engaged in administrative duties connected with pilotage on the Bay and River Delaware, or was duly assigned and engaged in administrative assignments for the benefit of said pilotage, or was temporarily disabled from the performance of this duties as a Pilot or other reason deemed satisfactory to the Commission.
- 7.4 In the event that the requirement for 52 pilotages is reduced or eliminated to the satisfaction of the Commission, a number of refresher trips may be required before renewal is granted.

8.0 Docking, Undocking, and Anchoring of Vessels

- 8.1 When a vessel is docking or anchoring, a Delaware licensed pilot shall remain on the bridge, attentive to duty, until the vessel has at least one ship's line secure to the dock, or until the vessel is anchored properly and firmly within a designated anchorage area.
- 8.2 Nonetheless, nothing in these Rules shall prevent the Master of a vessel from employing the services of a docking master.

9.0 Casualty Reports

- 9.1 It shall be the personal responsibility of all Pilots licensed by this Commission to make reports of all casualties, collisions, groundings, etc. These reports shall be made to the Division of Professional Regulation's Chief Investigator, with a copy sent to the Commission's liaison to the Investigator. All such reports must be made within five days of the occurrence, except that any marine casualty involving oil spillage, pollution, or death must also be reported by telephone, facsimile transmission, or telegram to the Investigator and Commission liaison within twenty-four hours of the occurrence, to be followed thereafter by the written report. Failure to make such reports within the required time frame may result in disciplinary proceedings.
- 9.2 Pilots licensed by this Commission are also required to furnish the Investigator and Commission liaison with a copy of all written reports the pilot makes to the U. S. Coast Guard relating to a

occurrence through the pilot's licensed route of all casualties, collisions, or groundings. These pilots must provide the Investigator and the Commission liaison with copies of any Coast Guard findings based on these reports.

10.0 Commission Recommendations

It is suggested that, in the event any of the Pilots licensed by this Commission consider it unwise for a ship which he has boarded to get under way or leave a dock either due to weather or tide conditions, and the master of the ship insists on getting under way, the Pilot should refuse to assume his duties until such a time as it is in his opinion safe to proceed.

11.0 Offshore Trip Experience Requirement for Second Class Pilots

- 11.1 Under the provisions of 23 **Del.C.** §113(b), no person shall be eligible for licensure as a first class pilot by this Board, until that person has served at least one year in each of the lower classes.
- 11.2 While holding a second or third class license, all pilots must make at least two inward bound trips on vessels rated over 100,000 summer deadweight tons, on the southeastern approach lane from "D" buoy to at least the Delaware Capes. Each such trip must be made while accompanied by a pilot holding a first class license for the Bay and River Delaware issued by either this Board or the Pennsylvania Navigation Commission. At least one of these trips must be made during darkness. Second class pilots must furnish proof of the se trips to the Board at least thirty days prior to being granted their first class pilot license.

6 DE Reg. 635 (11/01/02)

12.0 Service Requirement for Advancement from License Class to a Higher License Class

- 12.1 Under 23 **Del.C.** §113(b), a licensed pilot must serve at least one year in each of the previous lower pilot license classifications before the pilot is entitled to a first class license, permitting the pilot to provide pilotage services for "ships or vessels of any practical draft of water." 23 **Del.C.** §112(1). Using the plain meaning rule of legislative interpretation, the term "serve" as used in Section 113(b) means to actively engage in the pilot profession during a full one-year term, and not merely to hold a current license for twelve months.
- 12.2 For example, if a pilot is unavailable for pilotage assignments during a one-year term, the total time for which the pilot was unavailable shall not be counted toward the one-year requirement. This circumstance will then affect the pilot's license renewal date, at the completion of the total one-year term.

6 DE Reg. 635 (11/01/02)

DIVISION OF PROFESSIONAL REGULATION

2500 BOARD OF PHARMACY

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

24 DE Admin. Code 2500

ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on August 19, 2009 to receive comments regarding proposed amendments to the rules and regulations of the Delaware State Board of Pharmacy ("Board"). The Board's proposal amends regulations 1.0 Pharmacist Licensure Requirements, 3.0 Pharmacy Requirements, 5.0 Dispensing, 11.0 Pharmaceutical Services in Nursing Homes and 15.0 Automated Pharmacy Systems. In addition, the Board is proposing to add new regulations 18.0 Storage and

Dispensing of Medical Gases, 19.0 Technicians: Qualifications, Training and Duties and 20.0 Specialty Institutional Pharmacy Licenses.

The proposed regulations were noticed for hearing and published in the *Register of Regulations* and on July 1, 2009 at 13 DE Reg. 57.

Summary of the Evidence and Information Submitted

The hearing notices were marked as **Public Hearing Exhibits 1** and **2**. The Board received the following written and verbal comments:

Public Hearing Exhibit 3 is a letter from Angelo C. Voxakis, P.D., President/ CEO of Epic Pharmacies, Inc. ®. Mr. Voxakis commented on behalf of the 10 independently owned Epic pharmacies in Delaware with regard to the proposed language in Regulation 3.8, Technician Support. Specifically, Mr. Voxakis asked the Board to reject Regulation 3.8 arguing that staffing levels are a function of the business model and the resources of a particular business. Mr. Voxakis submitted that the regulation would create a competitive disadvantage for one business model over another and would serve as a barrier to new pharmacies. He has seen no evidence that regulating staffing addresses a public safety issue.

Public Hearing Exhibit 4 is a letter from Brian Watson, PharmD, President, Delaware Society of Health-System Pharmacists. Mr. Watson expressed concern over the requirements of Regulation 19.0 Technicians: Qualifications, Training and Duties. Specifically, Mr. Watson submitted that health-system pharmacies would face many challenges in order to support Regulation 19.1.2 which limits the performance of certain activities to only certified pharmacy technicians. Specifically, Mr. Watson noted that 1) many pharmacy technicians have already undergone specific training for their workplace and demonstrated the required competency and skill set for the workplace to the satisfaction of their pharmacist-in-charge who is the best person to determine the qualifications and skill level of staff; 2) limiting certain tasks to certified pharmacy technicians will require health-system pharmacies to compensate by moving highly trained pharmacists from patient care to perform drug compounding and drug preparation, which is “a ‘step back’ in what the profession of pharmacy is striving to achieve for patients”; and 3) that certification only equates with a baseline knowledge and does not equal the competence of a skill gained through job specific orientation, training and evaluation.

Mr. Watson recommended eliminating the second sentence in section 19.1.2 (“Only certified...compounding.”) so there is no differentiation between the technical duties of a certified versus a non-certified technician. Mr. Watson also offered verbal comment at the public hearing consistent with his letter to the Board.

Public Hearing Exhibit 5 is an e-mail from Kevin Musto dated June 22, 2009 stating that he would prefer to see the terminology “clerk/support personnel” in the regulation instead of “technician” which he believes could result in financial burden on the employer. If the change cannot be done, he supports the term “technician support.” Generally he supports Regulation 3.8 [technician support] and believes that the regulation will help to address the issue of safety and robberies, patient safety and the likelihood of increased errors when pharmacists are taking on too much responsibility and that the regulation may have value for diversion prevention.

Public Hearing Exhibit 6 is a letter from Suzanne E. Raab-Long, Vice-President, Professional Services, Delaware Health Care Association. Ms. Raab-Long commented on Regulation 19, Technicians: Qualifications, Training, and Duties. Ms. Raab-Long commented that the concept of a certified technician has merit but stated that the Delaware Health Care Association is concerned with 1) the requirement to complete and certified training program approved by the Board. Ms. Raab-long submitted that passing the P TCB Exam or other national technician certification exam should be sufficient; 2) the restriction of certain duties to only certified technicians which would require hospitals to require all of their technicians to become certified because of the insufficient number of certified technicians at most of their member hospitals; and 3) that the requirement increases expenses to hospitals at a time of economic hardship.

Ms. Raab-Long also offered verbal comment suggesting that the “and” in Regulation 19.1.2 should be changes to an “or.”

Public Hearing Exhibit 7 is a letter from Albert W. Helmeczi, Rph., MS, FASHP, Vice-President, Pharmacy Services, Christiana Health Care Services. Mr. Helmeczi commented on Regulation 19, Technicians: Qualifications, Training, and Duties and stated that he could not support the regulation because 1) 50% of the division of pharmacy services 176 full-time employees are pharmacy technicians, with only 10% of those

individuals being certified pharmacy technicians. As a result 90 % of their technical workforce would be prohibited from performing tasks they are currently performing and have been trained to do; 2) limiting tasks to only certified technicians will require pulling highly trained pharmacists from direct patient care and clinical activity to handle drug preparation and compounding which will put hospitalized patients at risk; and 3) that their technical staff complete weeks of orientation and training signed off by a pharmacist. Certification only equates with a baseline knowledge and does not equal the competence of a skill gained through job specific orientation, training and evaluation that occurs and will continue to occur in their facility.

Mr. Helmecki recommended eliminating the second sentence in section 19.1.2 ("Only certified...compounding.") so there is no differentiation between the technical duties of a certified versus a non-certified technician. Mr. Helmecki also recommended that there be a phase in period of no less than 3 years for employers to employ certified technicians but submitted that the utilization of all technical staff should be left to the discretion of the pharmacist-in-charge.

Mr. Helmecki offered verbal comment at the public hearing consistent with his letter to the Board.

James Kaminski, Pharmacy Administrator, commented that the regulation committee was more focused on the community pharmacy setting when it drafted Regulation 19.1.2. He added that the word "clerk" was changed to "technician" as the result of recommendations following the Board's Joint Sunset Review. As an inspector, he would recommend not finalizing Regulation 19 until it can be addressed along with Regulation 10.

Sandra Robinson, Board President, commented that she had received inquiries about Regulation 11.0 Pharmaceutical Services in Nursing Homes seeking clarification of the intent on Regulation 11.3.3

Findings of Fact With Respect to the Evidence and Information Submitted

1. The Board received no written or verbal comments with regard to regulations 1.0 Pharmacist Licensure Requirements, 5.0 Dispensing, 15.0 Automated Pharmacy Systems, 18.0 Storage and Dispensing of Medical Gases, or 20.0 Specialty Institutional Pharmacy Licenses.

2. The Board received 2 written comments with regard to Regulation 3.8 Technician Support. Mr. Voxakis commented in opposition to the proposal and Mr. Musto supported the regulation with the exception of the terminology in the use of the word "technician." The Board is not persuaded that Regulation 3.8 as proposed should be amended. The Board looked extensively at this issue before proposing the current regulation. The regulation does not mandate staffing or scheduling of staff hours. It only requires that someone trained as a technician must be available to assist the pharmacist. Pharmacies are free to train their current staff as technicians and are not required by the regulation to increase staffing. The use of the terminology of "technicians" instead of "clerks" is based on a recommendation by the Joint Sunset Committee.

The Board finds that the regulation as proposed does improve public safety by giving a pharmacist someone to assist when they get overly busy in the pharmacy.

3. The majority of the public comment focused on Regulation 19.1.2;

Certified pharmacy technicians must be at least 18 years of age, successfully completed a certified training program approved by the Board and successfully pass the PTCB Exam or other national technician certification exam approved by the Board of Pharmacy. Only certified pharmacy technicians may assist the pharmacist by reconstituting oral solutions and contacting the prescriber or their agent to obtain refill authorization or other patient or prescription information of a non-clinical nature, or assisting the pharmacist with compounding.

There were no comments from the pharmacists in the community based pharmacy setting; the comments were from the hospital pharmacy setting. The Board acknowledges that it was primarily focused on the community based pharmacy setting when drafting Regulation 19.0. The Board believes that the regulation should be adopted as proposed with the exception that the word "and" following the word "Board" in the first full sentence of Regulation 19.1.2 should be changed to "or". The Board believes that there was a typographical error in that the intent was to provide alternative methods by which to become certified. The Board finds the change to be non-substantive.

The Board notes that with the change in wording from "and" to "or" hospitals based pharmacy setting can submit their certification programs for review for Board approval. The Board intends to revise Regulation 10.3.3 in the near future and will further address the hospital based pharmacy settings at that time. In the interim, Regulation

19.1.1.2 The areas of training required are to be determined by the pharmacist-in-charge and will be appropriate to the practice site and responsibilities assigned to the technicians. Training should be a minimum of 10 hours of didactic training in the following areas:

19.1.1.2.1 general drug and dosage form knowledge

19.1.1.2.2 medical terminology

19.1.1.2.3 pharmaceutical calculations

19.1.1.2.4 prescription labeling requirements

19.1.1.2.5 general filling/dispensing responsibilities

19.1.1.2.6 patient profile record system requirements

19.1.1.2.7 requirements for patient counseling

19.1.1.2.8 confidentiality

19.1.1.2.9 safety practices

19.1.1.2.10 inventory functions

19.1.1.2.11 knowledge of applicable State and Federal Statutes and Regulations

19.1.1.2.12 other site-specific parameters

19.1.1.3 The general content of the training program must be maintained in the policy and procedure manual.

19.1.1.4 Documentation of successful training in specific areas by oral or written evaluation will be maintained and will be available for inspection by the Board of Pharmacy.

19.1.1.5 Supervision. Supportive personnel must be supervised by a registered pharmacist who will be responsible for the activities of these persons.

19.1.2 Certified pharmacy technicians must be at least 18 years of age, successfully complete a certified training program approved by the Board of Pharmacy **[and or]** successfully pass the PTCB Exam or other national technician certification exam approved by the Board of Pharmacy. Only certified pharmacy technicians may assist the pharmacist by reconstituting oral solutions and contacting the prescriber or their agent to obtain refill authorization or other patient or prescription information of a non-clinical nature, or assisting the pharmacist with compounding.

19.2 Allowed Activities

19.2.1 Except in emergency situations for short periods where staff is unavailable only pharmacy technicians and certified pharmacy technicians may assist the pharmacist or deliver prescriptions in the pharmacy to a patient or the patient's agent.

19.2.2 Pharmacy technicians and certified pharmacy technicians may carry out any pharmacy-related duty assigned to them by their supervising pharmacist except for those activities specifically excluded by 24 Del.C. §§2507(b) and 2502(19).

***Please Note: As the rest of the sections were not amended since the proposal in the July 2009 Register, they are not being published here. A complete copy of the final regulation is available at:**

2500 Board of Pharmacy

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER****EXECUTIVE ORDER
NUMBER NINE****TO: HEADS OF ALL STATE DEPARTMENTS AND AGENCIES****RE: THE CREATION OF AN ECONOMIC DEVELOPMENT OMBUDSPERSON AND RAPID RESPONSE TEAMS TO PROMOTE PROSPERITY AND SUSTAINABLE GROWTH**

WHEREAS, as Governor, I am committed to expanding economic opportunity for all Delawareans and improving the standard of living for future generations; and

WHEREAS, an important part of my administration's strategy is to have a strong, proactive economic development staff identifying and pursuing opportunities to grow existing businesses and to attract new ones; and

WHEREAS, fiscal impact studies in Delaware and across the country demonstrate that commercial and industrial development generates a net gain for taxpayers, adding to the State's tax base as well as increasing employment options for citizens; and

WHEREAS, the socioeconomic development opportunities sometimes require extraordinary efforts to clear administrative, intergovernmental, procedural, financial, staffing, and infrastructure hurdles that can impede the successful attraction, retention and growth of businesses; and

WHEREAS, Delaware enjoys a strategic advantage over the other states in this dynamic and challenging economic environment because of its close-knit business, government, and educational communities and its potential for responding quickly to new opportunities; and

WHEREAS, all State agencies, as well as Delaware's counties and municipal governments, have significant roles to play in anticipating and reacting to economic development opportunities in a timely, coordinated, and comprehensive manner; and

WHEREAS, it is critical to the continued prosperity of citizens throughout Delaware that State and local governments partner to put infrastructure, resources and lines of communication in place so they can be deployed expediently to support an economic development initiative that aligns with the Governor's priorities.

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

1. The Governor will designate a member of his Executive Staff to serve as an Economic Development Ombudsperson (hereinafter "Ombudsperson").

2. The Ombudsperson will serve as a liaison to businesses, communities, local economic development organizations, regulatory agencies, local governments and State agencies.

3. When the Director of the Delaware Economic Development Office, in consultation with the Office of the Governor, determines that a particular economic development opportunity warrants a rapid response and extraordinary collaboration between and among State agencies and local governments, the Director of the Delaware Economic Development Office will direct the Ombudsperson to facilitate an efficient and expedient conduct of the permitting process by coordinating with State agencies and local governments in a manner that deploys resources effectively and hastens those processes within the parameters of existing State laws and local ordinances and controlling local land-use authority. In no event shall the ombudsperson suggest, direct or otherwise promote that any permitting process result in a particular outcome.

4. Each Cabinet-level Department will identify a Rapid Response team within their agency, or individual resource in the case of smaller agencies. The Rapid Response team's and/or individual resource's responsibilities will include:

a. Responding, at the direction of the Ombudsperson, to significant economic development initiatives; and

b. Providing the requisite expertise, authority, and staff resources appropriate to facilitate rapid resolution of issues related to the review and consideration of significant economic development projects; and

c. Identifying opportunities to improve and expedite the review and permitting processes.

APPROVED this 18th day August, 2009

Jack A. Markell,
Governor

**EXECUTIVE ORDER
NUMBER TEN**

TO: HEADS OF ALL STATE DEPARTMENTS AND AGENCIES

RE: STATE EMPLOYEES AND THE RIGHT TO ORGANIZATION AND EFFECTIVE UNION REPRESENTATION

WHEREAS, in accordance with state law, state employees have the right of organization and union representation;

WHEREAS, experience in the public and private sector indicates that fully protecting the right to participate in employee organizations contributes to fair and effective human resource policies and programs;

WHEREAS, the decision to organize must rest with state employees and management should not seek to intervene or influence such decisions;

WHEREAS, state employees must be afforded the opportunity to make such decisions, free of undue influence from management;

WHEREAS, it is the policy of this Administration to strictly observe the right of state employees to organize and engage in collective bargaining with respect to terms and conditions of employment;

WHEREAS, it is the policy of this State to ensure that employees have access to information provided by employee organization representatives and other bargaining unit representatives concerning union representation and collective bargaining;

WHEREAS, it is important that state employee union representatives be afforded the opportunity to fully represent their members;

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

1. Managers and supervisors shall not interfere or otherwise hinder state employee efforts to exercise their right to organize for purposes of collective bargaining.

2. It is the policy of this State to maintain a neutral position as to whether employees become involved in an organizing campaign.

3. Managers and supervisors shall not express any view, argument, or opinion on employee organization or collective bargaining except to inform employees of the requirements of this Executive Order relating to labor management relations and representation.

4. The State recognizes that communications between employees and their representatives are crucial to employees' ability to exercise their rights. Subject to the terms of the Public Employment Relations Act, executive branch state agencies shall authorize access to union representatives for such communications in non-work areas, such as employee break rooms, lunch rooms and other areas that foster communications, for which access does not compromise security, confidentiality or privacy, or otherwise interfere with operations.

5. Executive Order No. 70, issued by Governor Ruth Ann Minner, is hereby rescinded.

APPROVED this 7th day of September, 2009

Jack A. Markell,
Governor

**EXECUTIVE ORDER
NUMBER ELEVEN**

TO: HEADS OF ALL STATE DEPARTMENTS AND AGENCIES
RE: REESTABLISHMENT OF THE STATE EMPLOYEES' CHARITABLE CAMPAIGN

WHEREAS, the employees of the State of Delaware have demonstrated their generosity and commitment to the support of charitable health and welfare causes; and

WHEREAS, it is in the best interest of the State to provide a single annual campaign with minimal disruption to the work and services that our state employees provide to the residents of our State; and

WHEREAS, it is a worthy endeavor to encourage state employees to contribute to charitable organizations within Delaware and volunteer their time.

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

1. Reestablishment of the State Employees' Charitable Campaign. The State of Delaware shall henceforth conduct an annual combined charitable solicitation campaign (hereinafter referred to as the "Campaign") to provide its employees with the opportunity to make charitable contributions either through direct payment or payroll deduction. State employees also are encouraged to volunteer.

2. Criteria for Selection. An organization must meet the following criteria in order to participate in the Campaign:

(a) Foundation, Umbrella Organization, or Individual Organization. An organization may be a foundation, an umbrella organization, or an individual organization.

(i) A foundation means a not-for-profit organization that makes grants to other organizations. Such a foundation must meet the other criteria for selection as set forth herein.

(ii) An umbrella organization means an organization that meets the other criteria for selection as set forth herein and that serves as the administrative agency for at least four nonprofit organizations, each of which meets the other criteria for selection as set forth herein. An approved umbrella organization shall certify that each of its participating organizations meets the criteria for selection as set forth herein. The certification shall apply only for purposes of the Campaign. The documentation supporting the certification of an individual organization under an umbrella organization shall be provided to the State Employees' Charitable Campaign Steering Committee (hereinafter referred to as the "Steering Committee") upon request. An organization may not affiliate with more than one umbrella organization for purposes of the Campaign.

(iii) An individual organization means an organization that meets the other criteria for selection as set forth herein and that is not affiliated with a foundation or an umbrella organization.

(b) Health and Welfare Purpose.

An organization must be organized and operated for the purpose of rendering, or materially or financially supporting the rendering of, services to benefit the health and welfare of residents of the State of Delaware, including, but not limited to:

(i) Delivery of health care to ill or infirm individuals;

(ii) Education and training of personnel for the delivery of health care to ill or infirm individuals;

(iii) Health research for the benefit of ill or infirm individuals;

(iv) Delivery of education, training, and care to individuals with physical and mental disabilities;

(v) Education of individuals who, without assistance, would not be able to afford it;

(vi) Treatment, care, rehabilitation, and counseling of juvenile delinquents, persons convicted of crimes, persons who abuse drugs or alcohol, persons who are victims of family violence or abuse, persons who are otherwise in need of social adjustment and rehabilitation, and the families of such persons;

(vii) Relief for victims (including non-residents of Delaware) of crime, war, casualty, famine, natural disasters, and other catastrophes or emergencies;

(viii) Neighborhood and community-wide services that directly assist needy, poor, and indigent individuals, including provision of emergency relief and shelter, recreation, transportation, and preparation and delivery of meals, educational opportunities, and job training;

(ix) Legal aid services that are provided without unlawful discrimination to needy, poor, and indigent individuals solely because such individuals cannot afford legal counsel;

(x) Protection of families that, on account of poverty, indigence, emergency, or other adversity, are in need of family, child care, or maternity services, child or marriage counseling, foster care, and guidance or assistance in the management and maintenance of the home and household;

(xi) Relief for needy, poor, and indigent infants and children (including orphans), including the provision of adoption services;

(xii) Relief for needy, poor, and indigent adults and the elderly;

(xiii) Assistance, consistent with the mission of the state agency or facility involved, to members of its staff or service, who, by reason of geographic isolation, emergency conditions, injury in the line of duty, or other extraordinary circumstances, have exceptional health or welfare needs; or

(xiv) Lessening of the burdens of government with respect to the provision of any of the foregoing services.

(c) Established Physical Presence in State. An organization must have an established physical presence in the State of Delaware, either in the form of an office or service facility which is staffed at least fifteen hours a week, or by making available its staff through scheduled appointments with Delaware residents or businesses at least fifteen hours a week.

(d) Charitable Status. An organization shall hold and maintain a currently valid designation from the Internal Revenue Service as a section 501(c)(3) organization, and be eligible to receive tax-deductible contributions under Section 170 of the Internal Revenue Code. A copy of the Internal Revenue Service designation letter shall be submitted with the application.

(e) Nondiscrimination. An organization shall have a policy and demonstrate a practice of nondiscrimination on the basis of race, color, religion, sex, age, national origin, or physical or mental disability, applicable to staff employment, and to memberships on its governing board.

(f) Annual Report. An organization shall prepare an annual report or report to the general public on an annual basis, which shall include a full description of the mission, target population, activities, objectives, and achievements of the organization and the names of its chief administrative personnel. Organizations with an annual budget of less than \$100,000 shall not be required to prepare an annual report, but must submit a copy of the Form 990, which they file with the Internal Revenue Service, with the Steering Committee.

(g) Limit on Administrative and Campaign Costs. Each foundation, umbrella organization, and individual organization shall submit a statement certifying that its management, general, and fundraising expenses are not in excess of twenty-five percent (25%) of total revenue. If such costs are in excess of the percentage of total revenue established above, an organization shall provide an explanation and documentation that its actual expenses for those purposes are reasonable and appropriate under the circumstances. The Steering Committee, established in Section III of this Order, shall decide that such excess is acceptable or shall require the organization to come within the percentage cap within a certain time period.

(h) Fundraising Practices. The publicity and promotional activities of a foundation, an umbrella organization and its constituent organizations, or an individual organization must be based upon the actual program and operations of the entity and must be truthful, non-deceptive, and consumer-oriented. Fundraising practices must assure: protection against unauthorized use of the organization's contributors' list; no payment of commissions, kickbacks, finder fees, percentages, or bonuses for fundraising; that no mailing of unsolicited tickets or commercial merchandise with a request for money in return will occur; and that no general telephone solicitations will be conducted. This requirement shall apply only to those activities connected with the Campaign.

(i) Voluntary Board of Directors. An organization shall be directed by an active, voluntary board of directors, which serves without compensation, holds regularly scheduled meetings, and exercises effective administrative control. If the board of directors is not located in Delaware, there must be a local board comprised of Delaware citizens, which advises the board of directors with respect to Delaware activities.

(j) Accounting Standards. An organization shall adopt and employ the Standards of Accounting and Financial Reporting for voluntary Health and Welfare Organizations from the American Institute of Certified Public Accountants ("AICPA") and provide for an annual external audit by an independent, certified public accountant. Organizations with an annual budget of less than \$100,000 shall not be required to submit to an independent audit, but must submit a copy of the Form 990, which they file with the Internal Revenue Service with the Steering Committee.

(k) Establishment of Organization. An organization must have been in operation in Delaware as a charitable organization recognized by the IRS for at least three years before application in order to demonstrate a reasonable degree of continuity and economical, effective, and efficient operation.

(l) Organizations Deemed Not Eligible. The following organizations are not eligible to participate in the State Campaign:

- (i) Those with partisan political and propaganda programs;
- (ii) Those with programs which exist solely to advocate particular religious or ethical beliefs; and
- (iii) Those which do not promote health and welfare.

3. Establishment and Appointment of the State Employees' Charitable Campaign Steering Committee.

(a) The Steering Committee is hereby established and shall consist of 12 members who shall be state employees and who shall be appointed to serve at the pleasure of the Governor. Of the members appointed, there shall be at least one employee from each of the three counties. In addition, one of the appointees shall be an employee who is represented by one of the unions under which the employees of the State are organized; one shall be an employee of the Department of Finance recommended by the Secretary of Finance; one shall be a representative from the Governor's staff; and one shall be a representative of the Lieutenant Governor's staff.

(b) The Director of the Office of Management and Budget shall serve as co-chairperson of the Steering Committee. The Governor shall annually appoint an honorary co-chairperson of the Steering Committee.

(c) Six members of the Steering Committee shall constitute a quorum. A simple majority vote of a quorum of voting members shall be required for the Steering Committee to take formal action. A representative of the organization, which serves as administrator for the program, shall attend the meetings of the Steering Committee, but shall not be a voting member.

(d) Meetings of the Steering Committee shall be open to the public in accordance with state law, including to representatives of the approved and participating foundations, umbrella, and individual organizations.

(e) The Office of Management and Budget shall provide administrative support to the Steering Committee and record the proceedings of the Committee's meetings.

4. Responsibilities of the Steering Committee.

(a) The Steering Committee shall have the following duties, responsibilities, and authority:

(i) Develop all necessary schedules, policies, and procedures to implement this Executive Order;

(ii) Develop, receive, and review applications for participation in the Campaign by foundations, umbrella organizations, and individual organizations;

(iii) Approve eligible foundations, umbrella organizations, and individual organizations for participation in the Campaign;

(iv) Select the administrator for the Campaign in accordance with the procedures set forth at Section VI;

(v) Oversee the management of the Campaign;

(vi) Recruit employee chairpersons;

(vii) Promote and publicize the Campaign; and

(viii) Review pamphlets, donor cards, and other promotional materials for the Campaign.

5. Selection of Eligible Organizations by Steering Committee.

(a) Organizations interested in participating in the Campaign shall submit an application in accordance with the procedures set forth by the Steering Committee.

(b) The Steering Committee, in accordance with its procedures, shall review each application and determine whether an organization should be approved for participation in the Campaign. The Steering Committee is expressly authorized to adopt and utilize an abbreviated application form and process for any organization that has participated in the Campaign for the prior three (3) consecutive years, provided that a duly authorized representative of the organization certifies that such organization continues to meet all of the criteria for participation listed in Section II above.

(c) In the event the Steering Committee determines to reject an organization for participation in the Campaign, the Steering Committee shall send the subject organization a certified letter, return-receipt requested, advising the organization that the Steering Committee has rejected its application, and stating the reason(s) for that rejection. The decision of the Steering Committee with respect to approval of eligible foundations, umbrella organizations, and individual organizations shall be final.

6. Administration of State Employees' Charitable Campaign.

(a) The Campaign shall be administered by one of the organizations that has previously been approved for participation in the Campaign.

(b) The Steering Committee shall issue to all organizations previously accepted for participation in the Campaign an invitation to submit a bid as administrator of the Campaign.

- (c) The bid specifications shall describe the services to be provided, including, but not limited to the:
- (i) Organization and administration of any informational presentation to employees;
 - (ii) Assistance to any department or division which wishes to have a rally or other event by providing professional or training assistance and promotional materials;
 - (iii) Manufacture and distribution of informational pamphlets, posters, donor cards or other promotional materials;
 - (iv) Collection of donations and donor cards and tabulation of fund designation information;
 - (v) Proper distribution of donations to approved organizations, both with respect to funds collected at the time of the Campaign and to those which will be forwarded to the administrator from the Department of Finance representing payroll deductions authorized during the Campaign by employees;
 - (vi) Completion of an audit of the Campaign; and
 - (vii) Provision of a written report to the Committee detailing the distribution of funds to participating agencies at each time of distribution.
- (d) Bid proposals shall include a statement from the organization which substantiates a claim that the organization:
- (i) Demonstrates the administrative and financial capability to manage and operate an extensive fundraising campaign among State employees in an efficient manner; and
 - (ii) Ensures public accountability by certifying that it: annually submits to a financial audit by a certified public accountant; makes its audited financial statement, or a summary thereof, available to the public upon request; will provide evidence that it engages in sound management practices that indicate that contributions donated by the public have been utilized with the utmost integrity.
- (e) Bid proposals shall further include a percentage figure representing that portion of each donated dollar the organization would charge if chosen to serve as the administrator of the Campaign.
- (f) The Steering Committee shall choose as the administrator of the program that organization which submits a responsible bid with the lowest percentage figure as outlined above, unless the Steering Committee determines that the State's interest is best served by selecting other than the lowest responsible bidder, in which case the Steering Committee shall state, in writing, its reasons for such determination. The Steering Committee may choose to reject all bids and rebid the matter.
- (g) The organization, which is chosen to administer the program, shall not assign, subcontract, or otherwise transfer its duties and responsibilities to manage and administer the Campaign unless expressly permitted to do so in writing by the Steering Committee.
7. State Employees' Charitable Campaign Fund Drive Programs.
- (a) All facets of the Campaign shall have safeguards to ensure fair and equitable treatment and representation of the approved organizations.
- (b) If practical, all pamphlets, donor cards, and other promotional materials representing the Campaign shall be formatted in such a way as to provide equal representation of each of the approved organizations.
8. Distribution of Contributions.
- Contributions shall be distributed to organizations as designated by contributors. Undesignated funds shall be distributed to each approved organization in an amount proportionate to the percentage of the total designated funds contributed to that approved organization. Likewise, shrinkage due to unfulfilled pledges shall be absorbed by each approved organization in an amount proportionate to that percentage for the total designated funds, which were contributed to that approved organization.
9. Volunteering.
- State employees are encouraged to volunteer their time in support of community organizations. The State Office of Volunteerism coordinates volunteer efforts throughout the state, and employees are encouraged to learn more about these opportunities online at www.betterdelaware.org.
10. Executive Order Number Twenty and Executive Order Number Forty-Five issued on September 13, 2001 and May 28, 2003, and Executive Order Number Eighty-Seven issued on May 24, 2006, respectively are rescinded.

APPROVED this 8th day of September, 2009

Jack A. Markell,
Governor

GENERAL NOTICES

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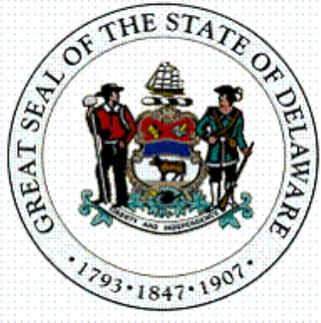
DEPARTMENT OF FINANCE DIVISION OF REVENUE

Statutory Authority: 30 Delaware Code, Section 354 (30 Del.C. §354)

Delaware's Voluntary Tax Compliance Initiative (VTCI) (September 1, 2009 - October 30, 2009)

Payment/Registration Form Address:

GRC
Department 96-0389
Oklahoma City, OK 73196-0389
Tax Returns Address:
Delaware Division of Revenue
PO Box 8712, Wilmington, DE 19899-8712



Pay/ Register:

Toll Free 877-551-5233
Online www.generalrevenue.com
Hours of Operation
8:00 am - 8:00 pm Mon. - Thurs.
8:00 am - 6:00pm Friday
10:00 am - 2:00 pm Saturday

To be considered for the tremendous benefits of the VTCI program you will need to register by completing the information below. Mail in this form with your payment or complete via phone or online.

REGISTRATION FORM

Name : _____ (please print)

1. Home Phone: _____
2. Alternative Phone: _____
3. TaxPayerID#: _____

4. Status – (circle one)

- 1 First Time Filer in Delaware
- 2 Return(s) may be missing
- 3 Return(s) may need correction

5. Repayment – (circle one)

- 1 NOT currently paying a liability
- 2 In current Repayment plan
- 3 Current Wage Garnishment or lien

6. If you are planning to file a non-filed or amended return for returns that were previously filed, you must complete this section.

(Non-filed or amended returns for the VTCI must be received no later than October 30, 2009 to qualify).

TAX Type	TAX YEAR(S)	If New/Amended Return, Estimated Tax Amount
<input type="checkbox"/> Personal income tax		
<input type="checkbox"/> Withholding tax		
<input type="checkbox"/> Gross receipts tax		

GENERAL NOTICES

<input type="checkbox"/>	Estate tax		
<input type="checkbox"/>	Income tax on estates and trusts		
<input type="checkbox"/>	Corporation income tax		
<input type="checkbox"/>	Occupational license fees and tax		
<input type="checkbox"/>	Contractors' license fees and tax		
<input type="checkbox"/>	Manufacturers' license fees and tax		
<input type="checkbox"/>	Tobacco product license fees and tax		
<input type="checkbox"/>	Realty Transfer tax		
<input type="checkbox"/>	Public Utilities tax		
<input type="checkbox"/>	Lodging tax		
<input type="checkbox"/>	Retail and Wholesale Merchants' license fees and tax		
<input type="checkbox"/>	Use tax and gross receipts tax on leases of tangible personal property		

(The above-listed taxes due from partners, shareholders or members of pass-through entities filing a voluntary tax return are also eligible.)

7. Confirm your existing reported liabilities below that you would like to register into the VTCI program – make changes/additions where needed. (These are amended return claim liabilities)

Tax Type	Period/Year(s)	Amt Reported Due

(use additional space below if needed)

Authorized Signature _____ Date _____

Telephone Number _____ Email _____

Tax Payer Name : _____

Business Name: _____

Address : _____



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)

Secretary's Order Number 2009-A-0030

Approval Of Revision To State Implementation Plan For Meeting The Infrastructure Requirements Of The Federal Clean Air Act For Fine Particulate Matter

Date of Issuance: September 1, 2009

Effective Date: September 1, 2009

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") under 29 Del. C. §§ 8001 et seq. and 7 Del. C. §6010(c), this Order is entered to approve a revision to the State Implementation Plan required under the federal Clean Air Act and regulations promulgated by the United States Environmental Protection Agency ("EPA").

Background

EPA delegated authority to the Department to administer certain responsibilities in Delaware under the federal Clean Air Act, as amended, 42 U.S.C. §§7401 et seq. ("CAA"). The delegation included preparing Delaware's State Implementation Plan ("SIP"), which consists of regulations, source specific requirements, plans and emission inventories that together identify how Delaware will attain and maintain air quality that conforms to primary and secondary National Ambient Air Quality Standards ("NAAQS"), which are EPA regulations. Delaware's SIP is reflected in EPA's regulations at 40 C.F.R. Part 52, Subpart I. The Delaware SIP is subject to ongoing revisions, which reflects Delaware's progress towards the goal of cleaner air quality. The SIP provides a road map of the regulatory procedures undertaken to control and reduce air pollutants under the Department's authority provided by federal and state laws and regulations. EPA's regulations require that the Department submit Delaware's SIP revisions for EPA's review and approval. On September 21, 2006 EPA promulgated a new NAAQS for daily (24-hr) fine particulate matter, and Delaware, like other states, is required to submit its Report three years from the promulgation date, or by September 21, 2009. In response, the Department's technical experts within the Division of Air and Waste Management, Air Quality Management Section prepared a draft plan revision "State Implementation Plan for Meeting the Infrastructure Requirements of the Clean Air Act for Fine Particulate Matter" (hereinafter "Report"). The Department held a duly noticed public hearing on the Report on August 27, 2009 in the Department's Dover offices of AQMS. At the public hearing, the Department's expert, Mark Prettyman, presented the proposed report and introduced documents into the record to support its adoption as a final Plan revision. EPA presented the Department with additional written comments during the public comment period and the Department made the EPA recommended non-substantive changes as submitted as the proposed final plan at the hearing. The Department's presiding hearing officer, Robert P. Haynes, recommended at the hearing that the Department approve the proposed Report, as revised, and submit to EPA as a SIP revision to show compliance with the federal law and regulations.

The Department did not receive any comments except from EPA. The Department reflected the EPA suggested non-substantive changes in the revised Report admitted into the record at the public hearing, a copy of which is attached hereto as Appendix A. The Department's presiding hearing officer indicated at the public hearing that he recommended approval of the proposed revision and that the record developed at the hearing, as described in the transcripts, supported his recommendation and would support a final decision.

Reasons and Findings

I find that approval of the Report in Appendix A is well-supported by the record developed at the public hearing and that the Report should be adopted as a revision to the SIP. The Report was the subject of public notices that provided the public with the opportunity to comment on the Report. The Department received only the comments

from EPA during the public comment period that ended at the August 27, 2009 public hearing. I agree that the proposed SIP revision should be approved and that the Department should submit the Report in Appendix A to EPA to show Delaware's compliance with the CAA and EPA's reporting requirements under the CAA. The SIP revision sets forth the Department's progress in promulgating many regulations that will significantly reduce the emission of air pollutants and allow Delaware to comply with the 24-hour fine particulate matter NAAQS by 2014. These regulatory efforts will enable Delaware to meet the visibility related obligations imposed by the CAA and EPA's regulations and will result in healthier air for Delaware.

In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary, hereby approves as reasonable the July 1, 2009 Report, revised on August 28, 2009 in response to EPA's non-substantive comments. The final Report is attached hereto as Appendix A, and together with this Order will be submitted to EPA as the latest Delaware SIP revision; and

2. The Department shall have this Order published in the Delaware Register of Regulations and in newspapers in the same manner as the notice of the proposed SIP revision.

Collin O'Mara
Secretary

Implementation, Maintenance, And Enforcement of the 2006 24-Hr National Ambient Air Quality Standards (NAAQS)

1.0 Preamble, Introduction and Background

A State Implementation Plan ("SIP") is a state plan that identifies how that state will attain and maintain air quality that conforms to each primary and secondary National Ambient Air Quality Standard ("NAAQS"). The SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and emission inventories.

Delaware's initial SIP was approved by the EPA on May 31, 1972. Since this initial approval, the Delaware SIP has been revised numerous times to address air quality non-attainment and maintenance issues. This was done by updating plans and inventories, and adding new and revised regulatory control requirements. Delaware's SIP is compiled at 40 C.F.R. Part 52 Subpart I.

Section 2.0 of this document is a revision to Delaware's SIP. The purpose of this SIP revision is to detail how Delaware meets all of the necessary implementation, maintenance, and enforcement measures required by the Clean Air Act ("CAA"), specifically, CAA §110(a)(1) and (2). This SIP revision is necessary because the EPA finalized a new 24-hour PM_{2.5} NAAQS in ~~September~~ on October 17, 2006 (71 FR 61144), and "infrastructure SIPs" are due to the EPA within 3-years from the date of signature of any new NAAQS under CAA Section 110(a). Under the heading "Delaware's Plan" in Section 2.0 of this document Delaware provides a revision to its SIP to address those requirements of Section 110(a)(2)(A)-(M) of the CAA which have not been addressed in other SIP revisions. It is a compilation of certain elements that describe how Delaware demonstrates the 2006 24-hr fine particulate (PM_{2.5}) NAAQS is being implemented, maintained and enforced. The elements of this SIP revision, once approved by EPA, will provide a federally enforceable written confirmation that Delaware will continue to comply with the Section 110(a)(2) requirements of the CAA.

Legislative authority for the Delaware air quality program relating to the responsibilities in the CAA is codified in Title 7 "Conservation" of the **Delaware Code**, Chapter 60 - Delaware's comprehensive water and air resources conservation law, which gives the Delaware DNREC the power and duty to implement the provisions of the CAA in the State of Delaware.

Many of the miscellaneous requirements of Section 110(a)(2)(A)-(M) of the CAA relevant to the 2006 PM_{2.5} NAAQS are already contained in Delaware's SIP or in SIP revisions which have been submitted to but not yet approved by EPA. The following Table identifies those SIP provisions, which have all gone through public notice and hearing prior to submittal to EPA. The following Table also identifies those infrastructure requirements which are not applicable to Delaware.

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Table - 110(a)(2)(A)-(M) Requirements in the Current State of Delaware SIP

Section 110(a) element	Summary of element	Provisions in the Current Delaware SIP or recent SIP revisions Submittals ¹	Where Codified or approved by EPA
§110(a)(2)(A)	Include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this Act.	Pertinent emission limitations and schedules contained in Delaware's SIP that are listed in 40 CFR 52.420(c). Regulation 46 Electric Generating Unit (EGU) Multi-Pollutant Regulation, November 21, 2006 Regulation 13, Open Burning Regulation, May 2, 2007 Regulation 24, Section 46, Crude Oil Lightering, May 2, 2007 Regulation 48, Combustion Turbine Generator Emissions, September 11, 2007 Regulation 44, Stationary Generator Emissions, November 1, 2007 Regulation 43, Not To Exceed California Heavy Duty Diesel Engine Standards, November 29, 2001 Regulation 45, Excessive Idling Of Heavy Duty Vehicles, August 12, 2005 Regulation 1, Definitions And Administrative Principles Regulation 4, Particulate Emissions From Fuel Burning Equipment Regulation 5, Particulate Emissions From Industrial Process Operations Regulation 6, Particulate Emissions From Construction And Materials Handling Regulation 7, Emissions From Incineration Of Noninfectious Waste Regulation 8, Sulfur Dioxide Emissions From Fuel Burning Equipment Regulation 9, Emissions Of Sulfur Compounds From Industrial Operations Regulation 10, Control Of Sulfur Dioxide Emissions Kent And Sussex Counties Regulation 12, Control Of Nitrogen Oxides Emissions Regulation 14, Visible Emissions Regulation 18, Particulate Emissions From Grain Handling Operations	40 CFR 52.420(c) R

GENERAL NOTICES

		<p>Regulation 22, Restriction On Quality Of Fuel In Fuel Burning Equipment</p> <p>Regulation 24, Control Of Volatile Organic Compound Emissions</p> <p>Regulation 26, Motor Vehicle Emissions Inspection Program</p> <p>Regulation 27, Stack Heights</p> <p>Regulation 29, Emissions From Incineration Of Infectious Waste</p> <p>Regulation 31, Low Enhanced Inspection And Maintenance Regulation 27, Stack Heights</p> <p>Regulation 29, Emissions From Incineration Of Infectious Waste</p> <p>Regulation 31, Low Enhanced Inspection And Maintenance Program</p> <p>Regulation 32, Transportation Conformity Regulation</p> <p>Regulation 35, Conformity Of General Federal Actions To The State Implementation Plans</p> <p>Regulation 36, Acid Rain Program</p> <p>Regulation No. 37, NOx Budget Program</p> <p>Regulation No. 39, Nitrogen Oxides Budget Trading Program</p> <p>Regulation 40, National Low Emission Vehicle Program</p> <p>Regulation 41, Limiting Emissions Of Volatile Organic Compounds From Consumer And Commercial Products</p> <p>Regulation 42, Specific Emission Control</p>	
§110(a)(2)(B) Part	<p>provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to - (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.</p>	<p>Regulation 17 Source Monitoring, Record Keeping And Reporting and Regulation 3, Ambient Air Quality Standards, provides for the establishment and operation of procedures necessary to monitor, compile and analyze data related to ambient air quality.</p>	40 CFR 52.420(c)

GENERAL NOTICES

§110(a)(2)(C)	Include a program to provide for the enforcement of the measures described in subparagraph (A) and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D;	Delaware implements its Construction and Operation Permit Program requirements under Regulation 2, and Regulation 25. Delaware implements its Prevention of Significant Deterioration (PSD) Program requirements under Regulation 25. Delaware implements its Emission Offset Provision (EOP) requirements under Regulation 25. Other aspects of Delaware's program for enforcement are found in those provisions of Regulation 25, and Regulation 17 as well as the source monitoring, source testing and test methods, and, recordkeeping and reporting provisions of Regulation 2, 23, 24, 26, 31, 37, 39, 40, 41, 42, and others in the approved Delaware SIP as well as recently submitted regulatory SIP revisions discussed under section 110(a)(2)(A) above.	40 CFR 52.420(c) R
§110(a)(2)(E)(ii)	(ii) requirements that the state comply with the requirements respecting state boards under section 128, and	The requirements of §110(a)(2)(E)(ii) are not applicable to Delaware because it does not have any board or body which approves air quality permits or enforcement orders.	
§110(a)(2)(E)(iii)	(iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring a adequate implementation of such plan provision;	The requirements of §110(a)(2)(E)(iii) are not applicable to Delaware because it does not rely on localities for specific SIP implementation.	

GENERAL NOTICES

§110(a)(2)(F)	<p>Require, as may be prescribed by the Administrator—</p> <p>(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps by owners or operators of stationary sources to monitor emissions from such sources,</p> <p>(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and</p> <p>(iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection;</p>	<p>§110(a)(2)(F)(i): Specific monitoring requirements are found throughout the State of Delaware Regulations Governing the Control of Air Pollution, to include Regulation No. 17 and 3. These requirements are included in Delaware's SIP, as necessary.</p> <p>§110(a)(2)(F)(ii): Specific emission reporting requirements are found throughout the State of Delaware Regulations Governing the Control of Air Pollution, to include Regulation No. 17. These requirements are included in Delaware's SIP, as necessary.</p> <p>Other aspects of Delaware's program for requiring installation and maintenance of monitoring equipment, periodic emissions reporting, is found in the source monitoring, source testing and test methods, and recordkeeping and reporting provisions of Regulations 12, 23, 24, 26, 31, 37, 39, 40, 41, 42, and others in the approved Delaware SIP, 40 CFR 52.420(c), as well as submitted regulatory SIP revisions discussed under section 110(a)(2)(A) above.</p>	40 CFR 52.420(c)
§110(a)(2)(G)	Provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority;	<p>State of Delaware Regulations Governing the Control of Air Pollution, Regulation 15, Air Pollution Alert and Emergency Plan, contains emergency episode plan provisions that are currently approved in the SIP, and found at 40 C.F.R. 52.420(c), that fulfill the contingency plan requirement for the 2006 24-hr PM₁₀ NAAQS, based on current federal requirements.</p> <p>7 Del. C. § 6003(a)(1) requires a permit from the Secretary prior to discharging any air contaminant. 7 Del. C. § 6002(2) defines air contaminant essentially as any substance other than uncombined water. 7 Del. C. § 6005 allows the Secretary to seek a preliminary or permanent injunction or temporary restraining order for any discharge of an air contaminant without a permit, and issue cease and desist orders for violations (7 Del. C. § 6018). Thus, it necessarily follows that any discharge of an air contaminant that would cause imminent & substantial endangerment to the health, safety and welfare of the people of the State of Delaware or the environment would constitute a sufficient basis for the Secretary to seek an injunction or temporary restraining order to halt the violation.</p>	40 CFR 52.420(c)

§110(a)(2)(I)	In the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D (relating to nonattainment areas);	Part D pertains to general requirements for nonattainment areas. New Castle County is in the Philadelphia-Wilmington-Camden PM _{2.5} nonattainment area for the 2006 24-hr PM _{2.5} NAAQS. The regulations in Delaware's approved SIP that are listed in 40 CFR Part 52, Subpart I related to nonattainment areas will continue to comply with Subpart D requirements and which could not have been approved if they had not met Subpart D requirements.	40 CFR 52.420(c) R
§110(a)(2)(J) (PSD)	Meet the applicable requirements of part C (relating to prevention of significant deterioration of air quality and visibility protection);	Delaware's PSD requirements are promulgated in Regulation 25, Preconstruction Review.	

1. All of the State of Delaware "Regulations Governing the Control of Air Pollution" have been re-coded under 7 **DE Admin. Code** 1100, effective September 11, 2008. This recoding was submitted to the EPA as a SIP on June 15, 2009, but has not yet been approved into the DE SIP. Because of this some of Delaware's control requirements are cited in this document in the old format. For example, "7 **DE Admin. Code** 1131" is cited as "Regulation 31"

2.0 SIP Revision

This SIP revision addresses those requirements of Section 110(a)(2)(A)-(M) of the Clean Air Act (CAA) which have not been addressed in other SIP revisions. Each of the requirements of §110(a)(2) of the CAA (Subparagraphs A-M) is presented below, along with a discussion of Delaware's plan revision to meet the requirement.

(A) § 110(a)(2)(A) Requirement: Include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Act.

Delaware's Plan: Delaware has established laws and regulations that include enforceable emissions limitations and other control measures, means or techniques, as well as schedules and timetables for compliance to meet the applicable requirements of the CAA. Delaware may make changes to its laws and regulations that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

At present, Delaware's statutory authority is set out in Title 7 "Conservation" of the **Delaware Code**, Chapter 60 - Delaware's comprehensive water and air resources conservation law. Legislative authority giving the Secretary of the Delaware Department of Natural Resources and Environmental Control the authority to promulgate Regulations is codified at 7 Del. C., Chapter 60. This authority is also applicable to the 2006 PM_{2.5} NAAQS.

(B) § 110(a)(2)(B) Requirement: Provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to - (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.

Delaware's SIP already contains other elements, namely, 7 **DE Admin. Code** 1117 Source Monitoring², Record Keeping and Reporting and 7 **DE Admin. Code** 1113, Ambient Air Quality Standards, addressing §110(a)(A) as discussed in the section 1.0 and the table thereto of this document.

2. All of the State of Delaware "Regulations Governing the Control of Air Pollution" have been re-coded under 7 **DE Admin. Code** 1100, effective September 11, 2008. This recoding was submitted to the EPA as a SIP on June 15, 2009, but has not yet been approved into the DE SIP. Delaware's control requirements are cited in Section 2

in the new format. For example, "Regulation 31" is cited as "7 DE Admin. Code 1131".

Delaware's Plan: Delaware has established and currently operates appropriate devices, methods, systems and procedures necessary to monitor, compile and analyze data on ambient air quality, and upon request, makes such data available to the Administrator. Delaware will continue to operate devices, methods, systems and procedures and may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. At present, Delaware does this as follows for the 2006 24-hr PM_{2.5} matter NAAQS:

- "Delaware maintains and operates a multi-station network of ambient monitors throughout the State to measure ambient air quality levels within Delaware for comparison to each NAAQS as required by 40 CFR Part 58. Daily PM_{2.5} monitoring is currently performed at various locations throughout Delaware.
- "All data is measured using U.S. EPA approved methods as either Reference or Equivalent monitors; all monitors are subjected to the quality assurance requirements of 40 CFR Part 58; Appendix A; and all samplers are located at sites that have met the minimum siting requirements of Part 58, Appendix E. The data is submitted to the EPA's Air Quality System (AQS) system, in a timely manner in accordance to the schedule prescribed by the U.S. EPA in 40 CFR Part 58.
- "In order to keep EPA informed of changes to the sampling network DNREC provides EPA Region III with prior notification of any planned changes to the network. As needed, details of these changes and anticipated approvals of the changes are communicated to EPA. On an annual basis, Delaware sends EPA a monitoring network plan as required by 40 CFR Part 58 Section 10: Annual monitoring network plan and periodic network assessment. This plan contains all required information including site and monitor description, analysis methods, operating schedule, monitoring objectives and scale of representativeness, as well as information on any planned changes. DNREC submits data to the AQS system, in a timely manner, pursuant to the schedule prescribed by the EPA in 40 CFR Part 58.
- "Delaware has and will continue to submit data to EPA's Air Quality System ("AQS") in a timely manner in accordance to the schedule prescribed by the U.S. EPA in 40 CFR Part 58.

(C) §110(a)(2)(C) Requirement: Include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D.

For the 2006 PM_{2.5} NAAQS, Delaware's SIP already contains the other elements addressing §110(a)(C) as discussed in the section 1.0 and the table thereto of this document.

Delaware's Plan: Delaware has established and currently operates a program to provide for the enforcement of the enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the CAA and to regulate the modification and construction of any stationary source within areas covered by its SIP as necessary to assure the NAAQS are achieved, including permit programs required in parts C and D. At present, Delaware as part of its Air Quality Management Section function exercises its programmatic authority to utilize the enforcement powers set out in 7 Del. C. §6005 entitled "Enforcement; civil and administrative penalties; expenses"; 7 Del. C. §6013 entitled "Criminal penalties"; and 7 Del. C. §6018 entitled "Cease and desist order." Delaware will continue to operate this program and may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

(D) §110(a)(2)(D) Requirement: Contain adequate provisions - (i) prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will - (I) contribute significantly to non-attainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility, (ii) insuring compliance with the applicable requirements of sections 126³ and 115⁴ (relating to interstate and international pollution abatement).

3. §126(a) - Each plan shall (1) require each major proposed new or modified source (A) subject to Part C or (D)

which may significantly contribute to pollution in excess of the NAAQS in any AQCR outside the State in which such source intends to locate or modify, to provide written notice to all nearby States the pollution levels of which may be affected by such source 60 days prior to the date on which commencement of construction is to be permitted by the State, and (2) identify all major existing stationary sources which may have the impact described in (1) with respect to new or modified sources and provide notice to all nearby States of the identity of such sources. (b) Any State may petition EPA for a finding that any major source or group of stationary sources emits or would emit any pollutant in violation of the prohibition of §110(a)(2)(D)(ii) or this section. (c) Notwithstanding any permit which may have been granted by the State, it shall be a violation of this section and the plan - (1) for any major proposed new or modified source with respect to which a finding has been made under subsection (b) to be constructed or to operate in violation of this section and the prohibition of §110(a)(2)(D)(ii) or this section, or (2) for any major existing source to operate more than 3 months after such finding has been made. EPA may permit the continued operation of a source beyond the expiration of the 3-month period if the source complies with the emission limitations and compliance schedules as may be provided by EPA to bring about compliance with the requirements of §110(a)(2)(D)(ii). Nothing shall be construed to preclude any such source from being eligible for an enforcement order under §113(d) after the expiration of such period during which EPA has permitted continuous operation.

4. §115(a) - Whenever EPA, upon receipt of reports, surveys or studies from any duly constituted international agency has reason to believe that any pollutants emitted in the US cause or contribute to pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country or whenever the Secretary of State requests it to do so, EPA shall give formal notification to the Governor of the State in which such emissions originate. (b) The EPA notice shall be deemed to be a finding under §110(a)(2)(H)(ii) which requires a plan revision with respect to so much of the applicable plan as is inadequate to prevent or eliminate the endangerment. Any foreign country so affected by such emission of pollutants shall be invited to appear at any public hearing associated with any revision of the appropriate portion of the applicable plan. (c) This section shall apply only to a foreign country which EPA determines has given the US the same rights with respect to the prevention or control of air pollution occurring in that country. (d) Recommendations issued following any abatement conference conducted prior to CAA 1977 shall remain in effect with respect to any pollutant for which no NAAQS has been established under § 109 unless EPA, after consultation with all agencies, which were party to the conference, rescinds any such recommendation.

Delaware's Plan: The implementation plan for Delaware and recently submitted SIP revisions presently contain adequate provisions prohibiting sources from emitting air pollutants in amounts which will contribute significantly to non-attainment or interfere with maintenance with any NAAQS and to prevent interference with measures related to preventing significant deterioration of air quality or which have to date proved adequate to protect visibility and to address interstate and international pollutant abatement; however, Delaware may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. At present, Delaware's legal authority is contained in the following:

- ~~Delaware Code Title 7, Chapter 60 § 6010 (c). Rules and regulations; plans. The Secretary may formulate, amend, adopt and implement, after public hearing, a statewide air resources management plan to achieve the purpose of this chapter and comply with applicable federal laws and regulations. Since 110(a)(2)(D) is in the CAA, and thus a law, Delaware has the legal authority to regulate sources of interstate transport to areas in nonattainment, or in those areas maintaining the NAAQS, if they were previously nonattainment.~~
- 110(a)(2)(D)(i)(I): Major stationary sources for the annual and 24-hr PM_{2.5} are currently subject to Nonattainment New Source Review (NSR) and Prevention of Significant Deterioration (PSD) permitting programs under the PSD and EOP provisions of 7 DE Admin. Code 1125, Preconstruction Review.^[3] As provided in the PM_{2.5} NSR Implementation Rule (73 FR 28321), NSR in New Castle County for PM_{2.5} will continue to be administered under the provisions of Appendix S until no later than May 16, 2011 when the EOP section of 7 DE Admin. Code 1125 and the Delaware SIP have been revised to reflect the provisions of 73 FR 28321. Also, in Kent and Sussex counties, PM_{2.5} PSD activities will continue to be administered using PM₁₀ as a

surrogate for PM_{2.5}, without consideration of precursors, until no later than May 16, 2011 when changes to Regulation 25 and the SIP have been completed. Delaware has complied with §110(a)(2)(D) through promulgation of 7 DE Admin. Code 1146, Electric Generating Unit Multi-Pollutant Regulation, ~~7 DE Admin. Code 1142, Section 2, Control of NO_x Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries~~, and 7 DE Admin. Code 1148, Control of Stationary Combustion Turbine Electric Generating Unit Emissions; which significantly reduce emissions from Delaware's largest EGUs, industrial boilers, and peaking units. These regulations have been submitted to the EPA as revisions to Delaware's SIP.

- "110(a)(2)(D)(i)(II): PSD requirements under Section 3 of Regulation 25. Major sources are subject to NNSR and PSD permitting programs implemented in accordance with EPA's PM_{2.5} NSR Implementation Rule (73 FR 28321) calling for use of Appendix S for NNSR and using PM₁₀ as a surrogate for PM_{2.5} in the PSD NSR program requirements
- "The State of Delaware confirms that it is meeting this requirement for the use of Appendix S for PM_{2.5} activities under the NNSR program and using PM₁₀ as a surrogate for PM_{2.5} in the PSD programs.
- "Delaware's proposed Visibility SIP assessed and demonstrated that Delaware has met Best Available Retrofit Technology and Reasonable Further Progress (RFP) goals, and thus did not interfere with measures required to be included in the applicable implementation plan for any other State to protect visibility.
- "110(a)(2)(D)(ii): Nothing in Delaware's statutory or regulatory authority prohibits or otherwise interferes with Delaware's ability to exercise sections 126 and 115 of the CAA.

(E) § 110(a)(2)(E) Requirement: Provide (i) necessary assurances that the state (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the state or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under state (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of federal or state law from carrying out such implementation plan or portion thereof), (ii) requirements that the State comply with the requirements respecting State boards under section 128,⁵ and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision.

The elements of §§110(a)(2)(E)(ii) and (iii) are not applicable to Delaware as discussed in section 1.0 and the table thereto of this document.

Delaware's Plan: With respect to the remaining obligations under this section, Delaware assures EPA that it has adequate authority under state law pursuant to 7 Del. C. Chapter 60 to carry out its SIP obligations with respect to the 24-hr PM_{2.5} NAAQS. DNREC does not believe that there is any prohibition in any federal or state law that would prevent it from carrying out its SIP or any portion thereof. Further, DNREC assures EPA that it has, through the State of Delaware General Fund and through the Title V fee program, and will continue to have, funding to carry out its SIP obligations. Further, DNREC believes its funding sources are sufficient to provide adequate personnel for those purposes; however, Delaware may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

At present Delaware fulfills this obligation by virtue of having adequate personnel and funding through the CAA § 105 grant process (federal grant funds), the State of Delaware general fund (state tax revenues), and appropriated special funds collected by the State of Delaware from application fees, permit fees, renewal fees, and civil or administrative penalties or fines. Delaware does not anticipate the need for additional resources beyond those to be appropriated in the above manner to carry out its SIP requirements.

5. §128 (a) each plan shall contain requirements that - (1) any board or body which approves permits or enforcement orders shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders, and (2) any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be disclosed. A State may adopt any requirements respecting conflicts of interest for such boards or bodies or heads of executive agencies, or any other entities which are more stringent than the requirements of (1) and (2)

(F) § 110(a)(2)(F) Requirement: Require, as may be prescribed by the Administrator - (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection.

Delaware's Plan: Delaware requires that owners or operators of stationary sources monitor and submit periodic reports on the nature and amounts of PM_{2.5} emissions and emissions related-date emissions from the sources. This may include the installation, maintenance and replacement of equipment, where appropriate. This information submitted to DNREC is available to the public at reasonable times for public inspection pursuant to Delaware law. Delaware will continue to require reporting of emissions but may makes changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

Except as specifically exempted by the Delaware Freedom of Information Act, 29 Del.C. Chapter 100, Delaware makes all records, reports or information obtained by the Department or referred to at public hearings available to the public pursuant to the provisions of the Delaware Freedom of Information Act, 29 Del. C. Chapter 100.

(G) § 110(a)(2)(G) Requirement: Provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority;⁶

Delaware's SIP contains an emergency episode plan for PM₁₀ fine particulates as discussed in the section 1.0 and the table thereto of this document. For the 1997 and 2006 PM_{2.5} NAAQS, the emergency episode plan will be ~~updated after EPA develops new thresholds per 40 C.F.R. 52.420(e), as necessary~~ updated as required by EPA.

Delaware's Plan: Delaware has authority comparable to that in section 303 and a adequate contingency plans to implement such authority but may makes changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

7 **Del.C.** §6003(a)(1) requires a permit from the Secretary prior to discharging any air contaminant. 7 **Del.C.** §6002(2) defines air contaminant essentially as any substance other than uncombined water. 7 **Del.C.** §6005 allows the Secretary to seek a preliminary or permanent injunction or temporary restraining order for any discharge of an air contaminant without a permit, and issue cease and desist orders for violations (7 **Del.C.** §6018). Thus, it necessarily follows that any discharge of an air contaminant that would cause imminent & substantial endangerment to the health, safety and welfare of the people of the State of Delaware or the environment would constitute a sufficient basis for the Secretary to seek an injunction or temporary restraining order to halt the violation.

6. Sec. 303- Notwithstanding any other provisions of this Act, the Administrator upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to public health or welfare, or the environment, may bring suit on behalf of the United States in the appropriate United States District court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary. If it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect public health or welfare or the environment. Prior to taking any action under this section, the Administrator shall consult with appropriate State and local authorities and attempt to confirm the accuracy of the information on which the action proposed to be taken is based. Any order issued by the Administrator under this section shall be effective upon issuance and shall remain in effect for a period of not more than 60 days, unless the Administrator brings an action pursuant to the first sentence of this section before the expiration of that period. Whenever the Administrator brings such an action within the 60-day period, such order shall remain in effect for an additional 14 days or for such longer period as may be authorized by the court in which such action is brought.

(H) § 110(a)(2)(H) Requirement: Provide for revision of such plan - (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) except as provided in paragraph

(3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this Act.

Delaware's Plan: Delaware will review and revise its SIP from time to time as may be necessary to take account of revisions of such primary or secondary NAAQS or the availability of improved or more expeditious methods of attaining such standard and whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements established under the CAA.

~~For the 2006 24-hr fine particulate matter 5 NAAQS, the attainment demonstration is not yet due under the CAA, and will be developed as a SIP revision, as required.~~

(I) § 110(a)(2)(I) Requirement: In the case of a plan or plan revision for an area designated as a non-attainment area, meet the applicable requirements of part D (relating to non-attainment areas).

For the 1997 annual PM_{2.5} NAAQS, Delaware's SIP or recent SIP revisions already contain other elements addressing § 110(a)(I) as discussed in the section 1.0 and the table thereto of this document, as well as § 110(a)(2)(D) of section 2. Many of these also apply to the 2006 24-hr PM_{2.5} NAAQS. ~~[For the 2006 24-hr PM_{2.5} NAAQS, any remaining applicable requirements, which are not yet due under the CAA, will be developed as SIP revisions, as required.]~~

(J) § 110(a)(2)(J) Requirement: Meet the applicable requirements of section 121 (relating to consultation), section 127 (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection).⁷

7. § 121. - In carrying out requirements for plans to contain - (1) any transportation controls, air quality maintenance plan requirements or preconstruction review of direct sources of pollution, or (2) any measure referred to - (A) in part D, or (B) in part C, and in carrying out the requirements of § 113(d), the State shall provide a satisfactory process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any FLM having authority over Federal land to which the State plan applies. Such process shall be in accordance with regulations promulgated by EPA. Only a general purpose unit of local government, regional agency, or council of governments adversely affected by action of EPA approving any portion of a plan may petition for judicial review.

§ 127. (a) - Each plan shall contain measures to regularly notify the public of when any NAAQS is exceeded or was exceeded during the preceding year, to advise the public of health hazards associated with such pollution, and to enhance awareness of measures which can be taken to prevent the standards from being exceeded and ways in which the public can participate in regulatory and other efforts to improve air quality.

Delaware's Plan: Delaware will meet the applicable requirements of section 121 (relating to consultation), section 127 (relating to public notification), and has met the applicable part C (relating to prevention of significant deterioration of air quality and visibility protection) in Delaware's Visibility SIP submitted to EPA September 25, 2008; but may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. At present, Delaware does so utilizing the following:

- **7 DE Admin. Code 1146,** Transportation Conformity provides a legal platform for the various consultation procedures that have been developed between D NREC, DEL DOT, and the Metropolitan Planning Organizations (MPOs). The MPOs provide the forum for consultation with local governments.⁸ Delaware's MPOs are: (1) WILMAPCO, Kent County MPO, and the Salisbury-Wicomoco MPO. Regional Planning Organizations provide the forum for inter-state consultations. Additionally, consultations with Federal Land Managers are always on-going in accordance with EPA Rules and Delaware's Visibility SIP. All SIP revisions undergo public notice and hearing which have allowed for comment by the public which includes local political subdivisions. Delaware believes the public notice and hearing processes also fulfill the section 121 consultation process. The submitted attainment plans and regulations in the approved Delaware SIP specify the organizations responsible for implementing and enforcing the plans.

- DNREC makes real-time and historical air quality information available on its Web site. All relevant SIPs and plans to achieve the NAAQS contain public notification provisions related to air monitoring levels of ozone and PM_{2.5} such as Air Quality Action Days, and DNREC's website. DNREC provides extended range air quality forecasts, which give the public advanced notice of air quality events. This advance notice allows the public to limit their exposure to unhealthy air and enact a plan to reduce pollution at home and at work. DNREC forecasts daily ozone and particle levels and issues e-mails to the public, businesses and the media via AirAlerts. AirAlert e-mail forecasts and notifications are free to the public.
- For the 1997 PM_{2.5} NAAQS, Delaware's SIP already contains the other elements addressing §110(a)(J) as discussed in the section 1.0 and the table thereto of this document. ~~For the 2006 24-hr PM_{2.5} NAAQS, any remaining applicable requirements, which are not yet due under the CAA, will be developed as SIP revisions, as required.~~

8. 7 DE Admin. Code 11 32 was submitted as a revision to the Delaware SIP in a separate submittal.

(K) § 110(a)(2)(K) Requirement: Provide for - (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

For the annual PM_{2.5} NAAQS, Delaware's SIP or recently submitted SIP revisions contains required modeling as discussed in the section 1.0 and the table thereto of this document. ~~For the 2006 24-hr PM_{2.5} NAAQS, any remaining applicable requirements, which are not yet due under the CAA, will be developed as SIP revisions, as required.~~

Delaware's Plan: Delaware will continue to perform modeling as required under the CAA to demonstrate attainment), but may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. Delaware will continue to submit the Air Quality modeling data as part of Delaware's relevant SIP submissions and through federal grant commitments or in other ways that EPA may request.

(L) § 110(a)(2)(L) Requirement: Require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover - (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under Title V.

Delaware's Plan: In a manner consistent with Delaware law, Delaware will continue to require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V pursuant to Delaware law. Delaware currently fulfills this under the enabling authority of 7 Del.C. § 6095 to 6099 and fee legislation that currently is renewed every three years. Delaware has a fully approved Title V operating permits program. See paragraphs (b) and (c) under "Delaware" in Appendix A to 40 CFR Part 70-Approval Status of State and Local Operating Permits Programs. Delaware may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

(M) § 110(a)(2)(M) Requirement: Provide for consultation and participation by local political subdivisions affected by the plan.

Delaware's Plan: Delaware will continue to provide for consultation and participation by local political subdivisions affected by the SIP pursuant to the public notice laws found in 7 Del.C. §6006 and 6010 and 29 Del.C. Chapters 10003, 10004 and 10115, as applicable. Furthermore, all SIP revisions undergo public notice and hearing which have allowed for comment by the public which includes local political subdivisions. We believe the public

notice and hearing processes fulfill the requirements for consultation with local political subdivisions affected by the SIP.

3.0 Conclusion

Based on the information provided above, Delaware fully complies with the requirements of §110(a)(2)(A) through §110(a)(2)(M).

Secretary's Order No. 2009-A-0031

Approval Of Revision To State Implementation Plan For Ozone, Fine Particulate Matter (Pm2.5), National Ambient Air Quality Standards And Visibility

Date of Issuance: September 1, 2009

Effective Date: September 1, 2009

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control (Department) under 29 **Del.C.** §§8001 et seq. and 7 **Del.C.** §6010(c), this Order is entered to approve a revision to the State Implementation Plan required under the federal Clean Air Act and regulations promulgated by the United States Environmental Protection Agency (EPA).

Background

EPA delegated authority to the Department to administer certain responsibilities in Delaware under the federal Clean Air Act, as amended, 42 U.S.C. §§7401 et seq. (CAA). The delegation included preparing Delaware's State Implementation Plan (SIP), which consists of regulations, source specific requirements, plans and emission inventories that together identify how Delaware will attain and maintain air quality that conforms to primary and secondary National Ambient Air Quality Standards (NAAQS), which are EPA regulations. Delaware's SIP is reflected in EPA's regulations at 40 C.F.R. Part 52, Subpart I. The Delaware SIP is subject to ongoing revisions, which reflects Delaware's progress towards the goal of cleaner air quality. The SIP provides a road map of the regulatory procedures undertaken to control and reduce air pollutants under the Department's authority provided by federal and state laws and regulations. EPA's regulations require that the Department submit Delaware's SIP revisions for EPA's review and approval.

On December 13, 2007, the Department submitted to EPA a report entitled 'State Implementation Plan Revision for Ozone, Fine Particulate Matter (PM2.5) and Visibility.' EPA's review of this report resulted in its request to clarify and supplement certain language, and the Department's Division of Air and Waste Management, Air Quality Management Section (AQMS) prepared the proposed revised report, dated July 13, 2009 to reflect EPA's requested changes to the 2007 submission.

The Department held a duly noticed public hearing on the Report on August 27, 2009 in the Department's Dover offices of AQMS. At the public hearing, the Department's expert, Mark Prettyman, presented the proposed report and introduced documents into the record to support its adoption as a final Plan revision. EPA provided the Department with additional written comments during the public comment period and the Department made the EPA recommended non-substantive changes. AQMS as submitted as the proposed final plan at the hearing. The Department's presiding hearing officer, Robert P. Haynes, recommended at the hearing that the Department approve the proposed Report, as revised, and submit to EPA as a SIP revision to show compliance with the federal law and regulations.

The Department did not receive any comments except from EPA. The Department reflected the EPA suggested non-substantive changes in the revised Report admitted into the record at the public hearing, a copy of which is attached hereto as Appendix A. The Department's presiding hearing officer indicated at the public hearing that he recommended approval of the proposed revision and that the record developed at the hearing, as described in the transcripts, supported his recommendation and would support a final decision.

Reasons and Findings

I find that approval of the Report, as attached hereto as Appendix A in its final plan, is well-supported by the record developed at the public hearing and that the Report should be adopted as a revision to the SIP. The Report was the subject of public notices that provided the public with the opportunity to comment on the Report. The Department received only the comments from EPA during the public comment period that ended at the August 27, 2009 public hearing. I agree that the proposed SIP revision should be approved and that the Department should submit the Report in Appendix A to EPA to show Delaware's compliance with the CAA and EPA's reporting requirements under the CAA. The SIP revision sets forth the Department's progress in promulgating the regulations to significantly reduce air emission of pollutants and enable Delaware to comply with the 8 hour ozone and annual fine particulate matter established in the NAAQS by 2010. These regulatory actions will enable Delaware to meet the visibility related obligations imposed by the CAA and EPA's regulations and will result in healthier air for Delaware.

In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary, hereby approves as reasonable the July 13, 2009 Report, revised on August 28, 2009 in response to EPA's non-substantive comments. The final Report and this Order will be submitted to EPA as the latest Delaware SIP revision; and
2. The Department shall have this Order published in the Delaware Register of Regulations and in newspapers in the same manner as the notice of the proposed SIP revision.

Collin O'Mara
Secretary

Implementation, Maintenance, And Enforcement of National Ambient Air Quality Standards, Amendment to the State Implementation Plan Revision For Ozone, Fine Particulate Matter (PM_{2.5}), and Visibility (as submitted on December 2007)

August 25, 2009

1.0 Preamble, Introduction and Background

A State Implementation Plan ("SIP") is a state plan that identifies how that state will attain and maintain air quality that conforms to each primary and secondary National Ambient Air Quality Standard ("NAAQS"). The SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and emission inventories.

Delaware's initial SIP was approved by the EPA on May 31, 1972. Since this initial approval, the Delaware SIP has been revised numerous times to address air quality non-attainment and maintenance issues. This was done by updating plans and inventories, and adding new and revised regulatory control requirements. Delaware's SIP is compiled at 40 C.F.R. Part 52 Subpart I.

Section 2.0 of this document is a revision to Delaware's SIP. The purpose of this SIP revision is to detail how Delaware meets all of the necessary implementation, maintenance, and enforcement measures required by the Clean Air Act ("CAA"), specifically, CAA §110(a)(2). Under the heading "Delaware's Plan" in Section 2.0 of this document Delaware provides a revision to its SIP to address those requirements of Section 110(a)(2)(A)-(M) of the CAA which have not been addressed in other SIP revisions. It is a compilation of certain elements that describe how Delaware demonstrates how the 1997 eight-hour ozone and ~~in some cases~~ the 1997 fine particulate (PM_{2.5}) NAAQS are being implemented, maintained and enforced. The elements of this SIP revision, once approved by EPA, will provide a federally enforceable written confirmation that Delaware will continue to comply with the Section 110(a)(2) requirements of the CAA.

Legislative authority for the Delaware air quality program relating to the responsibilities in the CAA is codified in Title 7 "Conservation" of the Delaware Code, Chapter 60 - Delaware's comprehensive water and air resources conservation law, which gives the Delaware DNREC the power and duty to implement the provisions of the CAA in the State of Delaware.

Many of the miscellaneous requirements of Section 110(a)(2)(A)-(M) of the CAA relevant to the 1997 eight-hour ozone and 1997 fine particulate (PM_{2.5}) NAAQS are already contained in Delaware's SIP or in SIP revisions

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which have been submitted to but not yet approved by EPA. The following Table identifies those SIP provisions. The attainment and base year inventory plans and the regulations cited in the following Table have gone through public notice and hearing prior to submittal to EPA. The following Table also identifies those infrastructure requirements which are not applicable to Delaware.

Table - 110(a)(2)(A)-(M) Requirements in the Current State of Delaware SIP

Section 110(a) element	Summary of element	Provisions in the Current Delaware SIP or recent SIP revisions Submittals ^a	Where Codified or approved by EPA
§110(a)(2)(A)	Include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this Act.	<p>For the 1997 ozone and 1997 PM_{2.5} NAAQS, the pertinent emission limitations and schedules are contained in Delaware's submitted Reasonable Further Progress (RFP) and attainment demonstration SIPs that were submitted on June 13, 2007, in recently submitted regulatory revisions listed below and in the regulations in Delaware's approved SIP that are listed in 40 CFR 52.420(c).</p> <p>Regulation No. 1-446 Electric Generating Unit (EGU) Multi-Pollutant Regulation, November 21, 2006 Regulation No. 1-413, Open Burning Regulation, May 2, 2007 Regulation No. 24, Section 46, Crude Oil Lightering, May 2, 2007 Regulation No. 48, Combustion Turbine Generator Emissions, September 11, 2007 Regulation No. 1-444, Stationary Generator Emissions, November 1, 2007</p> <p>Regulation No. 43, Not To Exceed California Heavy Duty Diesel Engine Standards, November 29, 2004 Regulation No. 45, Excessive Idling Of Heavy Duty Vehicles, August 12, 2005</p> <p>The regulatory revisions listed above and the following regulations listed below that are in Delaware's approved SIP that are listed in 40 CFR 52.420(c) also apply to the fine particulate matter NAAQS:</p> <p>Regulation No. 1, Definitions And Administrative Principles Regulation No. 4, Particulate Emissions From Fuel Burning Equipment Regulation No. 5, Particulate Emissions From Industrial Process Operations Regulation No. 6, Particulate Emissions From Construction And Materials Handling Regulation No. 7, Emissions From Incineration Of Noninfectious Waste</p>	40 CFR 52.420(c)

		<p>Regulation No. 8, Sulfur Dioxide Emissions From Fuel Burning Equipment; Regulation No. 9, Emissions Of Sulfur Compounds From Industrial Operations; Regulation No. 10, Control Of Sulfur Dioxide Emissions Kent And Sussex Counties; Regulation No. 12, Control Of Nitrogen Oxides Emissions; Regulation No. 14, Visible Emissions; [Regulation No. 18, Particulate Emissions From Grain Handling Operations; Regulation No. 22, Restriction On Quality Of Fuel In Fuel Burning Equipment; Regulation No. 24, Control Of Volatile Organic Compound Emissions;] Regulation No. 26, Motor Vehicle Regulation No. 27, Stack Heights; [Regulation No. 29, Emissions From Emissions Inspection Program Incineration Of Infectious Waste;] Regulation No. 31, Low Enhanced Inspection And Maintenance Program; Regulation No. 32, Transportation Conformity Regulation; [Regulation No. 34, Emission Banking And Trading Program] Regulation No. 35, Conformity Of General Federal Actions To The State Implementation Plans Regulation No. 36, Acid Rain Program; Regulation No. 37, NOx Budget; Regulation No. 39, Nitrogen Oxides Budget Trading Program; Regulation No. 40, National Low Emission Vehicle Program; Regulation No. 4441, Limiting Emissions Of Volatile Organic Compounds From Consumer And Commercial Products; Regulation No. 42, Specific Emission Control</p> <p>For the fine particulate matter NAAQS, any remaining applicable requirements under §1-10(a)(2)(A) will be addressed in future SIP revisions.</p>	
<p>§110(a)(2)(B)</p>	<p>Provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to - (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.</p>	<p><u>Regulation 17 Source Monitoring, Record Keeping And Reporting and</u> Regulation No. 3, Ambient Air Quality Standards, of the State of Delaware Regulations Governing the Control of Air Pollution provides for the establishment and operation of procedures necessary to monitor, compile and analyze data related to ambient air quality.</p>	<p>40 CFR 52.420(c)</p>

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§110(a)(2)(C)	Include a program to provide for the enforcement of the measures described in subparagraph (A) and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D;	<p>Delaware implements its Construction and Operation Permit Program requirements under Regulation Nos. 4402, and 25^b of the State of Delaware Regulations Governing the Control of Air Pollution.</p> <p>Delaware implements its Prevention of Significant Deterioration (PSD) Program requirements under Regulation No. 25 of the State of Delaware Regulations Governing the Control of Air Pollution.</p> <p>Delaware implements its Emission Offset Provision (EOP) requirements under Regulation No. 25 of the State of Delaware Regulations Governing the Control of Air Pollution.”</p> <p>Other aspects of Delaware’s program for enforcement are found in those provisions of Regulation 25, Regulation 11 and Regulation 17 as well as the source monitoring, source testing and test methods, and, recordkeeping and reporting provisions of Regulations 12, 23, 24, 26, 31, 37, 39, 40, 41, 42, and others in the approved Delaware SIPs as well as recently submitted regulatory SIP revisions discussed under section 110(a)(2)(A) above. ^c</p> <p>These recently submitted regulatory revisions and the regulations in Delaware’s approved SIP that are listed in 40 CFR 52.420(c) also apply to the <u>1997</u> fine particulate matter NAAQS.</p> <p>[For the fine particulate matter NAAQS, any remaining applicable requirements under §110(a)(2)(C) will be addressed in future SIP revisions.]</p>	40 CFR 52.420(c)
§110(a)(2)(E)(ii)	(ii) requirements that the state comply with the requirements respecting state boards under section 128, and	The requirements of §110(a)(2)(E)(ii) are not applicable to Delaware because it does not have any board or body which approves air quality permits or enforcement orders.	
§110(a)(2)(E)(iii)	(iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision;	The requirements of §110(a)(2)(E)(iii) are not applicable to Delaware because it does not rely on localities for specific SIP implementation.	

<p>§110(a)(2)(F)</p>	<p>Require, as may be prescribed by the Administrator—</p> <p>(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps by owners or operators of stationary sources to monitor emissions from such sources,</p> <p>(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and</p> <p>(iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection;</p>	<p>§110(a)(2)(F)(i): Specific monitoring requirements are found throughout the State of Delaware Regulations Governing the Control of Air Pollution, to include Regulation No. 17 and Regulation 3. These requirements are included in Delaware's SIP, as necessary.</p> <p>§110(a)(2)(F)(ii): Specific emissions reporting requirements are found throughout the State of Delaware Regulations Governing the Control of Air Pollution, to include Regulation No. 17 and Regulation 3. These requirements are included in Delaware's SIP, as necessary.</p> <p>Other aspects of Delaware's program for requiring installation and maintenance of monitoring equipment, periodic emissions reporting, is found in the source monitoring, source testing and test methods, and recordkeeping and reporting provisions of Regulations 12, 23, 24, 26, 31, 37, 39, 40, 41, 42, and others in the approved Delaware SIP, 40 CFR 52.420 (c), as well as recently submitted regulatory SIP revisions discussed under section 110(a)(2)(A) above.</p> <p>These recently submitted regulatory revisions and the regulations in Delaware's approved SIP that are listed in 40 CFR 52.420(c) also apply to the 1997 fine particulate matter NAAQS.</p> <p>[For the fine particulate matter NAAQS, any remaining applicable requirements under § 110(a)(2)(F) will be addressed in future SIP revisions.]</p>	<p>40 CFR 52.420(c)</p>
<p>§110(a)(2)(G)</p>	<p>Provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority;</p>	<p>State of Delaware Regulations Governing the Control of Air Pollution, Regulation 15, Air Pollution Alert and Emergency Plan, contains emergency episode plan provisions that are currently approved in the SIP, and found at 40 C.F.R. 52.420(c), that fulfill the contingency plan requirement for the 1997 ozone NAAQS.</p> <p>[7 Del. C. § 6005 allows the Secretary to seek a preliminary or permanent injunction or temporary restraining order for any discharge of an air contaminant without a permit (7 Del. C. § 6005). Thus, it necessarily follows that any discharge of an air contaminant that would cause imminent & substantial endangerment to the health, safety and welfare of the people of the State of Delaware or the environment would constitute a sufficient basis for the Secretary to seek an injunction or temporary restraining order to halt the violation. The provisions of 7 Del. C. § 6003 also provide equal authority for Delaware to seek permanent, preliminary injunctions and temporary restraining orders and to issue cease and desist orders to moving sources if they present an imminent and substantial endangerment to public health, safety, welfare or the environment.]</p> <p>For the fine particulate matter NAAQS, the emergency episode plan will be addressed in future SIP revisions.</p>	<p>40 CFR 52.420(c)</p>

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§110(a)(2)(I)	In the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D (relating to nonattainment areas);	<p>Part D pertains to general requirements for nonattainment areas. All of Delaware is in the Philadelphia-Wilmington-Atlantic City ozone nonattainment area. <u>New Castle County is in the Philadelphia-Wilmington-DE-PA-NJ PM_{2.5} nonattainment area.</u></p> <p>On June 13, 2007 Delaware submitted SIP revisions pertaining to the base year inventory, RFP plan and attainment demonstration for the Philadelphia-Wilmington-Atlantic City ozone nonattainment area and submitted the RACT SIP on March 29, 2007 and was updated on May 2, 2007 to cover Crude Oil Lifting operations. Delaware has also submitted those recently submitted regulatory SIP revisions discussed under section 110(a)(2)(A) above.</p> <p>The pertinent emission limitations and schedules are contained in these submitted plans.</p> <p>The regulations in Delaware's approved SIP that are listed in 40 CFR Part 52, Subpart I related to nonattainment areas will continue to comply with Subpart D requirements and which could not have been approved if they had not met Subpart D requirements.</p> <p>[For the fine particulate matter NAAQS, the applicable Part D requirements have not yet come due and will be addressed in future SIP revisions.]</p>	40 CFR 52.420(c)
§110(a)(2)(J) (PSD)	Meet the applicable requirements of ... part C (relating to prevention of significant deterioration of air quality and visibility protection);	Delaware's PSD requirements are promulgated in Regulation No. 25, Pre construction Review, of the State of Delaware Regulations Governing the Control of Air Pollution.	
[§110(a)(2)(K)]	<p>[Provide for:</p> <p>—(i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of</p> <p>predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and</p> <p>—(ii) the submission, upon request, of data related to such air quality modeling to the Administrator;]</p>	<p>[On June 13, 2007 Delaware submitted SIP revisions pertaining to the base year inventory, RFP plan and attainment demonstration for the Philadelphia-Wilmington-Atlantic City ozone nonattainment area which contained the required modeling.</p> <p>For the fine particulate matter NAAQS, the attainment demonstration is not yet due and will be addressed in future SIP revisions.]</p>	

- a. All of the State of Delaware "Regulations Governing the Control of Air Pollution" have been re-coded under 7 DE Admin Code 1100, effective September 11, 2008. This recoding was submitted to the EPA as a SIP on June 15, 2009, but has not yet been approved into the DE SIP. Because of this some of Delaware's control requirements are cited in this document in the old format. For example, "7 DE Admin Code 1131" is cited as "Regulation 31".
- b. ~~Now codified under regulation 1125 in the Title 7 Department of Natural Resources and Environmental Control of Delaware's Administrative Code.~~
- c. ~~Regulation Numbers 41 and 42 are now codified under regulations 1141 and 1142 in the Title 7 Department of Natural Resources and Environmental Control of Delaware's Administrative Code.~~

2.0 SIP Revision

This SIP revision addresses those requirements of Section 110(a)(2)(A)-(M) of the Clean Air Act (CAA) which have not been addressed in other SIP revisions. Each of the requirements of §110(a)(2) of the CAA (Subparagraphs A-M) is presented below, along with a discussion of Delaware's plan revision to meet the requirement.

(A) §110(a)(2)(A) Requirement: Include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Act.

~~[For the ozone NAAQS, Delaware's SIP or recent SIP revisions already contain other elements addressing §110(a)(2)(A) as discussed in the section 1.0 and the table thereto of this document. Many of these also apply to the fine particulate (PM_{2.5}) NAAQS. For the fine particulate (PM_{2.5}) NAAQS, any remaining applicable requirements under §110(a)(2)(A) will be addressed in future SIP revisions.]~~

Delaware's Plan: Delaware has established laws and regulations that include enforceable emissions limitations and other control measures, means or techniques, as well as schedules and timetables for compliance to meet the applicable requirements of the CAA. Delaware may make changes to its laws and regulations that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

At present, Delaware's statutory authority is set out in Title 7 "Conservation" of the Delaware Code, Chapter 60 – Delaware's comprehensive water and air resources conservation law. Legislative authority giving the Secretary of the Delaware Department of Natural Resources and Environmental Control the authority to promulgate Regulations is codified at 7 Del. C., Chapter 60. This authority is applicable to the 1997 ozone as well as the 1997 fine particulate (PM_{2.5}) NAAQS.

(B) §110(a)(2)(B) Requirement: Provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.

Delaware's SIP already contains other elements, namely, ~~Regulation No. 3, 7 DE Admin. Code 1103⁴²~~ Ambient Air Quality Standards, and 7 DE Admin. Code 1117 of the State of Delaware Regulations Governing the Control of Air Pollution addressing §110(a)(A), as discussed in the section 1.0 and the table thereto of this document.

Delaware's Plan: Delaware has established and currently operates appropriate devices, methods, systems and procedures necessary to monitor, compile and analyze data on ambient air quality, and upon request, makes such data available to the Administrator. Delaware will continue to operate devices, methods, systems and procedures and may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. At present, Delaware does this as follows for both the 1997 ozone and fine particulate matter NAAQS:

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4. 2. All of the State of Delaware "Regulations Governing the Control of Air Pollution" have been re-coded under 7 DE Admin Code 1100, effective September 11, 2008. This recoding was submitted to the EPA as a SIP on June 15, 2009, but has not yet been approved into the DE SIP. Delaware's control requirements are cited in Section 2 in the new format. For example, "Regulation 31" is cited as "7 DE Admin Code 1131".

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- Delaware maintains and operates a multi-station network of ambient monitors throughout the State to measure ambient air quality levels within Delaware for comparison to each NAAQS as required by 40 CFR Part 58. Seasonal (April – October) ozone, and daily PM_{2.5} monitoring is currently performed at various locations throughout Delaware.
- All data is measured using U.S. EPA approved methods as either Reference or Equivalent monitors; all monitors are subjected to the quality assurance requirements of 40 CFR Part 58; Appendix A; and all samplers are located at sites that have met the minimum siting requirements of Part 58, Appendix E. The data is submitted to the EPA's Air Quality System (AQS) system, in a timely manner in accordance to the schedule prescribed by the U.S. EPA in 40 CFR Part 58.
- In order to keep EPA informed of changes to the sampling network DNREC provides EPA Region III with prior notification of any planned changes to the network. As needed, details of these changes and anticipated approvals of the changes are communicated to EPA. On an annual basis, Delaware sends EPA a ~~summary table of all the changes to the network. This summary also provides for a description of each change, the reason for each change, and any other information relevant to the change.~~ monitoring network plan as required by 40 CFR Part 58 Section 10: Annual monitoring network plan and periodic network assessment. This plan contains all required information including site and monitor description, analysis methods, operating schedule, monitoring objectives and scale of representativeness, as well as information on any planned changes. DNREC submits data to the AQS system, in a timely manner, pursuant to the schedule prescribed by the EPA in 40 CFR Part 58.

Delaware has and will continue to submit data to EPA's Air Quality System ("AQS") in a timely manner in accordance to the schedule prescribed by the U.S. EPA in 40 CFR Part 58.

(C) §110(a)(2)(C) Requirement: Include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D.

For the ~~ozone 1997 ozone and 1997 PM_{2.5} NAAQS, Delaware's ozone and PM_{2.5} SIPs already contains the other elements addressing §110(a)(C) as discussed in the section 1.0 and the table thereto of this document. These also apply to the fine particulate (PM_{2.5}) NAAQS. For the fine particulate (PM_{2.5}) NAAQS, any remaining applicable requirements under §110(a)(2)(C) will be addressed in future SIP revisions.~~

Delaware's Plan: Delaware has established and currently operates a program to provide for the enforcement of the enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the CAA and to regulate the modification and construction of any stationary source within areas covered by its SIP as necessary to assure the NAAQS are achieved, including permit programs required in parts C and D. At present, Delaware as part of its Air Quality Management Section function exercises its programmatic authority to utilize the enforcement powers set out in 7 Del. C. §6005 entitled "Enforcement; civil and administrative penalties; expenses"; 7 Del. C. §6013 entitled "Criminal penalties"; and 7 Del. C. §6018 entitled "Cease and desist order." Delaware will continue to operate this program and may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

(D) §110(a)(2)(D) Requirement: Contain adequate provisions – (i) prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will - (I) contribute significantly to non-attainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility, (ii) insuring compliance with the applicable requirements of sections 126⁵³ and 115⁶⁴ (relating to interstate and international pollution abatement).

Delaware's Plan: The implementation plan for Delaware and recently submitted Ozone, PM_{2.5} and Visibility SIP revisions presently contain adequate provisions prohibiting sources from emitting air pollutants in amounts which will contribute significantly to non-attainment or interfere with maintenance with any NAAQS and to

prevent interference with measures related to preventing significant deterioration of air quality or which have to date proved adequate to protect visibility and to address interstate and international pollutant abatement; however, Delaware may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. At present, Delaware's legal authority is contained in the following:

- ~~[Delaware Code Title 7, Chapter 60 § 6010 (c). Rules and regulations; plans. The Secretary may formulate, amend, adopt and implement, after public hearing, a statewide air resources management plan to achieve the purpose of this chapter and comply with applicable federal laws and regulations. Since 110(a)(2)(D) is in the CAA, and thus a law, Delaware has the legal authority to regulate sources of interstate transport to areas in nonattainment, or in those areas maintaining the NAAQS, if they were previously nonattainment.]~~
- 110(a)(2)(D)(i)(I): Major stationary sources for 1997 8-hour ozone and PM_{2.5} are currently subject to Nonattainment New Source Review (NNSR) and Prevention of Significant Deterioration (PSD) permitting programs under the PSD and EOP provisions of 7 DE Admin. Code 1125, Regulation No. 25, Preconstruction Review, of the State of Delaware Regulations Governing the Control of Air Pollution.⁷⁵ ~~Delaware sources are subject to the Clean Air Interstate Rule (CAIR) Federal Implementation Plan (FIP) for annual and seasonal ozone, and for sulfur dioxide. In the adoption of CAIR EPA has indicated that compliance with CAIR satisfies a States §110(a)(2)(D)(i) obligations relating to "significant contribution" and "interference with maintenance" requirements, and the State of Delaware currently satisfies the CAIR requirements by relying on the CAIR FIP.⁸ In addition, because Delaware believes that more than CAIR is necessary to mitigate transport, Delaware has promulgated 7 DE Admin. Code 1146 Regulation No. 1146, Electric Generating Unit Multi-Pollutant Regulation, 7 DE Admin. Code 1142, Regulation No. 1142, Section 2, Control of NO_x Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries, and 7 DE Admin. Code 1148, Regulation No. 1148, Control of Stationary Combustion Turbine Electric Generating Unit Emissions; which significantly reduce emissions from Delaware's largest EGUs, industrial boilers, and peaking units (i.e., generally, Delaware's CAIR covered units). These regulations have, or are in the process, of being submitted to the EPA as revisions to Delaware's SIP.~~
- 110(a)(2)(D)(i)(II): PSD requirements under Section 3 of 7 DE Admin. Code 1125, Regulation No. 25 of the State of Delaware Regulations Governing the Control of Air Pollution. Major sources are subject to NNSR and PSD permitting programs implemented in accordance with EPA's interim guidance calling for use of PM₁₀ as a surrogate for PM_{2.5} related to the non-attainment and PSD NSR program requirements.

5. **3.** §126(a) - Each plan shall (1) require each major proposed new or modified source (A) subject to Part C or (D) which may significantly contribute to pollution in excess of the NAAQS in any AQCR outside the State in which such source intends to locate or modify, to provide written notice to all nearby States the pollution levels of which may be affected by such source 60 days prior to the date on which commencement of construction is to be permitted by the State, and (2) identify all major existing stationary sources which may have the impact described in (1) with respect to new or modified sources and provide notice to all nearby States of the identity of such sources. (b) Any State may petition EPA for a finding that any major source or group of stationary sources emits or would emit any pollutant in violation of the prohibition of §110(a)(2)(D)(ii) or this section. (c) Notwithstanding any permit which may have been granted by the State, it shall be a violation of this section and the plan - (1) for any major proposed new or modified source with respect to which a finding has been made under subsection (b) to be constructed or to operate in violation of this section and the prohibition of §110(a)(2)(D)(ii) or this section, or (2) for any major existing source to operate more than 3 months after such finding has been made. EPA may permit the continued operation of a source beyond the expiration of the 3-month period if the source complies with the emission limitations and compliance schedules as may be provided by EPA to bring about compliance with the requirements of §110(a)(2)(D)(ii). Nothing shall be construed to preclude any such source from being eligible for an enforcement order under §113(d) after the expiration of such period during which EPA has permitted continuous operation.

GENERAL NOTICES

- The State of Delaware confirms that it is meeting this requirement for the use of PM₁₀ as a surrogate for PM_{2.5} in the PSD and NNSR programs.
- ~~The EPA's guidance⁹ advises that the section 110(a)(2)(D)(i) requirement related to protection of visibility is deferred until such time as Delaware submits its Visibility SIP. Delaware's Visibility SIP will assess whether there is interference with measures required to be included in the applicable implementation plan for any other State to protect visibility. Delaware's Visibility SIP assessed and demonstrated that Delaware has met Best Available Retrofit Technology and Reasonable Further Progress (RFP) goals, and thus did not interfere with measures required to be included in the applicable implementation plan for any other State to protect visibility.~~
- 110(a)(2)(D)(ii): Nothing in Delaware's statutory or regulatory authority prohibits or otherwise interferes with Delaware's ability to exercise sections 126 and 115 of the CAA.

(E) §110(a)(2)(E) Requirement: Provide (i) necessary assurances that the state (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the state or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under state (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of federal or state law from carrying out such implementation plan or portion thereof), (ii) requirements that the State comply with the requirements respecting State boards under section 128,¹⁰⁶ and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision.

The elements of §110(a)(2)(E)(ii) and (iii) are not applicable to Delaware as discussed in section 1.0 and the table thereto of this document.

Delaware's Plan: With respect to the remaining obligations under this section, Delaware assures EPA that it has adequate authority under state law pursuant to 7 Del. C. Chapter 60 to carry out its SIP obligations with respect to both the 1997 8-hour ozone and the 1997 fine particulate (PM_{2.5}) NAAQS. DNREC does not believe that there is any prohibition in any federal or state law that would prevent it from carrying out its SIP or any portion thereof. Further, DNREC assures EPA that it has, through the State of Delaware General Fund and through the Title V fee program, and will continue to have, funding to carry out its SIP obligations. Further, DNREC believes its

6. **4. §115(a) -** Whenever EPA, upon receipt of reports, surveys or studies from any duly constituted international agency has reason to believe that any pollutants emitted in the US cause or contribute to pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country or whenever the Secretary of State requests it to do so, EPA shall give formal notification to the Governor of the State in which such emissions originate. (b) The EPA notice shall be deemed to be a finding under §110(a)(2)(H)(ii) which requires a plan revision with respect to so much of the applicable plan as is inadequate to prevent or eliminate the endangerment. Any foreign country so affected by such emission of pollutants shall be invited to appear at any public hearing associated with any revision of the appropriate portion of the applicable plan. (c) This section shall apply only to a foreign country which EPA determines has given the US the same rights with respect to the prevention or control of air pollution occurring in that country. (d) Recommendations issued following any abatement conference conducted prior to CAA 1977 shall remain in effect with respect to any pollutant for which no NAAQS has been established under § 109 unless EPA, after consultation with all agencies, which were party to the conference, rescinds any such recommendation.

7. **5.** Now codified under regulation 1125 in the Title 7 - Department of Natural Resources and Environmental Control of Delaware's Administrative Code.

8. ~~If Delaware later decides to adopt its own program to replace the CAIR FIP, that program will be submitted to the EPA as a SIP revision.~~

9. William T. Harnett Guidance Memorandum, dated August 15, 2006, "Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and PM_{2.5} NAAQS."

funding sources are sufficient to provide adequate personnel for those purposes; however, Delaware may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

At present Delaware fulfills this obligation by virtue of having adequate personnel and funding through the CAA § 105 grant process (federal grant funds), the State of Delaware general fund (state tax revenues), and appropriated special funds collected by the State of Delaware from application fees, permit fees, renewal fees, and civil or administrative penalties or fines. Delaware does not anticipate the need for additional resources beyond those to be appropriated in the above manner to carry out its SIP requirements.

(F) §110(a)(2)(F) Requirement: Require, as may be prescribed by the Administrator - (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection.

For the 1997 ozone and 1997 PM_{2.5} NAAQS, Delaware's SIPs already contain the other elements addressing §§ 110(a)(F)(i) and (ii) as discussed in the section 1.0 and the table thereto of this document. ~~These also apply to the fine particulate (PM_{2.5}) NAAQS. For the fine particulate (PM_{2.5}) NAAQS, any remaining applicable requirements under §110(a)(2)(C) will be addressed in future SIP revisions.~~

Delaware's Plan: Delaware requires that owners or operators of stationary sources monitor and submit periodic reports on the nature and amounts of emissions and emissions related-date emissions from the sources. This may include the installation, maintenance and replacement of equipment, where appropriate. This information submitted to DNREC is available to the public at reasonable times for public inspection pursuant to Delaware law. Delaware will continue to require reporting of emissions but may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

Except as specifically exempted by the Delaware Freedom of Information Act, 29 Del. C. Chapter 100, Delaware makes all records, reports or information obtained by the Department or referred to at public hearings available to the public pursuant to the provisions of the Delaware Freedom of Information Act, 29 Del. C. Chapter 100.

(G) §110(a)(2)(G) Requirement: Provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority;¹¹⁷

10. **6.** §128 (a) each plan shall contain requirements that - (1) any board or body which approves permits or enforcement orders shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders, and (2) any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be disclosed. A State may adopt any requirements respecting conflicts of interest for such boards or bodies or heads of executive agencies, or any other entities which are more stringent than the requirements of (1) and (2).

11. **7.** Sec. 303- Notwithstanding any other provisions of this Act, the Administrator upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to public health or welfare, or the environment, may bring suit on behalf of the United States in the appropriate United States District court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary. If it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect public health or welfare or the environment. Prior to taking any action under this section, the Administrator shall consult with appropriate State and local authorities and attempt to confirm the accuracy of the information on which the action proposed to be taken is based. Any order issued by the Administrator under this section shall be effective upon issuance and shall remain in effect for a period of not more than 60 days, unless the Administrator brings an action pursuant to the first sentence of this section before the expiration of that period. Whenever the Administrator brings such an action within the 60-day period, such order shall remain in effect for an additional 14 days or for such longer period as may be authorized by the court in which such action is brought.

GENERAL NOTICES

Delaware's SIP contains an emergency episode plan for ozone as discussed in the section 1.0 and the table thereto of this document. For the 1997 fine particulate (PM_{2.5}) NAAQS, the emergency episode plan will be addressed in future SIP revisions, updated as required by EPA.

Delaware's Plan: Delaware has authority comparable to that in section 303 and adequate contingency plans to implement such authority but may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

At present, 7 Del. C., Chapter 60 provides authority comparable to section 303 in that Delaware may seek permanent, preliminary injunctions and temporary restraining orders (7 Del. C. § 6005) and issue cease and desist orders for violations (7 Del. C. § 6018). Under 7 Del. C., § 6003, any unpermitted emission which may cause imminent or substantial danger to public health, safety, welfare or the environment is a violation of 7 Del. C., Chapter 60. 7 Del. C. § 6003(a)(1) requires a permit from the Secretary prior to discharging any air contaminant. 7 Del. C. § 6002(2) defines air contaminant essentially as any substance other than uncombined water. 7 Del. C. § 6005 allows the Secretary to seek a preliminary or permanent injunction or temporary restraining order for any discharge of an air contaminant without a permit, and issue cease and desist orders for violations (7 Del. C. § 6018). Thus, it necessarily follows that any discharge of an air contaminant that would cause imminent & substantial endangerment to the health, safety and welfare of the people of the State of Delaware or the environment would constitute a sufficient basis for the Secretary to seek an injunction or temporary restraining order to halt the violation.

(H) §110(a)(2)(H) Requirement: Provide for revision of such plan - (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this Act.

Delaware's Plan: Delaware will review and revise its SIP from time to time as may be necessary to take account of revisions of such primary or secondary NAAQS or the availability of improved or more expeditious methods of attaining such standard and whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements established under the CAA.

(I) §110(a)(2)(I) Requirement: In the case of a plan or plan revision for an area designated as a non-attainment area, meet the applicable requirements of part D (relating to non-attainment areas).

For the 1997 ozone and 1997 PM_{2.5} NAAQS, Delaware's SIP or recent SIP revisions already contain other elements addressing §110(a)(I) as discussed in the section 1.0 and the table thereto of this document. Many of these also apply to the fine particulate (PM_{2.5}) NAAQS. For the fine particulate matter NAAQS, the remaining applicable requirements under Part D will be addressed in future SIP revisions.

(J) §110(a)(2)(J) Requirement: Meet the applicable requirements of section 121 (relating to consultation), section 127 (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection).^{12 8}

Delaware's Plan: Delaware will meet the applicable requirements of section 121 (relating to consultation), section 127 (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection); but may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. At present, Delaware does so utilizing the following:

- **7 DE Admin. Code 1132 Regulation No. 32**, Transportation Conformity, of the State of Delaware Regulations Governing the Control of Air Pollution provides a legal platform for the various consultation procedures that have been developed between D NREC, DEL DOT, and the Metropolitan Planning Organizations (MPOs). The MPOs provide the forum for consultation with local governments.^{13 9} Delaware's MPOs are: (1) WILMAPCO, Kent County MPO, and the Salisbury-Wicomoco MPO. Regional planning organizations provide the forum for inter-state consultations. Additionally, consultations with Federal Land Managers are always on-going in accordance with EPA Rules. All SIP revisions undergo public notice and hearing which have

allowed for comment by the public which includes local political subdivisions. Delaware believes the public notice and hearing processes also fulfill the section 121 consultation process. The submitted attainment plans and regulations in the approved Delaware SIP specify the organizations responsible for implementing and enforcing the plans.

- DNREC makes real-time and historical air quality information available on its Web site. All relevant SIPs and plans to achieve the NAAQS contain public notification provisions related to air monitoring levels such as Ozone Action Days, Air Quality Action Days, and DNREC's website. DNREC provides extended range air quality forecasts, which give the public advanced notice of air quality events. This advance notice allows the public to limit their exposure to unhealthy air and enact a plan to reduce pollution at home and at work. DNREC forecasts daily ozone and particle levels and issues e-mails to the public, businesses and the media via AirAlerts. AirAlert e-mail forecasts and notifications are free to the public.

For the 1997 ozone and PM_{2.5} NAAQS, Delaware's SIPs already contains the other elements addressing §110(a)(J) as discussed in the section 1.0 and the table thereto of this document. ~~For the fine particulate (PM_{2.5}) NAAQS, any remaining applicable requirements under §110(a)(2)(J) will be addressed in future SIP revisions.~~

(K) § 110(a)(2)(K) Requirement: Provide for - (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

For the 1997 ozone and PM_{2.5} NAAQS, Delaware's SIPs or recently submitted SIP revisions contains required modeling as discussed in the section 1.0 and the table thereto of this document. ~~For the fine particulate (PM_{2.5}) NAAQS, the attainment demonstration is not yet due and will be addressed in future SIP revisions.~~

Delaware's Plan: Delaware will continue to perform modeling as required under the CAA to demonstrate attainment), but may makes changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation. Delaware will continue to submit the Air Quality modeling data as part of Delaware's relevant SIP submissions and through federal grant commitments or in other ways that EPA may request.

(L) §110(a)(2)(L) Requirement: Require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover - (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under Title V.

Delaware's Plan: In a manner consistent with Delaware law, Delaware will continue to require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon a

12. **8. §121.** - In carrying out requirements for plans to contain - (1) any transportation controls, air quality maintenance plan requirements or preconstruction review of direct sources of pollution, or (2) any measure referred to - (A) in part D, or (B) in part C, and in carrying out the requirements of §113(d), the State shall provide a satisfactory process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any FLM having authority over Federal land to which the State plan applies. Such process shall be in accordance with regulations promulgated by EPA. Only a general purpose unit of local government, regional agency, or council of governments adversely affected by action of EPA approving any portion of a plan may petition for judicial review.

§127. (a) - Each plan shall contain measures to regularly notify the public of when any NAAQS is exceeded or was exceeded during the preceding year, to advise the public of health hazards associated with such pollution, and to enhance awareness of measures which can be taken to prevent the standards from being exceeded and ways in which the public can participate in regulatory and other efforts to improve air quality.

13. **9.** Regulation 1132 was submitted as a revision to the Delaware SIP in a separate submittal.

application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V pursuant to Delaware law. Delaware currently fulfills this under the enabling authority of 7 Del.C. §6095 to 6099 and fee legislation that currently is renewed every three years. Delaware has a fully approved Title V operating permits program. See paragraphs (b) and (c) under "*Delaware*" in Appendix A to 40 CFR Part 70—Approval Status of State and Local Operating Permits Programs. Delaware may make changes that it believes in its discretion are appropriate, while continuing to fulfill this obligation.

(M) §110(a)(2)(M) Requirement: Provide for consultation and participation by local political subdivisions affected by the plan.

Delaware's Plan: Delaware will continue to provide for consultation and participation by local political subdivisions affected by the SIP pursuant to the public notice laws found in 7 Del.C. §6006 and 6010 and 29 Del.C. Chapters 10003, 10004 and 10115, as applicable. Furthermore, all SIP revisions undergo public notice and hearing which have allowed for comment by the public which includes local political subdivisions. We believe the public notice and hearing processes fulfill the requirements for consultation with local political subdivisions affected by the SIP.

3.0 Conclusion

Based on the information provided above, Delaware fully complies with the requirements of §110(a)(2)(A) through §110(a)(2)(M).

DELAWARE RIVER BASIN COMMISSION**NOTICE OF PUBLIC HEARING**

The Delaware River Basin Commission will hold a public hearing and business meeting on Thursday, October 22, 2009 beginning at 10:30 a.m. The meeting location could not be confirmed as of the deadline for this notice. For more information, including the meeting location, 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 EDUCATION**PUBLIC NOTICE**

The State Board of Education will hold its monthly meeting on Thursday, October 15, 2009 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF SOCIAL SERVICES****DSSM 3017 Other CMR Elements****PUBLIC NOTICE**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend policies in the Division of Social Services Manual (DSSM) regarding the Delaware Temporary Assistance for Needy Families (TANF) program's Contract of Mutual Responsibility.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to (302) 255-4425 by October 31, 2009.

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 NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**DIVISION OF AIR AND WASTE MANAGEMENT****1302 Regulations Governing Hazardous Waste****NOTICE OF PUBLIC HEARING**

In order for the State of Delaware to maintain authorization from the U. S. Environmental Protection Agency (EPA) to administer its own hazardous waste management program, the State must maintain a program that is equivalent to and no less stringent than the Federal program. To accomplish this, the State is proposing to make miscellaneous changes to the DRGHW that correct existing errors in the hazardous waste regulations, add clarification or enhance the current hazardous waste regulations.

The public hearing on the proposed amendments to DRGHW will be held on Thursday October 22, 2009 starting at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

DIVISION OF FISH AND WILDLIFE**3900 Wildlife****PUBLIC NOTICE**

This action will extend the rabbit hunting season from its current ending date of February 15th to the last day of February or the last Saturday of February should February end on a Sunday. This season extension was requested by Delaware hunters who have lost some rabbit hunting opportunities over the years due to conflicts with deer hunting seasons. This short season extension should not have a significant impact on the well being of the rabbit population.

This regulatory change will be presented at a public hearing on December 2, 2009 beginning at 6:30 p.m., DNREC Auditorium, 89 Kings Highway, Dover, Delaware. The hearing record for these proposed Regulations will remain open until 4:30 p.m.. Thursday December 3, 2009. Written comments for the hearing record should be addressed to Kenneth Reynolds, 6180 Hay Point Landing Road, Smyrna, DE 19977 or to Kenneth.Reynolds@state.de.us. The record will remain open for written public comment until 4:30 p.m.. December 3, 2009.

DEPARTMENT OF SAFETY AND HOMELAND SECURITY**DIVISION OF STATE POLICE****2300 Pawn Brokers, Secondhand Dealers and Scrap Metal Processors****PUBLIC NOTICE**

Notice is hereby given that the Department of Safety and Homeland Security, Division of State Police, in accordance with 24 **Del.C.** Section 2311 proposes to amend adopted Rule 3.0 – Revocations and Emergency Suspensions. This amendment describes its intent to issue a revocation or emergency suspension of Pawnbrokers, Secondhand Dealers, and Scrap Metal Processors. If you wish to view the complete amendment, contact Ms. Peggy Anderson at (302) 672-5304. Any persons wishing to present views may submit them in writing, by October 31, 2009, to Delaware State Police, Detective Licensing, P.O. Box 430, Dover, DE, 19903.

DEPARTMENT OF STATE**DIVISION OF PROFESSIONAL REGULATION****1000 Board of Pilot Commissioners****PUBLIC NOTICE**

Under Title 23 of the **Delaware Code**, Section 102, as well as 29 **Delaware Code** Chapter 101, the Delaware Board of Pilot Commissioners is empowered to adopt regulations concerning the practice of pilotage on the Bay and River Delaware and the tributaries thereof. The Commission has now drafted revisions to its existing Pilot regulations. A copy of the proposed changes accompanies this notice.

The Commission will take written comments on the draft changes to the Delaware Public Carrier Regulations from October 1, 2009 through December 11, 2009. In addition, the Commission will hold a public hearing for the receipt of comments on these changes at its next regularly scheduled meeting, December 11, 2009, at the Cannon Building, Conference Room A, 861 Silver Lake Boulevard, Dover, DE 19901, at 1:00 p.m.

Questions or comments regarding the proposed changes should be directed to: Judy Letterman, Administrator, Cannon Building, Conference Room A, 861 Silver Lake Boulevard, Dover, DE 19901 (302) 677-7312 (telephone) (302) 739-2711 (fax); judy.letterman@state.de.us.

DEPARTMENT OF TRANSPORTATION**DIVISION OF MOTOR VEHICLES****Rules and Regulations Pertaining to the Regulation of Public Carriers****PUBLIC NOTICE**

Under Title 2 of the **Delaware Code**, Section 1802, as well as 29 **Delaware Code** Section 8404, the Delaware Department of Transportation (DelDOT), is empowered to adopt regulations concerning public carriers, such as taxicabs, limousines, and charter buses operated by private entities. The Department has now drafted revisions to its existing Public Carrier regulations. A copy of the proposed changes accompanies this notice.

The Department will take written comments on the draft changes to the Delaware Public Carrier Regulations from September 1, 2009 through October 31, 2009.

Questions or comments regarding these proposed changes should be directed to: Michael Harrell, Administrator, DelDOT DMV Transportation Services, P.O. Drawer E, Dover, DE 19903 (302) 744-2730 (telephone) (302) 739-6299 (fax) michael.harrell@state.de.us.

EXECUTIVE DEPARTMENT**DELAWARE ECONOMIC DEVELOPMENT OFFICE****402 Procedures Governing The Delaware Strategic Fund****PUBLIC NOTICE**

The State of Delaware, Delaware Economic Development Office hereby gives notice of its intention to adopt amended regulations pursuant to the General Assembly's delegation of authority to adopt such measures found at 29 **Del.C.** §5005(11) and in compliance with Delaware's Administrative Procedures Act, 29 **Del.C.** §10115. The proposed changes to regulations amend the fees for submitting an application for economic assistance under the Delaware Strategic Fund, to better reflect the actual cost to process those applications. Additionally, the proposed regulations to Award Approval and Standards will reflect actual practice and market conditions.

The Division solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty days (30) after these proposed amended regulations are promulgated in the *Delaware Register of Regulations*.

Any such submissions should be mailed or delivered to Lee Porter, Delaware Economic Development Office, 99 Kings Highway, Dover, DE 19901 by October 15, 2009.

OFFICE OF MANAGEMENT AND BUDGET**Freedom of Information Act Policy and Procedures**

In accordance with procedures set forth in 29 **Del.C.** Ch. 11, Subch. III and 29 **Del.C.** Ch. 101, the Director of the Office of Management and Budget is proposing to adopt a regulation setting forth policy and procedures in dealing with requests from the public for information as set forth in 29 **Del.C.** Ch. 100, the Freedom of Information Act.

The Director of the Office of Management and Budget, or an employee of the Office of Management and Budget designated by the Director, will hold a public hearing at which members of the public may present comments on the proposed regulation on October 30, 2009 at 2:00 p.m. at the Delaware Office of Management and Budget, 122 William Penn Street, Room 133, Dover, DE, 19901. Additionally, members of the public may present written comments on the proposed regulation by submitting such written comments to Mr. Robert Scoglietti, Delaware Office of Management and Budget, 122 William Penn Street, Dover, DE, 19901. Written comments must be received on or before 12:00 p.m. on October 30, 2009. Members of the public may receive a copy of the proposed regulation at no charge by United States Mail by writing Mr. Robert Scoglietti at the address of the Delaware Office of Management and Budget set forth above.
