

DIVISION OF RESEARCH
OFFICE OF THE REGISTRAR OF REGULATIONS
Statutory Authority: 29 Delaware Code, Section 1134(a)(4) (29 **Del.C.** §1134(a)(4))

PROPOSED

PUBLIC NOTICE

Regulation Governing Administrative Rulemaking Procedures

The Registrar of Regulations of the Division of Research of the Legislative Council, pursuant to 29 **Del.C.** §1134(a)(4), proposes to adopt Regulation Governing Administrative Rulemaking Procedures. The purpose of the regulation is to provide procedures for the filing of regulations under the Administrative Procedures Act, 29 **Del.C.** Ch. 101, and for publication in the Delaware *Register of Regulations* and the *Administrative Code*. The regulation was presented at the April 30, 2014 meeting of the Legislative Council.

Persons wishing to present their views regarding the proposed new regulation must do so in writing by 4:30 pm on July 1, 2014 to Vicki Schultes, Office of the Registrar of Regulations, Division of Research, 411 Legislative Avenue, Dover, DE 19901 or by email to Vicki.Schultes@state.de.us. Copies of the regulation are available for review in the June 1, 2014 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> and are available from the above address.

Regulation Governing Administrative Rulemaking Procedures

1.0 Authority and Purpose

- 1.1 This regulation establishes procedures for filing and publication of agency regulations under 29 **Del.C.** Ch. 101.
- 1.2 The procedures of this regulation constitute minimum requirements for regulation filing and publication. Other governing statutes, federal laws, or federal regulations may require additional regulation filing and publication procedures, including the Regulatory Flexibility Act, 29 **Del.C.** Ch. 104.

2.0 Definitions

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

"Agency" means agency as defined in 29 **Del.C.** §10102.

"Codify" means the process of collecting, arranging, and publishing administrative regulations systematically in the *Delaware Administrative Code*, and includes the process of verifying that each amendment was marked as required in Section 6.0 of this regulation.

"Division" means the Division of Research of Legislative Council as established pursuant to 29 **Del.C.** Ch. 11.

"File" means an agency's electronic submission of regulatory documents to the Registrar of Regulations for publication.

"Official regulation" means a regulation in its final form as adopted by an order as defined in 29 **Del.C.** §10118 and filed with the Registrar of Regulations.

"Publish" means to compile and make regulations available to the public by full text or summary and includes availability in an electronic format.

"Register" means the Delaware *Register of Regulations*, a publication authorized and recognized by law published for public information purposes, providing public notice of changes in agency regulations, whether new, modified or repealed, together with supplemental information as deemed appropriate by the Registrar, as outlined in 29 **Del.C.** §1134.

"Registrar" means the Registrar of Regulations, an employee of the Division charged with the responsibility of compiling, maintaining, and publishing the *Register of Regulations*.

"Regulation" means regulation as defined in 29 **Del.C.** §10102.

"Regulation Drafting Manual" means the *Delaware Administrative Code Drafting and Style Manual*, a manual of composition and style guidelines and requirements for drafting documents to be published in the Delaware *Register of Regulations* and the *Delaware Administrative Code*.

3.0 Publication Dates and Deadlines

- 3.1 Pursuant to 29 Del.C. §§10115 and 10118, an agency shall file its regulation and its public notice or final order by 4:30 p.m. on the fifteenth day of the month for publication in the *Register* issued on the first of the next month.
- 3.2 If the fifteenth day is a Saturday, Sunday, or holiday, the agency shall file the regulation and public notice or final order by 4:30 p.m. on the next regular business day.
- 3.3 Any regulation received after the deadlines provided in subsections 3.1 and 3.2 for publication in the next calendar month shall be held for publication in the *Register* for the calendar month that follows the missed publication date.
- 3.4 The official date of publication for the *Register* is the first day of each calendar month as required by 29 Del.C. §1136.

4.0 Public Comment Period for a Proposed Regulation

- 4.1 For the purposes of 29 Del.C. §10118, "30 days" is computed by:
 - 4.1.1 Counting the day after publication of the regulation as the first day; and
 - 4.1.2 Counting the thirtieth consecutive day after the day of publication as the thirtieth day, unless
 - 4.1.3 The thirtieth consecutive day is a Saturday, Sunday, or holiday, in which event the thirtieth day is the next regular business day.
- 4.2 The extended "15 days" of public written comment under 29 Del.C. §10118 is computed by:
 - 4.2.1 Counting the day after the final public hearing on the proposed regulation, if applicable, as the first day; and
 - 4.2.2 Counting the fifteenth consecutive day after the day of the public hearing as the fifteenth day, unless
 - 4.2.3 The fifteenth consecutive day is a Saturday, Sunday, or holiday, in which event the fifteenth day is the next regular business day.

5.0 Final Order and Effective Date for a Final Regulation

- 5.1 Pursuant to 29 Del.C. §10118, upon expiration of the public comment period designated in the regulation analysis and filed with the regulation, and before expiration of 12 months after the end of the public comment period for the regulation or the last public hearing, whichever is later, the agency proposing the regulation shall notify the Registrar of the date the regulation is to become effective and enforceable by filing an order with the Registrar as specified in 29 Del.C. §10118.
- 5.2 The agency shall notify the Registrar after determining that the proposed regulation, in the form published, shall be the final form of the regulation, and after informing the Registrar of any nonsubstantive changes in the regulation as provided for in 29 Del.C. §10118 and marked as described in the *Regulation Drafting Manual*.
- 5.3 The agency shall file with the Registrar a final order and copy of the regulation, which shall clearly identify the proposed regulation, state the date the proposed regulation was published in the *Register*, and state its effective date.
- 5.4 The date designated as the effective date shall be at least 10 days after the date the final regulation is to be published in the *Register*. The earliest effective date is the 11th of the month of publication of the final regulation.
- 5.5 The Registrar shall publish the final order, effective date, and the final regulation, in full or as a summary, in the next issue of the *Register*, subject to section 3.0 of this regulation.

6.0 Regulation Drafting Manual; Underscoring and Striking Out

- 6.1 Drafting Manual
 - 6.1.1 An agency shall follow the guidelines for drafting regulations set out in the *Regulation Drafting Manual*.
 - 6.1.2 The *Regulation Drafting Manual* is available in hardcopy from the Division and can be found online at: http://regulations.delaware.gov/services/style_manual.shtml.
- 6.2 An agency shall request the official regulation text from the Registrar prior to drafting and filing regulation changes.
- 6.3 Underscoring and Striking Out
 - 6.3.1 An agency shall underscore language to be added and strike out language to be deleted in changes in proposed regulations, emergency regulations, and nonsubstantive changes.
 - 6.3.2 When an agency proposes to make a new regulation or section, the entire proposed text shall be underscored.
 - 6.3.3 Repealing a Regulation

6.3.3.1 When an agency proposes to repeal a complete regulation, it shall include as part of the information provided in the regulation public notice or final order a brief summary of the deleted language and a brief explanation of why the regulation is being repealed.

6.3.3.2 The agency shall file with the regulation public notice or final order a copy of the text to be deleted in one of the following formats:

6.3.3.2.1 Each page annotated "repealed in its entirety"; or

6.3.3.2.2 The entire text struck out in its entirety.

6.3.3.3 The Registrar may refuse to publish the full text of repealed regulations unless space is available within the page limits of the *Register*.

6.4 When an agency fails to mark a change as described in this section, the Registrar may refuse to codify the change. When determining whether or not to codify an unmarked change, the Registrar shall consider:

6.4.1 Whether the unmarked change is substantive or nonsubstantive; and

6.4.2 If the purpose of public notification has been adequately served.

6.5 The Registrar's refusal to codify an unmarked change means that the change is not operative for the purposes of 29 **Del.C.** Ch. 101 and that the agency must comply with regular administrative rulemaking procedures to make the change.

7.0 Refusal to Publish or Codify a Regulation or Regulation Change

7.1 The Registrar may not publish a proposed regulation or regulation change when the Registrar determines the agency has not met the requirements of 29 **Del.C.** Ch. 101 and Ch. 104 and this regulation.

7.2 The Registrar may not publish an agency's final order and effective date, nor codify the regulation or regulation change in the *Delaware Administrative Code*, if the agency exceeds the 12-month limit required by 29 **Del.C.** §10118(f).

7.3 The Registrar shall notify the agency of a refusal to publish or codify a regulation or regulation change, and shall advise and assist the agency in correcting any error or omission, and in re-filing to meet statutory and regulatory criteria.

8.0 Use of Incorporation by Reference in Regulations

8.1 An agency incorporating materials by reference shall comply with the following standards:

8.1.1 The regulation shall state specifically that the cited material is "incorporated by reference."

8.1.2 If the material contains options, or is modified in its application, the options selected and modifications made shall be stated in the regulation.

8.1.3 If the incorporated material is substantively changed at a later time, and the agency intends to enforce the revised material, the agency shall amend its regulation through administrative rulemaking procedures to incorporate by reference any applicable changes as soon as practicable.

8.1.4 An agency shall describe substantive changes that appear in the materials incorporated by reference as part of the public notice or final order filed with the regulation.

8.2 An agency shall comply with copyright requirements when it provides the Registrar a copy of material incorporated by reference.

9.0 Agency Contact

9.1 An agency shall submit the name and contact information of the contact person responsible for filing the agency's regulations with the Office of the Registrar.

9.2 The agency shall update the contact information with the Office of the Registrar within 15 days after a change in the contact person for the agency.