



**EXECUTIVE ORDER No. 36:  
REPORT TO THE  
DELAWARE GENERAL ASSEMBLY**

**Office of Governor Jack Markell  
June 27, 2013**

Although state agency regulations are often necessary for the effective functioning of state government and the protection of public health, safety and the environment, we must strive to ensure these regulations do not impose unnecessary burdens upon our residents, businesses and other organizations. On June 14, 2012, to reduce impediments to economic growth and to improve the efficiency of state government, Governor Jack Markell signed Executive Order No. 36 (“EO 36” or the “Order”). The Order established a mechanism for the periodic review of existing regulations by certain Executive Branch agencies, and required agencies to solicit input from the business community, the non-profit community and the general public to identify certain well-established regulations to be streamlined or eliminated.

Over the past year, 12 Executive Branch agencies conducted a comprehensive, customer-focused review of their regulations to determine which regulations should be modified or eliminated. This report explains and summarizes the EO 36 process, and details the regulations that have been or will be modified or eliminated as a result thereof.

## I. REQUIREMENTS OF EXECUTIVE ORDER NO. 36

### A. Overview

Executive Order No. 36 required each department and agency within the Executive Branch that has adopted regulations subject to the Administrative Procedures Act, 29 *Del. C.* § 10111 *et seq.* (“APA”) (collectively, the “Agencies”) to conduct a review of certain well-established regulations on their books. The goal was to identify, then modify or eliminate, any regulations that have become outdated, duplicative or overly burdensome, or that otherwise no longer serve the purpose for which they were originally adopted.

To bring order to the process and to provide adequate time for citizen input, Agencies were assigned to groups alphabetically and divided into 3 groups, with each group having a “Public Input Period” of three months. Agencies were grouped as follows:

- **Group 1:** Department of Agriculture; Department of Children, Youth & Their Families (DSCYF); Delaware Economic Development Office (DEDO); Department of Education, Department of Finance; *Public Input Period:* June 1, 2012–September 1, 2012.
- **Group 2:** Department of Health and Social Services (DHSS),<sup>1</sup> Department of Labor, Office of Management and Budget (OMB). *Public Input Period:* September 1, 2012–December 1, 2012.
- **Group 3:** Department of Natural Resources & Environmental Control (DNREC); Department of Safety and Homeland Security (DSHS); Department of State; Department of Transportation (DelDOT). *Public Input Period:* December 1, 2012–March 1, 2013.

During their respective Public Input Periods, Agencies were required to solicit input from the community at large to identify regulations for possible modification or elimination. Each Agency was required to conduct at least one public hearing in each county, with notice of each hearing promulgated in accordance with the APA. In addition, each Agency was required to accept written comments for the duration of its three-month Public Input Period.

At the conclusion of the applicable Public Input Period, each Agency evaluated the comments, proposals and recommendations it received and prepared a report to the Governor’s Office detailing the revisions and deletions the Agency intended to make. **Because the EO 36 process was, and**

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<sup>1</sup> As set forth below, because of the potential for significant levels of public input in connection with regulations adopted and administered by the Division of Public Health (DPH), DHSS held two public hearings in each county: one to solicit comments on DPH regulations and another to solicit comments on other DHSS regulations.

was intended to be, an Agency-driven process, these Agency reports are attached in the following sections of this Report.

Thereafter, each Agency was required to submit those revisions (*i.e.*, regulations to be eliminated or modified) to the Registrar of Regulations in accordance with the APA. Before a proposed adoption, amendment, or repeal of a regulation becomes final under the APA, the promulgating agency is required (1) to file the full text of the proposal with the Registrar for publication in the monthly *Register of Regulations*; and (2) to provide an opportunity for public comment on the proposal for at least 30 days following publication in the *Register*. 29 *Del.C.* § 10118. Thus, the APA process itself provides an opportunity for members of the public to provide input on any regulatory change proposed by a state agency.

Executive Order No. 36 further requires the Governor’s Office to submit a report to the General Assembly within one year of the Order detailing the regulations eliminated or modified in connection with the EO 36 process.<sup>2</sup> In addition, the Order provides that the EO 36 process will re-commence on a recurring basis no later than three years from the submission of the previous report to the General Assembly.

**B. Scope of Review**

- *Applicable Agencies*

As set forth above, only agencies having regulations subject to the APA are required to participate in the EO 36 review process. A total of 12 Agencies have adopted regulations pursuant to the APA, with only four other Executive Branch agencies (Department of Correction, Delaware State Housing Authority, Department of Technology & Information, and the Delaware National Guard) having no such regulations. The complete list of Agencies subject to the EO 36 process is shown in *Table 1*.

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|---|--|
| Agriculture, Department of                              | Labor, Department of   |
| Children, Youth & Their Families, Department of (DSCYF) | Management & Budget, Office of (OMB)                             |
| Delaware Economic Development Office (DEDO)             | Natural Resources & Environmental Control, Department of (DNREC) |
| Education, Department of                                | Safety and Homeland Security, Department of (DSHS)               |
| Finance, Department of                                  | State, Department of   |
| Health & Social Services, Department of (DHSS)          | Transportation, Department of (DelDOT)                           |

- *Regulations Subject to Review*

Executive Order No. 36 provides that in order to be efficient with taxpayer dollars, this regulatory review process “should be focused on and targeted at those regulations that have not been subject to review for at least three years.” As set forth in the Order, focusing on older and more well-established regulations is appropriate because (1) these regulations are more likely to be outdated or otherwise no longer justified by present realities; and (2) such a focus allows Agencies to consider

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<sup>2</sup> In light of the significant number of policy and scheduling issues facing both the Governor’s Office and the General Assembly during the last month of the legislative session, this report is being presented to the General Assembly approximately two weeks following the one-year anniversary of the Order.

the real-world effects of these regulations in light of economic, technological and other changes. Put more simply, established regulations have track records, while newer regulations may not.

In addition, because Agencies should focus their efforts on only those regulations they have the power to amend or delete, Agencies were required to review only those regulations for which they have direct promulgating authority. Thus, technically speaking, Agencies were not required to review certain regulations for which they do not have such authority, including:

- **Regulations administered by an Agency, but for which a board or commission has the sole power to adopt or amend.** Examples of such regulations include regulations governing the Board of Accountancy (26 *Del. Admin. C.* § 100), the Board of Medical Practice (14 *Del. Admin. C.* § 1700), and numerous other boards and commissions for which the Department of State's Division of Professional Regulation provides administrative and/or investigative support.
- **Regulations that may be adopted or amended by an Agency only in collaboration with or upon the consent of a board, commission, or other entity.** Examples include certain regulations of the Department of Education requiring the consent of the State Board of Education, including regulations governing high school graduation requirements (14 *Del. Admin. C.* § 505) and school attendance (14 *Del. Admin. C.* § 615).
- **Regulations that cannot be amended without changing state or federal law.** Examples include a DelDOT regulation relating to billboards and outdoor advertising whose substantive provisions (including, for example, the number of feet required between electronic billboards) are prescribed by statute (17 *Del. C.* § 1110), as well as certain DNREC regulations governed by the federal Clean Air Act.

**In total, as of the date of this Report, there are a total of 385 regulations subject to Agency review pursuant to EO 36.** However, notwithstanding the above requirements, many Agencies went above and beyond what was strictly required and reviewed regulations that are technically not part of the EO 36 process. Examples of Agencies doing more than what was required include the following (details of each proposal are discussed later in this Report):

- Although the **Department of State's** Division of Professional Regulation generally has no authority to adopt or amend regulations governing the boards and commissions for which it provides staff support, the Division performed an internal review of regulations governing these boards and **recommended 124 revisions to regulations governing the operation of 35 different boards and commissions** for which the Division provides support.
- The **Department of Safety and Homeland Security** administers the regulations of the Delaware Alcoholic Beverage Control (ABC) Commission, but has no power to amend them. As part of the EO 36 process, the Department requested that the ABC Commission review each of the 77 rules governing its operations. The Commission's review process is well underway, with proposed revisions expected in the months to come.
- Although regulations governing the State Lottery Office involve the Video Lottery Advisory Council (VLAC) and are technically outside the purview of EO 36, the **Department of Finance** worked with the VLAC to propose and adopt two small business-friendly revisions to the Lottery regulations. These revisions are discussed in greater detail in the Department's section of this Report.

## **II. THE PUBLIC INPUT PERIOD**

Executive Order No. 36 provides that "citizens are often in the best position to identify outdated, duplicative or overly burdensome regulations." For that reason, Agencies were required to engage

the business community, non-profit community and the general public to identify regulations for possible modification or elimination.

In keeping with the customer-driven focus of EO 36, Agencies engaged in a robust public outreach effort to publicize the EO 36 review process and to solicit comments from disparate members of the community. As a result of these outreach efforts, residents, business owners, employees, and other concerned citizens were offered multiple opportunities to provide input regarding their regulatory concerns, and were given several different methods (in person, online, etc.) in which to do so.

#### **A. Public Hearings**

As required by EO 36, each Agency conducted at least one public hearing in each county, with notice promulgated in accordance with the APA. (In anticipation of a significant number of comments relating to regulations adopted by the Division of Public Health, DHSS held 2 public hearings per county: one to solicit comments on DPH regulations and another to solicit comments on other DHSS regulations.) In an effort to save costs, increase efficiency, and reduce duplication of effort, the public hearings, notices, and other public outreach efforts were coordinated among all of the Agencies within a particular Group. Public hearings were held in accordance with the following schedule, with each agency conducting a hearing on one day of each week shown below:

- **Group 1** (Department of Agriculture, DSCYF, DEDO, Education, Finance):
  - Sussex County – Week of Aug. 6, 2012 – Carvel Center, Georgetown
  - Kent County – Week of Aug. 13, 2012 – Department of Agriculture, Dover
  - New Castle County – Week of Aug. 20, 2012 – Gilliam Conference Center, New Castle
- **Group 2** (DHSS, Labor, OMB):
  - Sussex County – Week of Sept. 24, 2012 – Sussex Central High School, Georgetown
  - Kent County – Week of Oct. 1, 2012 – UD Paradee Center, Dover
  - New Castle County – Week of Oct. 8, 2012 – Gilliam Conference Center
- **Group 3** (DNREC, DSHS, State, DelDOT):
  - Sussex County – Week of Jan. 7, 2013– Sussex Central High School
  - Kent County – Week of Jan. 14, 2013 – Delaware State University, Dover
  - New Castle County – Week of Jan. 14, 2013 – Carvel State Office Building, Wilmington

**In total, Agencies conducted 39 public hearings in connection with the EO 36 process, with 13 public hearings held in each of Delaware’s three counties.** It is worth noting that each of the 12 cabinet secretaries of the Agencies subject to EO 36 attended at least one public hearing, and several cabinet secretaries attended or conducted several hearings. For example, Department of Agriculture Secretary Ed Kee and Department of Labor Secretary John McMahon attended and/or conducted each of the three public hearings held by their respective departments. DEDO Director Alan Levin, Department of Finance Secretary Tom Cook, and Secretary of State Jeff Bullock each attended and/or conducted two public hearings. As described more fully in the following sections, the remaining hearings were conducted by senior-level members of each department.

#### **B. Additional Public Outreach Efforts**

In support of the above hearings and in an effort to generate comments from members of the community, the Agencies engaged in a vigorous public outreach campaign. In addition to the 39 public hearings, Agencies published notice of the hearings and otherwise solicited comments in connection with the EO 36 process by:

- Publishing a total of **50** hearing notices and requests for comments—32 times in *The News Journal* and the *Delaware State News*, and an additional 18 times in a variety of weekly newspapers;
- Placing a fillable Comment Submission Form on each Agency’s webpage for citizens to submit comments electronically. Each Agency’s website also included a public hearing schedule, a downloadable comment form, methods for citizens to submit comments by mail or email, and a link to the text of the Executive Order;
- Issuing Agency-specific press releases to alert media outlets of the public hearings and to solicit additional comments;
- Placing meeting notices on the State’s Public Meeting Calendar; and
- Working with community groups, business organizations, and stakeholders to publicize the public hearings specifically and the EO 36 process generally.

In addition, Agencies worked closely with members of the General Assembly (including, in particular, members of the Small Business Caucus led by Rep. Bryon Short and Rep. Danny Short), as well as various Chambers of Commerce, in connection with the EO 36 review. It is worth noting that Agencies put into place a process whereby individuals could submit comments anonymously through local Chambers of Commerce.

### III. SUMMARY OF COMMENTS RECEIVED

Despite engaging in the vigorous public outreach process described above, the public response to this effort was underwhelming. With respect to the public hearings, several agencies (including, among others, the Department of Labor and the Department of Safety and Homeland Security) reported that they conducted hearings in which no members of the public showed up. With the exception of DNREC and DelDOT, Agencies report attendance figures of below 10 participants for the majority of the public hearings.

With respect to the solicitation of public input, **Agencies reported a total of 234 comments received from all sources**, including public hearings, via the Online Submission Form, and all other means. The Agencies that received the most comments are DNREC and DelDOT, which received 79 comments and 43 comments, respectively.<sup>3</sup> **Other than DNREC and DelDOT, no Agency received more than 10 comments.**

However, the above total of 234 comments is somewhat deceiving. If one were to exclude the 62 comments directed toward a single DHSS regulation (16 *Del. Admin. C.* § 4106, relating to the practice of non-nurse midwifery), that would leave a total of **170 comments across all 12 Agencies, or an average of 12 comments per Agency.**

Perhaps more important, **Agencies received a total of only 93 comments that, in their judgment, were directed toward specific regulations or sets of regulations** (except for 16 *Del. Admin. C.* § 4106 described above). Divided amongst 12 Agencies, **each Agency received, on average, approximately 8 comments relating to specific regulations during the course of the entire three-month Public Input Period.**

Given the low number of public to engage in the EO 36 review process, Agencies were instructed to conduct their own in-depth review of the regulations on their books. The results of that process, as well as the public input process just described, are detailed below.

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<sup>3</sup> These figures exclude DHSS, which received 64 comments. However, 62 of those comments were made with respect to a single regulation, 16 *Del. Admin. C.* § 4106, relating to non-nurse midwifery.

## IV. REGULATORY CHANGES RESULTING FROM THE EO 36 PROCESS

### A. *EO 36 By the Numbers*

It is understood that this process will be judged (at least to some extent) on the number of regulations being amended or deleted. Those numbers are provided below, but two caveats are in order.

First, there is no meaningful way to distinguish between regulations consisting of a single page or less and regulations consisting of dozens of pages sections, subsections, and sub-sub-sections.<sup>4</sup> Thus, for lack of a reasonable alternative, regulations such as a half-page-long Department of Education provision relating to employee leave (14 *Del. Admin. C.* § 712) are counted the same for purposes of this Report as a 58-page, 92-section DSCYF regulation relating to day care centers (1 *Del. Admin. C.* § 101).

Second, any “by-the-numbers” evaluation of this process necessarily cannot distinguish between the quality and quantity of the regulations being amended or deleted. Just as there is no meaningful way to distinguish between short regulations and long regulations, too much attention to numbers can distract from the substance of the regulatory changes being made. Indeed, several valuable revisions described in this report actually add regulatory language as opposed to deleting it.

That said, **as a result of the EO 36 process, 12 Agencies are amending or deleting a total of 144 regulations. Of that total, 83 regulations are being amended, and 61 amendments are being deleted.** Please note, however, that the above total includes a number of amendments or deletions to regulations that were not technically part of the EO 36 process.

### B. *Examples of Significant Regulatory Changes Resulting from EO 36 Process*

The remaining sections of this Report provide additional detail on the specific regulatory changes being enacted as a result of the EO 36 process. However, listed below are examples of some of the more significant changes attributable to Executive Order No. 36:

- **DelDOT** currently requires the installation of multi-use paths, or a payment in lieu of installation, for all development plans. In response to comments that this requirement places a hardship on developments in less-dense areas, the Department will amend its *Subdivision Streets Manual* to allow for more flexibility when development occurs in lower-density areas.
- In addition, in response to comments that it is inequitable to require new entrance permits whenever ownership of a parcel changes, even when the parcel’s use remains the same, **DelDOT** is also amending its *Subdivision Streets Manual* to make it clear that a change in ownership will not require a new permit.
- Although the **Department of State’s** Division of Professional Regulation generally has no authority to adopt or amend regulations governing the boards and commissions for which it provides staff support, the Division performed an internal review of regulations governing these boards and commissions. As a result of its review, **the Division recommended 124 revisions to regulations governing the operation of 32 different boards and commissions for which the Division provides support.** Those recommendations, which are described in greater detail

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<sup>4</sup> Theoretically, one could count the number of pages of regulations, but that task is both unwieldy (based on sheer volume) and impracticable (because some regulations do not have authenticated .pdf versions on the Delaware Administrative Code website, it is impossible to count the number of authenticated pages of regulations duly promulgated in accordance with the APA).

in the Department of State's section of this Report, currently are being considered by these boards and commissions for possible adoption.

- Many of the **Department of Labor's** unemployment insurance regulations have not been updated since the 1950s. As a result of the EO 36 process, the Department of Labor is reducing the number of unemployment insurance regulations from 45 to 21—a 47% reduction—while updating the remaining UI regulations to reflect more than a half-century's worth of statutory and technological changes.
- **DNREC** is authorizing the issuance of after-the-fact permits for activities requiring wetlands or subaqueous lands permits rather than requiring parties to remove structures, apply and receive the appropriate permits and then replace the structures.
- In addition, **DNREC** is making it easier for individuals to install or retrofit aboveground storage tanks by (1) providing applicants 1 year to complete a retrofit before they must resubmit plans, as opposed to the current 60 days; (2) requiring DNREC to respond within 90 days to an owner's proposal to allow an alternative approach (*i.e.*, an approach that is not contemplated by Departmental regulations); (3) allowing individuals to submit requests to extend the timeframe for installation approvals (currently, approvals are only good for one year).
- **DHSS** intends to create a new limited license for operators of small water systems, reducing the accompanying class requirement from 11 weeks to 2 days.
- As a result of EO 36, **DEDO** amended or deleted nine out of the 10 regulations administered by that agency. It deleted six regulations (including four relating to Tourism programs no longer in operation) and made improvements to three regulations governing non-State guaranteed bonds, the Delaware Strategic Fund, and the Council on Development Finance.
- The **Department of Safety and Homeland Security** administers the regulations of the Delaware Alcoholic Beverage Control (ABC) Commission, but has no power to amend them. As part of the EO 36 process, the Department requested that the ABC Commission review each of the 77 rules governing its operations. The Commission agreed and its review process is well underway, with proposed revisions expected in the months to come.

### ***C. Reducing Regulatory Burdens on Delaware's Businesses***

One of the most important considerations underlying the EO 36 process is the effect regulations have on Delaware's businesses, in particular small businesses. Listed below are a few examples of regulatory changes—some small, some larger—that will make life easier for some of our state's businesses. Readers are directed to the Agency sections of this Report for additional examples.

- In response to comments that **small businesses** should not be held to the same standard of review as larger businesses that generate more average daily trips, **DelDOT** is revising its *Subdivision Streets Manual* to outline a new process for obtaining approval for commercial plans that produce less than 199 average daily trips.
- **DNREC** is making it easier for individuals to install or retrofit **aboveground storage tanks** by (1) providing applicants one year to complete a retrofit before they must resubmit plans, as opposed to the current 60 days; (2) requiring the Department to respond within 90 days to an owner's proposal to allow an alternative approach (*i.e.*, an approach that is not contemplated by Departmental regulations); (3) allowing individuals to submit requests to extend the timeframe for installation approvals (currently, approvals are only good for one year). In addition, DNREC is giving owners and installers of **underground storage tanks** greater flexibility in retrofitting tanks by extending deadlines for compliance and placing timelines on Department responses.

- To reward entrepreneurship for “**on-farm**” **sellers of non-potentially hazardous foods** and to allow for greater growth opportunities for these businesses, the **Department of Agriculture** is amending a regulation to raise the sales limit for permitted on-farm home food processing operations from \$40,000 to \$50,000.
- In addition, the **Department of Agriculture** is making it easier for **licensed generators or handlers of agricultural nutrients** to renew their licenses by amending a regulation to reduce from 60 to 45 the number of days that a renewal application must be filed before it expires.
- The **Office of Management and Budget (OMB)** added greater flexibility and fairness to the procedures governing the training and licensure of asbestos workers by (1) removing unnecessary certification requirements; (2) authorizing sanctions short of license surrender for minor infractions; (3) allowing applicants to pay cash for their licenses; and (4) extending certain appeal deadlines from 10 to 30 days. In addition, although this is not a regulatory change, OMB is changing its practice to allow prospective asbestos licensees to schedule appointments in New Castle County at least once per month, subject to demand. This change comes as a result of a public comment received during the EO 36 process.
- A State Lottery Office regulation requires a Vendor Registration Form (VRF) for all **non-gaming vendors** that transact business in excess of \$10,000 a year. An additional \$2,000 license application is required for vendors having dollar transactions in excess of \$400,000 per year with a single lottery agent or \$750,000 per year with all lottery agents. Working with the Video Lottery Advisory Council (VLAC), the **Department of Finance** amended this regulation to increase these sales thresholds from \$10,000 to \$50,000; \$400,000 to \$750,000; and \$750,000 to \$1,500,000. These changes will save non-gaming vendors significant licensing costs.

#### ***D. Ongoing Discussions and Revisions***

This report does not mark the end of the EO 36 process. As set forth more fully in the following sections, several agencies, boards, and commissions are discussing additional revisions to the regulatory regime as a result of Executive Order No. 36. For example, the changes proposed by the Department of State, Division of Professional Regulation are now being considered by the applicable boards and commissions. Revisions to the Rules of the Alcoholic Beverage Control Commission arising out of the EO 36 process are expected to be promulgated in the next several months. And DNREC intends to convene several stakeholder groups to discuss revisions to several additional regulations.

The sections of the Report below provide additional detail about how individual Agencies approached the EO 36 process, and the results arising therefrom.

## Agriculture, Department of

**Number of Comments Received: 6**

**Number of Comments Relating to Specific Regulations: 1**

**Number of EO 36 Regulations Amended or Deleted: 4** (4 amended, 0 deleted)

### **Highlights:**

- To reward entrepreneurship for “on-farm” sellers of non-potentially hazardous foods and to allow for greater growth opportunities for these businesses, the Department is amending a regulation to raise the sales limit for permitted on-farm home food processing operations from \$40,000 to \$50,000.
- To make it easier for licensed generators or handlers of agricultural nutrients to renew their licenses, the Department is amending a regulation to reduce from 60 to 45 the number of days that a renewal application must be filed before it expires.
- As part of an overall effort to increase responsiveness in connection with licensing and permitting activities, the Department is amending a regulation to require the Forest Service to approve or deny permit applications within 3 working days, as opposed to the current 5 working days.
- As a small measure to provide additional flexibility to small businesses that work with pest-control chemicals, the Department is amending its pesticide regulation to increase from 30 to 45 days the timeframe by which (1) an employee must complete a Department-approved training program, and (2) an employer must notify the Department of the hiring or termination of a registered employee.

## **I. OVERVIEW OF AGENCY AND APPLICABLE REGULATIONS**

The Delaware Department of Agriculture’s mission is to sustain and promote the viability of food, fiber, and agricultural industries in Delaware through quality services that protect and enhance the environment, health, and welfare of the general public.

The Department is comprised of 17 sections or commissions, reporting to Secretary of Agriculture Ed Kee or Deputy Secretary Austin Short. Departmental regulations cover a range of topics, including harness and thoroughbred racing, pesticide registration, animal disease control, noxious weed control, grain registration, weights and measures serviceperson registration, nutrient management and the administration of state forestland. In total, as of the July 1, 2012 the Department had 20 regulations subject to the EO 36 process.

## **II. THE PUBLIC INPUT PERIOD**

The Department’s Public Input Period ran for three months, from July 1 to October 1, 2012.

In addition to the public outreach process described in Section \_\_\_ of this report, Secretary Kee personally attended and conducted each of the three public hearings held by the Department. In addition, in order to reach additional audiences interested in specific topics, Secretary Kee directed the Department to hold supplemental hearings in association with the Delaware Thoroughbred Racing Commission, the Delaware Harness Racing Commission and the Delaware Nutrient Management Commission. Those meetings were held in September 2012 and in two instances were conducted by Secretary Kee.

Those notified of the Department's hearings and Public Input Period included representatives of various commodity and agricultural groups; representatives of the University of Delaware and Delaware State University; representatives of Delaware business and industry groups; and several state legislators.

The Department also issued a news release on July 12, in advance of the hearings, and made multiple posts advertising the hearings and the Public Input Period via Facebook and Twitter throughout the entire Public Input Period.

### III. SUMMARY OF COMMENTS RECEIVED

The Department received six comments for the record on Department regulations, programs or relevant laws. Additional comments and questions were made and responded to about general Department operations. The majority of comments dealt with Department programs or operations rather than regulations.

The Department also conducted an internal review of its regulations, with each section examining regulatory areas to revise, streamline or eliminate. Our sections and commissions additionally conduct periodic reviews of their regulations to ensure that they are fair, equitable, efficient and current.

### IV. REGULATORY CHANGES RESULTING FROM EO 36 PROCESS

During the course of the Department's internal review, four action items were identified that could help streamline or reduce the regulatory burden on residents and businesses. As a result, having reviewed the relevant regulations, the Department is making two changes to its regulatory regime.

**First**, in order to be able to inspect and license on-farm home food processing operations that produce non-potentially hazardous foods for commercial sale, the Department requires the registration of premises in Delaware where such foods are processed for sale. *See* Regulation 101 – On-Farm Home Processing of Non-Potentially Hazardous Foods at § 6.1. This registration allows the Department to inspect facilities, safeguard public health, and provide consumers with food that is safe, unadulterated, and honestly presented.

Under current regulations, licenses for the sale of non-potentially hazardous foods limit the amount of such food sold to \$40,000. To allow more growth opportunity for on-farm entrepreneurs, the Department is raising the sales limit for permitted on-farm home food processing operations from \$40,000 to \$50,000 by amending § 8.6.2 of Regulation 101. The safety and sanitary requirements applicable to on-farm food processing operations will remain unchanged.

**Second**, in conjunction with the Delaware Nutrient Management Commission (the "Commission"), the Department has established by regulation certain requirements for generators or handlers of nutrients. For example, to protect our lands and waters, a person who receives compensation for applying organic or inorganic nutrients to lands or waters as a part of a commercial or agricultural business must be certified as a "Commercial Nutrient Handler." *See* Regulation 1201 – Nutrient Management Certification Regulations at §§ 3.0, 4.1.1. Other persons requiring licenses ("certificate holders") include certain "Nutrient Generators" (persons who own or operate facilities that produce organic or inorganic nutrients) and "Private Nutrient Handlers" (persons who apply such nutrients to lands or waters they own lease, or otherwise control). *Id.*

Under current regulations, any certificate holder must file an application with the Commission to renew his or her certificate at least 60 days before their current certificate expires. *Id.* § 11.1. To provide these certificate holders more time to file their renewal applications, the Department is

amending § 11.1 of Regulation 1201 to reduce from 60 to 45 days the number of days that a renewal application must be filed before its expiration.

**Third**, under current regulations applicable to forest management activities (including, for example, the construction of roads and trails for forest management purposes and the preparation of property for reforestation), the Delaware Forest Service is required to approve, approve with modifications, or deny permit applications within 5 working days. *See* Regulation 401 – Forest Service Erosion and Sedimentation Regulations at §§ 5.5, 7.3.4. As part of an overall effort to increase responsiveness in connection with licensing and permitting activities, the Department is amending Regulation 401 to require the Forest Service to approve, approve with modifications, or deny permit applications within 3 working days.

**Fourth**, under Regulation 601 – Delaware Pesticide Rules and Regulations, licensed pest control businesses are required to register within 30 days all employees who handle pesticides, and are further required to notify the Department within 30 days whenever an employee who handles pesticides is terminated. As a small measure to provide additional flexibility to such businesses, the Department is amending Regulation 601 to extend those 30-day deadlines to 45 days.

The revisions to Regulation 101 and Regulation 1201 will be published in the July 2013 Register of Regulations. The revisions to Regulation 401 and Regulation 601 will be published in the August Register.

## Children, Youth & Their Families, Department of

**Number of Comments Received: 5**

**Number of Comments Relating to Specific Regulations: 4**

**Number of Regulations Amended or Deleted: 3** (3 amended, 0 deleted)

### **Highlights:**

- Amended Residential Child Care Facilities regulation to require additional “up-front” (pre-employment) training for providers and staff, but fewer hours as part of the annual training requirement. As a result, staff will begin their employment better trained to ensure the safety of children in their care, and will spend less time away from their duties for additional training.
- Revised 2 regulations relating to background checks by removing duplicative requirements; deleting provision that excludes step parents from background check requirement for prospective foster and adoptive parents; and clarifying that *all* Children’s Department employees and volunteers must undergo background checks.
- Revised Child Abuse History Background Check regulation requiring DFS to provide a point of contact for further information when substantiated child abuse/neglect cases are reported to the individual’s employer.

## **I. OVERVIEW OF AGENCY AND APPLICABLE REGULATIONS**

The primary responsibility of the Department of Services for Children, Youth and their Families (“Children’s Department”) is to provide and manage a range of services for children who have experienced abandonment, abuse, adjudication, mental illness, neglect, or substance abuse. Our services include prevention, early intervention, assessment, treatment, permanency, rehabilitation and after care.

The Children’s Department has nine (9) sets of regulations, seven (7) of which govern its Office of Child Care Licensing (“OCCL”), located within the Division of Family Services (DFS). The other two (2) are related to the Child Protection Registry established under 16 *Del. C.* §§ 921-929. The two (2) Child Protection Registry sets of regulations were not reviewed as part of the EO 36 process because in addition to current national constitutional challenges related to the child abuse registries which may impact our agency, at the time that the EO 36 process began, cases impacting the implementation of the registry regulations were also moving through the Delaware courts. These regulations, their controlling statutes, and the recently issued Court opinions are currently being evaluated by subject matter experts and stakeholders here in Delaware. The Child Protection and Accountability Commission (CPAC) will be creating a workgroup to examine and refine the Child Protection Registry laws in Delaware.

Of the seven (7) sets of regulations applicable to the Office of Child Care Licensing (OCCL), six (6) were reviewed as part of the EO 36 process.<sup>5</sup> Public hearings were held and regulatory changes were drafted and circulated. The following three (3) sets of regulations have now gone through the full EO 36 process:

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<sup>5</sup> OCCL review of Regulation 201, regarding Child Placing Agencies, began in 2010, prior to the issuance of EO36. It had been 16 years since this regulation set was last changed. The changes proposed in this area are based upon a formal comprehensive review process wherein all providers were invited to participate. The regulatory changes to Regulation 201 will be published in the July 2013 Register of Regulations.

1. Regulation 105 – Residential Child Care Facilities and Day Treatment Programs
2. Regulation 301 – Criminal History Record Checks for Child Care Persons
3. Regulation 302 – Child Abuse Registry Checks for Child Care and Health Care Persons

These regulations relate to requirements for residential child care facilities and day treatment programs and criminal history and child abuse registry checks. The regulatory changes to Regulations 301 and 302 were proposed and included in the May 2013 Register of Regulations. The regulatory changes to Regulation 105 were proposed and included in the June 2013 Register.

Three other sets of OCCL regulations – regarding early care and education providers – were also reviewed as part of EO 36. Public hearings were held, and changes were proposed and circulated. As a result of input received regarding those three sets of regulations, it was determined that further work was needed in order to achieve the purposes of EO 36. As a result, OCCL continues to work with stakeholders toward the adoption of regulations that incorporate best practices, yet are streamlined and efficient. All involved are diligently at work toward this end.

The three (3) sets of regulations undergoing further review are as follows:

1. Regulation 101 – Day Care Centers
2. Regulation 103 – Family Child Care Homes
3. Regulation 104 – Large Family Child Care Homes

## **II. SUMMARY OF COMMENTS RECEIVED AND REGULATORY CHANGES RESULTING FROM EO 36 PROCESS**

### **Regulation 105 - Residential Facilities and Day Treatment Program**

Four (4) public comments were made that focused on this regulation. As a result, two (2) changes have been promulgated regarding the required number of hours for annual training for providers and staff. The changes to Rules 3.2.9.1 and 3.2.9.2 would reduce the total number of annual hours required, but increase the number of annual hours required for specific topics. These changes ensure that a newly hired employee has additional training hours in topics including: behavior management, crisis management and safety, emergency, client service delivery and the protection of children, Delaware's child abuse and neglect law(s) and regulations; and licensing requirements prior to beginning employment where his or her employment includes interaction with children. Because of the additional hours required prior to the start of his or her employment in these areas, the annual training requirement is then reduced for subsequent years of employment. As a result, staff will begin their employment better-trained to ensure the safety of children in their care and will then spend less time away from their duties for additional training.

The following two recommendations from public comment will not be implemented for the following reasons:

- Require higher staff/child ratios at night.
  - *OCCL response:* This recommendation would result in significant increases in operating costs to licensees.
- Change the annual physical requirement for children to once every 2 years.
  - *OCCL response:* The current regulation follows the American Academy of Pediatrics recommendation.

The changes in this regulation reflect the very limited public comment received in response to EO 36 in this area; however, additional recommendations for changes to this regulation will be forthcoming in 2013.

### **Regulation 301 - Criminal Background Checks**

One (1) public comment was focused on this regulation, although the comment did not apply directly to the regulations but rather to DFS' policies. There will be a review of policy in light of the comment, but regulatory changes are not required.

Regulatory changes generated as a result of internal review include deleting outdated rules within the regulation, providing further clarification of existing definitions, updating individuals subject to a background check in accordance with federal law, and updating language to reflect current law. Specifically, these changes streamlined the requirements for background checks by removing duplicative regulations. Additionally, this regulatory change clarifies that *all* Children's Department employees and volunteers are subject to background checks, thereby improving safety. The following is further detail of the main proposed changes and deletions within this regulation:

- § 4.1 and 4.1.1 - Clarifies that volunteers are subject to a criminal history record check and removes duplicative background check requirements.
- § 4.3.1.5 – Delete provision that excludes step parents from the requirement for criminal background checks for prospective foster and adoptive parents
- §§ 4.4.1 and 4.4.1.1–4.4.1.4 – Deletes list of Children's Department Divisions for which background checks are required and replaces them with a blanket requirement that all Children's Department employees and volunteers must undergo background check. These revisions align the Regulations with Department Policy 313.

### **Regulation 302 - Child Abuse History Background Check**

There were no public comments related to this regulation. Based upon internal review, revisions are being made to language throughout this regulation to align the rules with current law and Children's Department policy. Changes to this regulation include the following:

- Update the Regulation to reflect changes made to Delaware Code pertaining to the section in which background checks appear.
- Update regulation to reflect that public school employees are covered under background checks against the Child Protection Registry
- Update wording to define what period of time the background checks cover.
- Update language in registration to provide a point of contact within DFS for further information when substantiated child abuse/neglect cases are reported to the individual's employer. This change increases responsiveness, by identifying a single person – a Child Protection Registry Hearing Coordinator – who is responsible for processing requests for record review.

It is of note that Regulations 103, 104, 105, 201 and 301 are governed not only by Delaware state law and policy, but also federal provisions under which Delaware receives funding. Therefore, any modifications to these regulations are made with the understanding that certain provisions cannot be eliminated or amended without a potential impact on funding.

### **III. REGULATORY REVISIONS STILL IN PROGRESS**

Forthcoming revisions to regulations for: Regulation 101 – Day Care Centers, Regulation 103 – Family Child Care Homes; and Regulation 104 – Large Family Child Care Homes will be the result of both public comment and OCCL internal review. Governor Markell appointed a Provider Advisory Board as a result of changes to the Delaware Childcare Act made during the 146<sup>th</sup> General Assembly. This Board has the authority to serve in an advisory capacity to OCCL on regulations governing “Early Care and School Age Centers.” The EO 36 revision process solicited feedback

from the Provider Advisory Board and other stakeholders. During this process it was determined that the regulations submitted to the Governor's Office in December 2012 could be further refined in order to create the most efficient and effective regulatory regime. At present, OCCL, the Provider Advisory Board and other stakeholders are actively involved in this process. Once all input has been solicited, and pending approval by the Governor's Office, the final revisions will be provided to the Registrar.

## Delaware Economic Development Office

**Number of Comments Received: 1**

**Number of Comments Relating to Specific Regulations: 0**

**Number of Regulations Amended or Deleted: 9** (3 amended, 6 deleted)

### **Highlights:**

- Amended or deleted 9 out of 10 regulations administered by agency and subject to EO 36 process.
- Deleted 6 regulations, including 4 relating to Tourism programs no longer in operation; 1 relating to a defunct energy alternatives program; and 1 relating to a program no longer administered by DEDO.
- Revised and updated 3 additional regulations relating to procedures governing non-State guaranteed bonds, the Delaware Strategic Fund, and the Council on Development Finance.

## **I. OVERVIEW OF AGENCY AND APPLICABLE REGULATIONS**

The Delaware Economic Development Office was created as an exempt agency under Title 29, Chapter 50, of the Delaware Code within the Executive Department. Pursuant to 29 *Del.C.* § 5003, DEDO “serves as the Governor’s staff agency in all general economic development matters,” and “function[s], as required, as an advisory, coordinating or implementing agency.”

The organization is led by Director Alan Levin. The leadership team is headed by Deputy Director Bernice Whaley who has eight (8) director-level reports who manage several departments within the agency: Administration, Strategic Communications, Business Development, Capital Resources, Intergovernmental Relations, Research, Workforce and Tourism.

**Administration** is responsible for information technology, human resources and fiscal operations. Strategic Communications has overall leadership for external communications to include design, marketing, and public/media relations.

**Business Development** is responsible for attraction, expansion and retention efforts. Additionally, the team assists entrepreneurs, innovators and small businesses, including minority- and women-owned businesses through the Delaware Emerging Technology Center (ETC) and administers the Main Street program.

**Capital Resources** offers business finance expertise and direct financial assistance through several programs, including the Delaware Strategic Fund. Infrastructure provides assistance to site selection consultants, local governments and other state agencies to find appropriate sites for economic development projects. Research provides company-specific data and economic and industry trends.

**Workforce** supports business and training partners, including the Department of Labor and higher education institutions, to develop training contracts for Delaware’s businesses.

The **Delaware Tourism Office** is a division of the agency, which promotes the state as a travel destination for visitors. The division focuses on sales of group tours, sports marketing, meetings, conventions and leisure.

As of the date of Executive Order No. 36, the Department had 10 regulations subject to the EO 36 process. Those regulations were as follows:

- Regulation 401 – Procedures Regarding Non-State Guaranteed Bonds
- Regulation 402 – Procedures Governing The Delaware Strategic Fund
- Regulation 403 – Administration and Operation of Council on Development Finance
- Regulation 451 – Matching Grants Program
- Regulation 452 – Direct Grants Program
- Regulation 453 – Co-Op Advertising Program
- Regulation 454 – Procedures Governing Delaware Tourism Grant Program
- Regulation 476 – Energy Alternatives Program Regulation
- Regulation 477 – Information Technology Training Grant Program Regulation
- Regulation 478 – Neighborhood Assistance Act Tax Credit Program Regulation

## II. THE PUBLIC INPUT PERIOD

Public hearings were held in accordance with the schedule set forth in the first section of this report. In addition to the public outreach process described in that section, Director Levin provided information about EO 36 and publicized the hearings in remarks delivered to various stakeholders in the weeks leading up to the hearings.

Director Levin personally attended two hearings. Deputy Director Bernice Whaley attended one hearing. The hearings were conducted by Karen Smith, Director of Communications, and Cindy Rule, Communications Specialist.

## III. SUMMARY OF COMMENTS RECEIVED

The agency received one (1) comment via hard-copy letter, delivered in person. That comment was not applicable to the agency’s regulations; therefore, it was forwarded to the appropriate agency, the Department of Finance, Division of Revenue.

## IV. REGULATORY CHANGES RESULTING FROM EO 36 PROCESS

As part of the EO 36 process, the Department conducted its own extensive review of the regulations on its books. All of the following changes are the result of the agency’s internal review:

### A. *Regulations Amended Pursuant to EO 36:*

- **Regulation 401 – Procedures Regarding Non-Guaranteed State Bonds**
- **Regulation 402 – Procedures Governing Delaware Strategic Fund**
- **Regulation 403 – Council on Development Finance**

Regulations 401-403 were streamlined, updated, and modernized as part of the EO 36 process. Regulation 401 deals with the issuance of non-guaranteed state bonds. The Department revised and updated this regulation to reference Post Issuance Compliance and Record Retention policies which apply to the Industrial Revenue Bond recipients and were drafted in the 2012 Fiscal Year. The revisions also include updated fee regulations that reflect current practices.

Regulation 402 outlines procedures governing the Delaware Strategic Fund, the state’s primary funding source to provide loans and grants to businesses for job creation, relocation, expansion and Brownfield redevelopment. The principal changes are summarized below:

- References to obsolete programs (such as the Green Industries Loan Program, Development Incentive Assistance, Exempt Persons Development Assistance, Relocation Assistance, and the Participation Loan Program) were deleted, as all of these initiatives were brought under the umbrella of the Strategic Fund.

- The revisions also removed duplicative and repetitive language and updated procedures to reflect current practices. For example, under the Brownfield Grant program, applicants may apply for up to \$100,000 in grant assistance, repaying the former \$50,000 cap. Other regulations specifying blanket terms, such as the length of the loan and interest, were broadened to allow flexibility for loans on case by case basis.
- “Bridge Grants” under the Small Business Innovation Research Program (SBIR) and the Small Business Technology Transfer Program (STTR) were renamed “Transition Grants.”<sup>6</sup> In addition, the regulatory language was updated to conform current federal practices.

Regulation 403 – Administration and Operation of Council on Development Finance (“CDF”) provides direction as to the administration of the CDF, a volunteer advisory board, which reviews the agency’s financial assistance projects. Among other things, the revisions to Regulation 403 require review for Strategic Fund loan or grants in which the applicant has not entered into a contract within one year of approval; eliminate the requirement that the CDF organize an annual retreat; and delete references to the obsolete Competiveness Fund. The revisions also eliminate the requirement to brief the Chairman of all pending projects and the requirement for staff to share commitment letters with the Council. In addition, reporting requirements for updating the CDF now include operating budget reports, and the definition of a substantive change made to any agreement, as it pertains to updating the Council, was broadened to also include payment modifications and employment benchmark modifications in addition to collateral, interest rate adjustments and principle award modifications.

***B. Regulations Eliminated Pursuant to EO 36:***

- **Regulation 451 – Matching Grants Program**
- **Regulation 452 – Direct Grants Program**
- **Regulation 453 – Co-Op Advertising Program**
- **Regulation 454 – Procedures Governing Delaware Tourism Grant Program**

The Department has eliminated the above four (4) tourism regulations, as these programs are no longer in operation.

- **Regulation 476 – Energy Alternatives Program**

Regulation 476 governs a program that no longer exists. This regulation has been deleted.

- **Regulation 478 – Neighborhood Assistance Act Tax Credits**

Regulation 478 is no longer applicable to the agency. DEDO once participated in the administration of the Neighborhood Assistance Act tax credits, but that responsibility was transferred several years ago to the Delaware State Housing Authority, which has adopted its own manual detailing the procedures applicable to the program. Because DEDO no longer has a role in administering this program, the above regulation has been eliminated.

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<sup>6</sup> The name change was recommended by the CDF to infer that DEDO is helping the grantee as it transitions or builds from an original federal funding source, without implying that subsequent funding will take place.

## Education, Department of

**Number of Comments Received: 8**

**Number of Comments Relating to Specific Regulations: 7**

**Number of Regulations subject to EO36 Amended or Deleted: 36** (15 amended, 21 deleted)

### ***Highlights:***

- **Removal of unnecessary submissions and reporting:** Districts and school personnel are often burdened by numerous and duplicative reporting requirements. This process allowed the Department to reduce the number of submissions required by regulation to allow for web postings or other means of making documents accessible via technology.
- **Increasing Flexibility at the District Level:** The Department plans to proceed with several regulatory changes that encourage local flexibility around instruction and program design.
- **Streamlining of regulations for easier use and access by school district personnel:** Department regulations are heavily accessed on a daily basis by district and school staff. The streamlines are intended to centralize information for easier access that is more user-friendly.
- **Improved focus towards constituencies affected by DOE Regulation:** EO36 has contributed towards an organizational change in how the agency views its responsibilities towards the LEA's that are often the end-users of agency regulations. Specifically, DOE seeks to foster innovation and flexibility among schools and districts, and the EO36 process has reinforced and advanced that objective.

## **I. OVERVIEW OF AGENCY AND APPLICABLE REGULATIONS**

### ***Background***

The Department of Education provides for the general oversight and supervision of public education in Delaware. There are currently 19 school districts, including 3 county vocational technical school districts and 22 charter schools with 2 additional charter schools approved to open in 2013-14. State law provides for a non-public option. Non-public schools include private and homeschools and the Department has limited oversight of these schools. Education funding in Delaware consists of approximately 59% in state funds, 13% in federal funds and 28% local funds. The Department also pursues grants from varying sources including federal, private and nonprofit.

For purposes of this report, the funding sources of education in Delaware are very important. There are requirements around the expenditure of such funding, and the Department must ensure compliance with any rules or requirements of those funding sources – even if they are considered burdensome or unnecessary.

### ***Department of Education Structure***

The organization of the Department lends alignment to the state regulatory structure. The regulatory structure is as follows:

100 Accountability

200 Administration and Operations

400 Construction

500 Curriculum and Instruction

600 School Climate and Discipline

700 Finance and Personnel

- 800 Health and Safety
- 900 Special Populations
- 1000 Student Activities
- 1100 Transportation
- 1500 Professional Standards Board

The Department, by law, is required to review all regulations every five years. This requirement has been in place since July 1996.

The Department has 70 regulations for which it has sole authority to approve, revise, and/or delete. Of these, 40 regulations are subject to EO36 based on not having been reviewed since June 14, 2009, three years prior to EO36. In addition to the regulations subject to EO 36 review, the Department reviewed an additional 25 regulations. Through this process, the Department identified 15 regulations to amend (five each that fall under the authority of the Department alone, the Department and State Board, and the Professional Standards Board/State Board) and 23 that can be deleted (12 that fall under sole authority of Department, four that are under the Department/State Board, and five that are Professional Standards Board/State Board).

The following provides a summary of how each branch and unit functions within the Department and the coordinating regulations.

Teaching and Learning Branch - The goal of the Teaching and Learning Branch is the improvement of curriculum and instructional practice, including assessment, with specific areas of emphasis on programs for exceptional children, early development and learning resources, and school/student support. The state regulations that are applicable to programs in this branch include those under Curriculum and Instruction, School Climate and Discipline, Health and Safety, Special Populations and Accountability.

College and Workforce Readiness Branch – The goal of this branch is to provide a variety of services to the community and to districts and schools to ensure students and other adults achieve educational success. The state regulations that govern programs and functions of this branch include those under Curriculum and Instruction, Student Activities, and Special Populations. There are several federal regulations that govern the function of programs in this branch that were not subject to this review and for which the Department did not receive comment.

Finance and Administrative Services Branch – The goal of this branch is to provide a wide range of services and activities including the allocation and oversight of state, federal and appropriated special funds, school plant planning, including major and minor capital programs, transportation, including public and private schools, school choice, financial management, regulation and review, human resources and quality management, technology resources and management, and the higher education office. The state regulations that govern programs and functions of this branch include those under Construction, Finance and Personnel, Administration and Operation and Transportation. There are several federal regulations that govern the function of programs in this branch that were not subject to this review and for which the Department did not receive comment.

Teacher and Leader Effectiveness Unit (TLEU) – The unit was created with funding from the federal Race to the Top grant. The goal of this unit is to develop and implement a leading-edge strategy for recruiting, selecting, training, developing, evaluating, and retaining exceptional teachers and school leaders statewide. This unit also responsible for the implementation of the state’s educator evaluation system (Delaware Performance Appraisal System – II revised). The implementation of the state’s educator licensure and certification system falls under this unit. The

state regulations that this unit oversees include those under Accountability, Administration and Operations, and those developed by the Professional Standards Board.

Charter School Office – The Charter School Office reports to the Chief of Staff. This goal of this office is to assist entities interested in making application for the operation of a charter school in Delaware, to provide technical assistance to current charter schools, and to work with the Charter School Accountability committee on the review and renewal of charter schools. The Charter School office works closely with the State Board of Education. Charter schools by law are exempt from certain provisions within Title 14 and in turn any corresponding implementing regulations. The Department by Code has the authority to promulgate rules and regulations that would further define the application, approval criteria and processes. Regulation 275 is this regulation and was published in June 2012 with several changes.

The Delivery Unit and School Turnaround Office are units created with funding from the federal Race to the Top (RTTT) grant. The Delivery unit is charged with monitoring and assisting with the implementation of activities as required under the RTTT grant and the School Turnaround Office is charged with monitoring and assisting with the implementations of activities of schools identified as Partnership Zone or Focus Schools. The Partnership Zone schools are governed by both federal and state regulation.

## **II. SUMMARY OF COMMENTS RECEIVED AND REGULATORY CHANGES RESULTING FROM EO 36 PROCESS**

### **A. Changes Resulting from Public Comments**

The Department received a total of 8 comments. Three were received during the three public hearings. An additional 5 comments were received via email/ online Comment Submission Form. The Department also received 5 comments from staff. The Department received no anonymous comments. There was one case where the matter of a regulation was not of concern, but the timing of when the regulation was published.

The most frequent comments were related to charter schools (with 4 comment forms submitted), and exceptional children (with 2 written comments received). The other areas of comment included streamlining the process by which the Department collects policies from districts and charter schools and updating regulations for clarity.

#### ***1. Comments Relating to Charter Schools***

The agency received several recommendations around Section 275, regulations pertaining to Charter Schools. Specifically, the suggested changes relate to:

1. Amending current requirements that require full disclosure of intended curricula at the time of application;
2. Amending the process for posting applications to prevent publication of personal identification of charter school board founding members;
3. Clarifying definitions in the application process and modifying sections around new and renewal applications, specifically related to clarification around deadlines;
4. Amending charter school admissions policies for purposes of providing additional preferences for student enrollment;
5. Adding to the economic viability section specific language requiring the establishment of a Citizens Budget Oversight Committee to coincide with other sections of regulations.

The Department will pursue the first three suggested modifications, in order to encourage and facilitate applications from strong and innovative applicants and Charter Management Organizations. The changes will provide enhanced direction and clarity to charter school applicants, and that better align with business practices of applicants and/or Charter Management Organizations.

The Department will not be making changes based on the fourth comment, as the proposed change is currently allowed in the regulatory framework, nor the fifth comment, as the goal of Executive Order 36 was to streamline, not add to, existing regulations.

### ***2. Comments Relating to Exceptional Children***

The agency received comments on regulations which impact students with autism, specifically around the definition and classification of autism, as well as the administration of DCAS to students with autism. Classification and definitions related to youth with developmental disabilities are a source of significant discussion among medical and behavioral health professionals. As such, the requested changes raise long-term policy issues that are outside the purview of this review. The Department will not be making changes to those sections at this time. Similarly, changes to the regulations, policies and practices around administration of the state assessment require further discussion with districts and schools. The Department will review this issue, but will not be making changes at this time.

### ***3. Other Comments***

Written comment was received requesting that further regulations be enacted to require Response to Intervention (RTI) programs for students, including students who are gifted and learning disabled. As this comment is requesting additional regulations be established, it falls outside of the scope of this process, which is seeking to reduce unnecessary rules.

Finally, one submission related to regulations within the Office of Child Care Licensing and did not fall under the purview of this agency. The submission has been forwarded to the Department of Services for Children, Youth & Their Families.

## **B. Changes Resulting from Agency Staff Review**

In addition to the comment request from the public and entities subject to the regulations, agency staff performed an internal review of the subject regulations and identified the following areas for deletion or streamlining. Regulations 106-108, which will be published in the July 2013 Register, and Regulations streamlined or amended by the Professional Standards Board were promulgated in the Spring of 2013. Additional regulatory changes will be planned and pursued over the next 6 months to allow for placement on the respective approving authorities where necessary.

### ***1. Increasing Flexibility to Facilitate Student-Centered Teaching***

Today's classroom requires an ability to quickly adapt teaching strategies, using available technologies and innovative teaching methods to respond to students' unique learning styles, needs and learning timelines. Since the start of the EO36 process, the Department has been working with districts to review regulations that hinder their ability to employ a "personalization" concept in their schools and classrooms. As an initial step, the Department will add increased flexibility to regulatory language around areas that define what requirement students must meet for promotion and graduation—specifically through Regulation 505 – High School Graduation Requirements and Diplomas. The Department will add flexibility to § 8.0, Options for Awarding Credit toward High

School Graduation of that regulation to clarify and to facilitate District use of student-centered instructional methods.

## ***2. Streamlining Publication of District and Charter School Policies***

Changes were suggested to repeal the provision that schools and districts supply electronic copies of policies and records, to allow for web-based posting and submission. As most policies are now accessible online, the changes remove an unnecessary step for schools in having to submit to Districts, and Districts then having to submit to the state, minimizing the potential for delays. For example, Regulation 615 – School Attendance Policy includes the following language:

### **3.0 Reporting Requirements and Timelines**

3.1 Each public school district shall have an electronic copy of its current attendance policy on file with the Department of Education.

3.2 Each public school district shall provide an electronic copy of any attendance policy within ninety (90) days of such revision(s) regardless of whether said revisions were made as a result of changes to Federal, state or local law, regulations, guidance or policies.

In response, the Department has reviewed all regulations with similar language and will delete the language accordingly. They include Regulation 603 – Compliance with the Gun Free Schools Act; Regulation 605 – Student Rights and Responsibilities; Regulation 612 – Possession, Use or Distribution of Drugs and Alcohol; Regulation 615 – School Attendance; Regulation 811 – School Health Record Keeping Requirements; and Regulation 881 – Releasing Students to Persons Other Than a Parent, Guardian or Relative Caregiver.

## ***3. Removing Outdated Language***

The Department will delete outdated language referring to “Vietnam Era” in Regulation 225 to clarify the Department’s anti-discrimination policies.

## ***4. Adding Flexibility to Adult Education***

The Department has proposed additional flexibility in the Requirements for Career and Technical Education programs. Specifically, the modification will allow for use of other market indicators beyond those issued by the Department of Labor for the development and continuation of CTE programs. This change will allow local school and district flexibility to allow for emerging career pathways as well as those that may be unique to their geographical area and employment market.

## ***5. Deleting Regulations that are Outdated or may be Streamlined***

- The Department will delete in its entirety Regulation 201, pertaining to District and School Shared Decision Making. The policy is outdated and the process has been absorbed and streamlined into the normal course of business at our schools and districts without the prescriptive nature of the regulation.
- The Department will delete Regulations 1101-1104 pertaining to Standards for School Buses and streamline those four sets of regulations into one set. The multiple regulations as they currently exist break down make and model years dating to 1998. With older buses transitioning out of the fleet, only one set of regulations is needed to account for various ages and makes of school buses.

- Regulation 106 instituted the original DPAS II Educator Evaluation System, and was replaced in its entirety by Regulation 106a in May, 2012. The Department is currently in the process of deleting Regulation 106 and making some modifications to the final Regulation, which will be 106a.
- Regulations 107 and 107A provided for the evaluation requirements of Specialist Educators, for example school counselors, nurses, etc. The Department is in the process of deleting Regulation 107, and making some modifications to the final regulation, which will be 107a.
- Regulation 108 instituted the original DPAS II Evaluation System for Administrators, and was replaced in its entirety by Regulation 108a in May, 2012. The Department will replace the language in Regulation 108 with the language in Regulation 108a, and will delete Regulation 108.
- Regulation 705 (Leave for Training Camp or Special Duty in the National Guard or the Military Reserves of the United States) will be streamlined with Regulation 706 (Credit for Experience for Full Time Active Duty Service in the Armed Forces of the United States) to become one regulation under the heading “Regulations Relating to Military Service.”
- Regulations 710, 712, 716 and 718 contain basic school and district personnel record keeping requirements. They will be combined to one regulation under the heading “Public School Employees and District Personnel”.
- Regulation 745 – Criminal Background Check for Public School Related Employment and Regulation 746 – Criminal Background Check for Student Teaching will be streamlined into one regulations under the heading “Criminal Background Checks.”
- Regulation 401 - Major Capital Improvement Programs and Regulation 405 - Minor Capital Improvement Programs will be streamlined into one regulation under the Heading “Capital Improvement Programs.”
- Regulation 621 addresses school safety and emergency preparedness plans. While critical components of operations, the Governor’s recent initiative via SB 233 (2012) has usurped this section, and schools are currently in the process of complying with the new requirements, to include the full evaluation and mapping of school facilities and grounds for use by law enforcement in the event of an emergency. The Department will delete this regulation in its entirety, and will refer to the expectation of compliance with safety plans in Regulation 601, Schools and Law Enforcement.
- Regulation 877 oversees Tobacco Policies at each school. The Governor’s requirement as of January 1, 2013 enacting tobacco-free state buildings and grounds applies to schools; therefore, this regulation is no longer needed.
- Regulation 1008 - Junior High and Middle School Interscholastic Athletics and Regulation 1009 – High School Interscholastic Athletics share duplicative language and will be streamlined to one regulation under the heading “Interscholastic Athletics for Junior High, Middle School and High School.”
- Regulation 1501 governs a salary supplements program that is no longer in operation. The supplements that had previously been provided under this section have expired. In addition, the state no longer adheres to the National Board for Professional Teaching Standards, which is referenced in this regulation. Finally, the state is approaching new ways of determining teacher compensation and bonus programs.

- Regulation 1508 allows for teaching institutions to develop special institutes for the purpose of preparing individuals who have never participated in an educational preparation program for teach certification. The Department is preparing new requirements around educator preparation, and alternative pathways to teacher certification, if any, will be included in the new requirements.
- Regulation 1509 provides for a Meritorious New Teacher Program. The program no longer exists, nor does the regional entity, the Mid Atlantic Regional Teachers Project, which governed the standards for the program.

***Regulations Promulgated by the Professional Standards Board (PSB):***

The Professional Standards Board (PSB) is responsible for the development and promulgation of regulations related to educator licensure and certification. While the Department is responsible for the implementation of these regulations, they are developed and adopted with approval by the PSB and State Board of Education.

In addition to the deletions that will be proposed to the Board as noted above, the PSB has 62 regulations overall for which it is responsible. Over the course of this process, 37 regulations were reviewed, amended, or reauthorized as appropriate with 7 of the 137 considered to be streamlined, as the changes will allow for easier application by our districts and schools. In addition, the streamlining provides for the regulations to remain current.

Specifically, the streamlining and modifications include:

The PSB amended several regulations that no longer needed specific language as, since the previous effective dates, the PSB and SBE had approved Praxis II tests and scores for these Standard Certificates. As the ‘testing’ requirement is in both the Delaware Code and Regulation 1505 - Standard Certificate, certain regulations are therefore redundant and can be eliminated. They include:

- Regulation 1520 – Early Childhood Teacher
- Regulation 1539 – Health Education Teacher
- Regulation 1554 – Family and Consumer Sciences Teacher
- Regulation 1555 – Marketing Education Teacher
- Regulation 1557 – Technology Education Teacher

A number of regulations had language and sections that were no longer required given the reference to Regulation 1505 - Standard Certificate in all certification regulations in order to be consistent across the board. This allows the PSB to make changes that impact all certification regulations simply by amending Regulation 1505. In addition to the reformatting, the following regulations also had considerable amendments to the requirements:

- Regulation 1553 – Driver Education and Traffic Safety Education Teacher
- Regulation 1574 – Teacher of Students with Autism or Students with Severe Intellectual Disabilities
- Regulation 1575 – Teacher of Students with Visual Impairments
- Regulation 1581 – School Reading Specialist

Streamlining and consolidating regulations under the Professional Standards Board creates significant efficiencies in regulations management for the Department, and facilitates the review process for both the Professional Standards Board and the State Board of Education.

### **III. Conclusion**

In conclusion, the Department will enact the following changes:

- Modification based on PSB review: 5 regulations
- Modification based on DOE staff review & public comment: 10 regulations
- Deletions based on PSB Review: 5 Regulations
- Deletion based on DOE staff review: 16 regulations

**In total, 36 regulations will be modified or deleted based on Executive Order 36.**

## Finance, Department of

**Number of Comments Received: 8**

**Number of Comments Relating to Specific Regulations: 0**

**Number of Regulations Amended or Deleted: 3** (3 amended, 0 deleted)

### **Highlights:**

- Lottery requires a \$2,000 license application whenever non-gaming vendors conduct business over a state-determined amount. The State Lottery Office has increased these amounts from \$10,000 to \$50,000, \$400,000 to \$750,000, and \$750,000 to \$1,500,000. The changes will save non-gaming vendors licensing costs that were previously passed on to the racinos.
- Lottery changed “table games shift supervisor” to read “table games supervisor” in its security regulations. This change allows racino table game shift supervisors to focus on their primary responsibility of game protection, rather than delivering the day’s drop boxes to the soft count room.

## **I. OVERVIEW OF AGENCY AND APPLICABLE REGULATIONS**

The Delaware Department of Finance promotes the state's economic health by providing leadership in the development and execution of sound fiscal policies. The Department of Finance oversees operations for Abandoned or Unclaimed Property, the Division of Revenue (DOR), the Division of Accounting, and the State Lottery Office.

The Abandoned or Unclaimed Property office manages the care and custody of property escheated to the state by property holders once an established dormancy period has elapsed. The State conducts outreach to known owners before any liquidation of non-cash assets takes place. If owners fail to respond to such outreach, assets are liquidated and, according to state Law, the proceeds are deposited into the General or other funds. After liquidation, however, the proceeds are held in trust for the shareholder, or his or her heirs, in perpetuity.

The Division of Revenue is the primary revenue collector for the state, mostly through the administration of state taxes. Additionally, Revenue oversees State of Delaware Business Licenses, as well as license requirements for the state’s bottle fee, door-to-door salespeople, and scrap tire retailers.

The Delaware Lottery Office generates income for the state's General Fund by administering traditional and Video Lottery games. The Delaware Lottery Office oversees games such as POWERBALL® and themed scratch-off tickets. It also manages video and sports lottery games, as well as Keno at area restaurants, gaming establishments, and racinos. The Delaware Lottery will soon offer online gaming throughout the state.

Only 10 regulations that follow the Delaware Administrative Procedures Act currently govern the Department and its associated divisions. Just six of these regulations were implemented more than three years ago.

**Abandoned Property:** The Abandoned or Unclaimed Property office is governed by one regulation that has not been updated within the past three years. This regulation oversees voluntary disclosure and audit programs.<sup>7</sup> This regulation does not have a broad effect on the state’s citizens.

<sup>7</sup> 10 Del. Reg. 699 (10/2006).

In a typical year, fewer than 100 businesses complete Unclaimed Property audits and voluntary disclosure agreements. The regulation has provided solid guidance for businesses under audit or participating in a voluntary disclosure agreement. Evidence of the general satisfaction with this regulation is demonstrated by the fact that the Department of Finance received no comments on it during the EO36 Process. The Department of Finance contends that this regulation is still necessary and should not be discarded or amended. After an internal review, Secretary Tom Cook and Unclaimed Property Director Mark Udinski have recommended no revisions to this regulation at this time.

In part, DOF recommended no change to this regulation at this time because, while the EO36 process was in progress, DOF was already engaged in two updates to its abandoned property regulations. Although these updates technically occurred outside the EO 36 process, the principles of reducing red tape and making government more “customer-friendly” are reflected in the revised regulations:

- 16 Del. Reg. 530 (11/01/12) (Final), creates an incentive for firms under audit to cooperate and move efficiently through the examination process by cutting five-years off of the examination period (1986 forward vs. 1981 forward), provided that the examination is completed by June 30, 2015.
- 16 Del. Reg. 630 (12/01/12) (Final), clarifies “the rules governing the historical periods for which the State Escheator will examine historical records to determine whether the person whose records are being examined has complied with” Delaware’s escheat law, was conceived and designed based upon input from the business community.

Moreover, as the Department of State’s (DOS) abandoned property voluntary disclosure program takes shape, Department of Finance fully expects continue to work in conjunction with the Secretary of State’s Office and the business community to monitor possible enhancements to or streamlining of escheat regulations in the near future.

**Division of Revenue:** The Division of Revenue is governed by three regulations that are more than three years old:

- 11 Del. Reg 674 (11/2007) simplifies compliance for employers by conforming “the administrative practice of the Division of Revenue with respect to withholding exemption certificates to the current administrative practice of the Internal Revenue Service.”
- 6 Del. Reg. 1353 (04/2003) establishes a “safe harbor” from the Delaware’s realty transfer tax for agents of a taxpayer in circumstances in which the agent, purely to facilitate the exchange of property, takes title transitory way without intending to acquire any beneficial interest in the property for his or her own account. This regulation is consistent with the determination of the Internal Revenue Service in P.L.R. 2001-48-042. In that ruling, the Internal Revenue Service stated its position that state or local tax treatment of beneficial ownership may differ from the treatment for federal income taxes, and permitted a provision in a qualified exchange accommodation agreement declaring the exchange accommodation titleholder to be the taxpayer’s agent for realty transfer tax purposes.
- 10 Del. Reg 1820 (06/2007) addresses the circumstances under which individual taxpayer’s names may be included on the state’s listing of delinquent taxpayers in the case of entities

other than natural persons. Specifically, this regulation holds that the word “taxpayer” as it pertains to this program includes “within its scope those individual 25% owners, beneficial owners and responsible officers of entities other than natural persons.”

Generally, the scope of these regulations is confined to somewhat arcane tax issues or specific business practices. None of the three DOR regulations received comments during the EO36 process. Moreover, two of these regulations are decidedly “taxpayer friendly” in that they: 1) establish a safe harbor and 2) simplify compliance. Finance contends that all three of these regulations are still necessary and should not be discarded or amended.

The conclusion of the EO 36 process does not, however, mean that DOR will cease its evaluation of tax-related regulations. The Division of Revenue conducts regular outreach with the Tax Section of the Delaware Bar and the Delaware Society of CPAs regarding statutory developments. Building upon the EO36 process, in addition to statutory issues, DOR will solicit regulatory guidance from these professional organizations as a regular part of the division’s future outreach efforts.

**Lottery:** The State Lottery Office is governed by two regulations that are currently more than three years old. One regulation requires Lottery Retailers to comply with the standards set forth in the Americans with Disabilities Act. These requirements adhere to federal disability standards and protect Delaware from possible litigation. Finance contends this regulation is beneficial, necessary, and should not be discarded or amended.

Lottery’s remaining regulation refers to current Delaware Lottery operations. While Finance did not receive any comments regarding Lottery operations at the EO36 Hearings, in the Video Lottery Advisory Council (VLAC) report submitted to Secretary Tom Cook on November 5, 2012, the VLAC recommended that, in the spirit of Governor Markell’s EO36 Process, an independent gaming regulatory review occur.<sup>8</sup>

Secretary Cook and State Lottery Office Director Vernon Kirk met with VLAC to conduct an in-depth review of Delaware’s existing Lottery regulations. In accordance with VLAC’s suggestions, two non-statutory areas that the VLAC had included in their regulatory reform recommendations have been revised:

### **1) The Non-Gaming Vendor Registration Structure**

Current Lottery regulations require a Vendor Registration Form (VRF) for all non-gaming vendors who transact business in excess of \$10,000 a year. An additional \$2,000 license application is required for vendors who have dollar transactions in excess of \$400,000 a year with a single lottery agent or \$750,000 a year with all lottery agents.

The amendments are to Rule 4.3, Rule 4.6.1, and Rule 4.6.2 of 10 Del. Admin. Code 203. All changes are expected to save the vendors time and licensing costs.

The amendment to Rule 4.3 would change the current rule to increase the amount of business that must be conducted by a non-gaming vendor before it must file a vendor registration form (VRF) from \$10,000 to \$50,000.

The amendment to Rule 4.6.1 would change the current rule to increase the amount of total dollar transactions a non-gaming vendor must have with a single video lottery agent from at least \$400,000 to at least \$750,000 in order to be deemed to be transacting regular and continuing business.

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<sup>8</sup> *Video Lottery Advisory Council Annual Report, 2012, page 4* ([http://finance.delaware.gov/publications/vlac\\_12.pdf](http://finance.delaware.gov/publications/vlac_12.pdf)).

The amendment to Rule 4.6.2 would change the current rule to increase the amount of total dollar transactions a non-gaming vendor must have with all video lottery agents from at least \$750,000 to at least \$1,500,000 in order to be deemed to be transacting regular and continuing business.

## **2) The Table Drop Procedure**

Current Lottery regulations require a table games shift supervisor escort a member of the security team at all times during delivery of the current day's drop boxes to the soft count room. The racinos felt the rule was cumbersome and that the table game shift supervisor should focus instead on their primary responsibility of game protection, rather than delivering drop boxes. The amendment is to Rule 20.2 of 10 Del. Admin. Code 203.

The amendment to Rule 20.2 would change "table games shift supervisor" to "table games supervisor." This new amendment will still provide the dual department control Lottery requires, but will now enable the table game shift supervisor to focus on their primary responsibility of game protection.

## **II. THE PUBLIC INPUT PERIOD**

In addition to the public outreach process described in Section \_\_\_ of this report, the Department distributed a press release to more than 45 media outlets to publicize the public hearings. In addition, notice of the EO36 hearings was sent directly to the Delaware, Maryland, Pennsylvania, and New Jersey state bar associations and the Delaware, Maryland, Pennsylvania, and New Jersey tax practitioner organizations. Notice was also sent to Delaware's Chamber of Commerce organizations, as well as 28 additional area organizations, such as the Mid-Atlantic Business Finance Company and the YMCA Capital Works Program.

Secretary Tom Cook personally attended the Georgetown and New Castle hearings. Deputy Secretary David Gregor attended the Kent and New Castle hearings. Directors Mark Udinski, Vernon Kirk, and Patrick Carter each attended one or more hearings. Deputy Director Colleen Yegla, State Lottery Official Brian Peters and State Lottery Official Rebecca Goldsmith also attended the hearings.

## **III. SUMMARY OF COMMENTS RECEIVED**

Finance received a total of eight comments during the EO36 process. Six comments were received during the three public hearings (6 Sussex, 0 Kent, 0 New Castle). An additional two comments were received via the online Comment Submission Form. None of these comments pertained to Finance regulations as defined by the Delaware Administrative Procedures Act.

One comment inquired about a taxpayer's personal tax bill. A second comment asked the State of Delaware to repeal its gross receipts taxes. Five comments were related to internal operations, such as emailing taxpayers to reduce costs and implementing a yard sale business license.

During the EO36 Process, an attendee of the Georgetown EO36 Hearing recommended that the Division of Revenue improve the readability of its taxpayer notices. Revenue has since prioritized improving its correspondence software module to address this concern.

An additional comment at the Georgetown EO36 Hearing asked that Delaware refrain from passing "emergency" regulations in the future, as was seen after the passage of House Bill No. 333 earlier this year so that the state could extend sports gambling before the start of football season. Finance explained to the attendee that H.B. 333 presented a unique challenge and that all future Finance regulations would follow Delaware's Administrative Procedures Act.

Finance received no comments during the EO36 process relating to its current regulations.

#### **IV. REGULATORY CHANGES RESULTING FROM EO 36 PROCESS**

After an internal review of the six regulations currently governing Finance and its agencies, the Department identified the two areas (discussed above) in which the EO 36 process helped DOF to focus on its need to:

1. Improve efficiency through the issuance of two updated regulations (Abandoned Property audit guidelines); and
2. Adopt the Video Lottery Advisory Council's recommendations to change two of its current regulations. Results will be published in Delaware's May 2013 Register of Regulations (See Exhibit C).

Additionally, Finance will continue to work in conjunction with the Secretary of State's Office to monitor possible enhancements to or streamlining of its Unclaimed Property regulations.

## Health and Social Services, Department of

**Number of Comments Received: 64** (Note: All but 2 comments related to a single regulation)

**Number of Comments Relating to Specific Regulations: 62** (See previous comment)

**Number of Regulations To Be Amended or Deleted: 8** (7 amended, 1 deleted)

### **Highlights:**

- Will create a new limited license for operators of small water systems, reducing the accompanying class from 11 weeks to 2 days.
- Will eliminate a hazardous chemical act regulation that duplicates rules issued by the federal government that Delaware businesses already must follow.
- Will streamline the Automatic External Defibrillation registration process for agencies that have them by eliminating redundant steps.

## **I. OVERVIEW OF AGENCY AND APPLICABLE REGULATIONS**

The Delaware Department of Health & Social Services (DHSS) is the state’s largest agency and provides services and functions that affect all Delawareans. DHSS has twelve divisions, but one Mission Statement, which is “to improve the quality of life for Delaware’s citizens by promoting health and well-being, fostering self-sufficiency, and protecting vulnerable populations.” Our Vision Statement states that “together we provide quality services as we create a better future for the people of Delaware.”

DHSS has 12 divisions, which include the following: Child Support Enforcement, Aging & Adults with Physical Disabilities, Public Health, Long Term Care Residents Protection, Social Services, State Service Centers, Visually Impaired, Developmental Disability Services, Office of the Chief Medical Examiner, Medicaid & Medical Assistance, Management Services, and Substance Abuse & Mental Health.

Some DHSS divisions operate under numerous sets of regulations, some none. Many, if not most, DHSS programs either receive a substantial amount of federal funding and/or are subject to federal laws and regulations, limiting the agency’s flexibility regarding many policies.

DHSS regulations protect vulnerable populations and keep all Delawareans safe. They enforce the integrity of publicly funded programs and set clear rules so that the playing field is level for all participants.

More than half of the DHSS regulations fall outside the scope of Executive Order 36. Most of those do so because they have been promulgated or updated within the last three years. Each month, DHSS submits on average 10 regulations to the Register of Regulations for publication of changes that have been made or that are being proposed. Below is a summary of DHSS regulations, organized by Division.

**Division of Services for Aging & Adults with Physical Disabilities (DSAAPD)** – This Division has two regulations. They provide a mechanism to delegate power to relative caregivers to consent to register minors for school and medical treatment of minors. As such, those regulations streamline government by making it easier for relative caregivers to arrange for basic needs of children in their care without needing court authority or other legal documents. The regulations themselves are short and straightforward.

**Division of Developmental Disability Services (DDDS)** – This Division has brief regulations governing eligibility for services as well as regulations finalized less than 3 years ago regarding an appeal process for clients.

**Division of Social Services (DSS)** – This Division operates programs and all but one involve some level of federal funding and thus federal rules. In addition, DSS began a section-by-section review of its Policy Manual in 2008. The review was completed in 2012 and sections are systematically being replaced. In making these revisions, DSS removed bureaucratic language, replacing it with simpler, easy-to-understand language and people-first language where appropriate. It was reformatted for organizational clarity and state and federal citations were added. Stakeholders regularly comment on proposed changes to DSS regulations and those comments are carefully considered and adopted, if possible. In addition to making DSS regulations more user-friendly, the online application (ASSIST) was upgraded. The upgrade makes it easier for citizens to apply for services and remains a common application for DSS and DMMA programs, as well as providing the ability to apply for energy assistance and even Food Bank of Delaware services. The upgrade also adds the ability for nonprofit community partners to track the number of applications they helped people to submit.

**Division of Medicaid and Medical Assistance (DMMA)** – Changes to medical program regulations must be approved by a federal agency, if that policy is not already set forth by the federal rules. These regulations are updated several times a year. Every new rule must be published for public comment and answered prior to implementation. In that way, we elicit and receive constant feedback from the public on the regulations we must implement. Also, as a payer for medical services delivered to the vulnerable and needy populations in the State, we are under ongoing scrutiny by every Administration and Legislature to find procedural and cost efficiencies which promote quality care in the most cost-effective manner. A few good examples are our transition to Diamond State Health Plan Plus in April 2012, which now covers long-term care services through our managed care organizations, the addition of telemedicine coverage in July 2012 to provide for needed specialist care particularly in professional shortage areas; and the implementation of a PACE Program starting February 1, 2013. All of these program changes were developed and implemented working closely with stakeholders to assure that the needs of the clients and providers were appropriately addressed.

**Division of Substance Abuse and Mental Health (DSAMH)** – This Division's only regulation sets forth the substance abuse facility licensing standards and was written less than 3 years ago.

**Division of Long Term Care Residents Protection (DLTCRP)** – The DLTCRP has been updating regulations over the past several years. The Division is continually reviewing regulations as well as updating them when they are alerted to changes in best practices by stakeholders. As a result of comments which were received last summer, the DLTCRP is making final changes to final regulations that were published as proposed this fall. Four sets of regulations were revised during 2012 and 5 are in public promulgation process already in 2013. Changes to the transfer/discharge process and appeal process were made as result of requests from facilities and advocates for these improvements. Criminal History Record Checks and Drug Testing regulations are also being updated due to the launch of an automated background check process. This streamlines and reduces the cost of background checks for employers and their employees. Three sets of regulations were updated to assure that facilities were prepared for a variety of emergencies. The changes again provided clarity and flexibility for businesses.

**Division of Public Health (DPH)** – Many of this Division’s regulations are informed or guided by federal rules, recommendations, or requirements of national accrediting bodies. In addition to stakeholders, DPH also has statutorily created boards that oversee some of the Division’s regulations. Over the last year, it has been working with a variety of stakeholders regarding new or substantially revised regulations on 5 topics: School Based Health Centers, Newborn Screening, Free Standing Surgical Centers, Accreditation of Certain Medical Offices, and Medical Orders for Life-Sustaining Treatment. This work is in response to legislation and/or concerns from stakeholders.

## **II. THE PUBLIC INPUT PERIOD**

The public outreach process is described in Section \_\_\_ of this report. Cabinet Secretary Rita Landgraf attended the October 8 DHSS hearing in New Castle County.

After the hearings, DHSS sent out a second press release to more than 100 media and community partner contacts that comments and proposals on the Agency’s regulations would be accepted through December 1. In addition, the public input period was promoted on the DHSS website and also on Facebook and Twitter. Further, the agency followed up regarding the input period with the chambers and the House Small Business Caucus. Agency staff talked to specific community partners in person, and made telephone calls and sent emails to other partners, asking if they had input on regulations more than 3 years old that should be streamlined or eliminated.

In addition to the above, staff at DHSS was contacted by several of the stakeholders we regularly interact with to find out what was being proposed at these hearings. Agency staff explained and sent copies of Executive Order 36 to those individuals. Staff also mentioned the hearings at meetings with stakeholders.

## **III. SUMMARY OF COMMENTS RECEIVED**

DHSS received 64 comments during the public comment period. Two people spoke at a Sussex County hearing. Thirteen presented testimony at a Kent County hearing and twenty-seven at a New Castle County hearing. The Department also received 22 written comments.

Of the 64 comments that DHSS received during the public comment period, only two of the comments were on a topic other than on Regulation 4106, the Practice of Non-Nurse Midwifery. Of those 2 comments, only one was on a DHSS regulation. The speaker did not specifically identify by regulation number the source of her concern and we have been unable to locate a regulation that matches what she described. We attempted to contact her in an effort to identify the source of her issue. The other was referred to the Agency whose work was being discussed, however, the concern was not about regulations.

The Non-Nurse Midwifery comments did not fall within the scope of EO 36 because they relate to health and safety protections, not the streamlining of government or increasing efficiency. As such, the comments will be addressed in an appropriate setting and with the engagement of all stakeholders.

DLTCRP wanted to eliminate the regulations for Rest (Residential) Homes because they are duplicative of other regulations. However, when contacted, stakeholders requested that these separate regulations remain in place. Because the Division has just completed revisions of most of their regulations, the remaining regulations that are 3 years old or older are those that do not need modification.

DPH found 35 sets of regulations that had not been reviewed in the last 3 years and that are not controlled by federal rules. As a result of the EO 36 review, DPH will eliminate 1 regulations and will substantially improve 7 others:

- Regulation 4456 – Hazardous Chemical Act: This regulation duplicates federal OSHA requirements. Because businesses must comply with OSHA requirements, there is no need for separate state rules. Regulation 4456 will be repealed in the August Register.
- Regulation 4303—Automatic External Defibrillation: Revisions to this regulation will streamline the registration process by eliminating several redundant steps. For example, it eliminates several requirements previously delineated for agencies possessing AEDs due to the advances made in AED technology. It also eliminates the requirement to follow a specific set of written protocols and specifies AED users are to follow the current American Heart Association/Emergency Cardiac Care Committee guidelines. DPH expects to publish the proposed changes in the August Register.

In addition, DPH has reviewed Regulation 4463 – Licensing of Public Water Systems and will create a new limited license for small water systems. This license will be non-transferable and allow a water system to become a licensed operator by attending a two-day class, take an exam and obtain a water operator’s license rather than attend an 11-week class. We are also proposing to create the Distribution license which will lessen the burden on those water system staff that only work in the distribution system and do not need the treatment plant knowledge required under the base level license requirements. The water operator’s license will make it less burdensome to these small businesses by allowing them to avoid hiring a contract operator which can cost up to \$5,000/year. A limited license will cost \$100 every two years plus the time for the operator to attend 20 hours of continuing education classes every two years. Water systems are currently complying with the regulatory requirements and these changes will provide for higher compliance rates and safer drinking water for all Delaware citizens. DPH has planned some workshops to get additional feedback from operators and expects to publish the proposed changes before the end of 2013.

Finally, DPH identified 5 regulations, governed by boards, that should be updated both to reflect best current practices and for opportunities to increase efficiencies and reduce red tape. The DPH staff and the Boards have started work on these revisions. The regulations in this category and proposed revisions are as follows:

- Regulation 4101 – J-1 Visa Waiver: The J-1 program makes it easier for employers (hospitals, federally qualified health centers and private practices) to hire physicians to work in underserved areas of the state. The proposed changes update the regulations to be in compliance with changes in federal rules, clarify provisions on restrictive covenants/non-compete, and change the Board composition. The Conrad State 30/J-1 Visa Waiver Program is used to place international medical graduates who have completed their medical education in the United States in underserved areas of the state. Normally, upon completion of their education, these international medical graduates are required to return to their country of nationality for at least two years before returning to the United States. However, under the Conrad State 30/J-1 Visa Waiver Program this home residency requirement can be waived for up to thirty (30) J-1 physicians annually. In exchange, the J-1 physicians must agree to practice medicine full time at a Delaware pre-approved sponsoring site for a minimum of three years. These changes were published as proposed on June 1, 2013.

- Regulation 4202 – Control of Communicable Diseases: Created in consultation with a stakeholder board, changes to this regulation will standardize the reporting of infectious disease making it easier for constituents to make an informed decision when choosing a health care facility for their medical needs (DHSS publicizes the number of healthcare associated infections per impacted facility on a regular basis). These changes were published as proposed on June 1, 2013.
- Regulation 4305 – Trauma System: Revised in consultation with a stakeholder board, the proposed changes will be helpful to industry and the citizens and visitors of our state because these regulations provide the structure for the Statewide Trauma System's organization and daily function, which has been proven to save lives. National research has shown a decrease in preventable mortality due to injury of up to 50% after implementation of a statewide organized system of care, such as is defined in the Delaware Trauma System regulations. DPH expects to publish the proposed changes in the September 1 Register.
- Regulation 4465 – Radiation Control: Created in consultation with a stakeholder board, these changes will assist industry to assure compliance with radiation protection requirements of accreditation bodies such as the American College of Radiology and the Joint Commission, increases clarity and facilitates end user understanding. These changes were published as Final on June 1, 2013.
- Regulation 4466 – Radiation Technologist/Technician Certification (streamlining completed, awaiting Board approval) will assist healthcare facilities to assure compliance with radiation protection credentialing bodies such as the American Registry of Radiologic Technologists, Nuclear Medicine Technologist Credentialing Board and Dental Assisting National Board, will increase clarity and facilitate end user understanding. The Authority Regulations committee has initiated review of regulation 4466, and was scheduled to meet on June 13. Current work plan is to have a draft for full Authority discussion in September, and a proposed rule for agency concurrence by December 31, 2013.

## Labor, Department of

**Number of Comments Received:** 5

**Number of Comments Relating to Specific Regulations:** 4

**Number of Regulations Amended or Deleted:** 45 (22 amended, 23 deleted)

### **Highlights:**

- Many of the Department's unemployment insurance regulations have not been updated since the 1950s. As a result of the EO 36 process, the Department of Labor is reducing the number of unemployment insurance regulations from 45 to 21 – a 47% reduction – while updating the remaining UI regulations to reflect more than a half-century's worth of statutory and technological changes.

## **I. OVERVIEW OF AGENCY AND APPLICABLE REGULATIONS**

The Delaware Department of Labor connects people to jobs, resources, monetary benefits, workplace protections and labor market information to promote financial independence, workplace justice and a strong economy.

The Department's organizational structure was created by statute on June 22, 1970, when Delaware moved from a commission form of government to a cabinet form of government. The department is made up of four divisions and three offices:

- **Division of Employment and Training** – Provides services to dislocated workers to secure employment or placement in training.
- **Division of Unemployment Insurance** – Provides direct monetary benefits to dislocated workers.
- **Division of Industrial Affairs** – Provides oversight for Prevailing Wage, Apprenticeship & Training, OSHA, Workers Compensation, Labor Law enforcement and the Office of Anti-Discrimination.
- **Division of Vocational Rehabilitation** – Provides services to persons disabled including job placement and training opportunities.
- **Office of Administration**
- **Office of Labor Market Information** – Provides current information for employment levels, unemployment rates, wages and earnings, employment projections, job information, training resources and career information.

The combined efforts of these divisions and offices support the employment-related needs of nearly 400,000 Delaware workers and more than 20,000 businesses throughout the state.

As of the date Executive Order No. 36 was issued (June 14, 2012), there were 54 regulations within the Department subject to the EO 36 process. That is, there were 54 regulations (1) adopted or amended by the Department, (2) that are not governed by requirements of federal law, and (3) had not been adopted or amended within the previous three years.

The vast majority of the regulations subject to the EO 36 process—42 out of 54 regulations—govern unemployment insurance. The vast majority of those regulations have not been amended since the 1950s. Other Department regulations subject to EO 36 include the following:

- Regulation 1102 – Exemptions for Disabled Workers from the Minimum Wage Act
- Regulation 1201 – Unemployment Insurance Appeal Board Regulations

- Regulation 1310 – Office of Anti-Discrimination
- Regulation 1320 – Office of Labor Law Enforcement
- Regulation 1321 – Clean Indoor Air Act Regulations
- Regulation 1322 – Prevailing Wage
- Regulation 1324 – Wage Payment and Collection Act--Payroll Debit Cards
- Regulation 1325 – Special Employment Practices Relating to Healthcare & Child Care Facilities

With respect to regulations outside the purview of EO 36, certain divisions have regulations that are governed by federal law. For example, the Divisions of Employment & Training and Vocational Rehabilitation are primarily governed and operate under federal Training & Guidance Letters (TEGLs). In addition, the Department had already reviewed and revised several regulations in the months preceding the issuance of EO 36, including:

- Regulation 1331 – Industrial Accident Board (revised 12/11);
- Regulation 1341 – Workers Compensation, 6 regulations (revised 6/12); and
- Regulation 1342 – Health Care Practice Guidelines (revised 6/11).

## **II. THE PUBLIC INPUT PERIOD**

Public hearings were held in accordance with the schedule set forth in the first section of this report. In addition to the public outreach discussed in that section, the Department sent announcements publicizing the EO 36 process to the Delaware State Chamber of Commerce, several local chambers, trade associations, and unions for publication in their newsletters.

Secretary McMahon attended each of the three public hearings (Sept. 26, Oct. 3, and Oct. 10) in Sussex County, Kent County, and New Castle County, respectively.

## **III. SUMMARY OF COMMENTS RECEIVED**

A total of one (1) person attended the public hearing in New Castle County. No one attended the meetings in Kent County or Sussex County.

The New Castle County attendee's comment concerned the establishment of a Service Delivery Area designation for the City of Wilmington under the Workforce Investment Act which governs the administration of training dollars for dislocated workers.

Currently the State of Delaware operates as a single state-wide Service Delivery Area with a single Workforce Investment Board that works in partnership with the Delaware Department of Labor to administer the federal funds received under WIA.

The citizen had previously contacted the department, the DWIB and the USDOL in an attempt to acquire such a designation. The decision from the USDOL regional office confirmed our interpretation and he was voicing his displeasure with the United States Department of Labor's denial of his request for such a designation. The decision is outside the Delaware Department of Labor's scope of authority.

## **IV. REGULATORY CHANGES RESULTING FROM EO 36 PROCESS**

In light of the extremely low level of public input, the Department reviewed its own regulations with a view toward streamlining or eliminating those regulations that are outdated, overly burdensome, or no longer serve their intended purpose.

As a result of the internal review, we discovered that the majority of regulations governing unemployment insurance had not been amended since the 1950s. As a result, a significant number of these regulations were superseded or no longer serve the purpose for which they were written. (We also discovered that although the regulations appear on the Department’s website, <http://ui.delawareworks.com/>, they are not included in Delaware’s Administrative Code website.)

The revised unemployment insurance regulations will appear in the July 2013 Register of Regulations. While it is not necessary to detail the specific deletions or amendments for each of the 21 unemployment insurance regulations being changed in accordance with this process, many of these regulations have been superseded by statute—in particular, Title 19, chapter 33, subchapter II of the Delaware Code. For example:

- Regulation 10 provides that whenever a worker files a claim for benefits, the Unemployment Compensation Commission (now defunct) shall notify the person’s last employer by means of a specific form, which must be returned by the employer within 7 days. This procedure has been superseded by 19 *Del.C.* § 3317(b), which requires the Division of Unemployment Insurance to send the last employer a separation notice after a claim for benefits is filed.
- Regulation 11 requires each employer to deliver a separation notice to each separated worker within 24 hours. This requirement no longer exists under Delaware law.
- Regulation 14 sets forth the method for calculating an individual’s week of total or part-total unemployment. This information is now defined by statute (19 *Del.C.* §§ 3302(3) and 3302(17)).
- Regulations 16-20 sets forth the procedures for appealing certain decisions of “claims deputies” and “appeal referees.” This procedure has been superseded by the section of the Code relating to the Unemployment Insurance Appeals Board (Title 19, chapter 31). These regulations also reference procedures relating to an “Appeal Tribunal” that no longer exists.
- Regulation 25 sets forth the procedures for the transfer of unemployment insurance claims experience from a predecessor to a successor employer. These procedures have been superseded by 19 *Del.C.* § 3353.
- Regulation 26 sets forth the procedures for the credit for rehire by an employer. These procedures have been superseded by 19 *Del.C.* § 3350(7).

In some instances, the unemployment insurance regulations have not only been superseded by legislative action, but by technological advances as well. For example, Regulation 12 describes the procedures by which persons who live in isolated areas served only “by the itinerant service of a public employment office” may receive benefits. Today, the Division of Unemployment Insurance provides an option for individuals to file their claims for unemployment insurance benefits online.

Finally, all of the remaining unemployment insurance regulations are being updated to eliminate references to the Unemployment Compensation Commission and other defunct entities, as well as to update antiquated procedures.

In sum, as a result of the EO 36 process, **the Department of Labor is reducing the number of unemployment insurance regulations from 45 to 21 – a 47% reduction** – while updating the remaining UI regulations to reflect more than a half-century’s worth of statutory and technological changes.

## Management and Budget, Office of

**Number of Comments Received:** 6

**Number of Comments Relating to Specific Regulations:** 3

**Number of Regulations Amended or Deleted:** 1 (1 amended, 0 deleted)

### **Highlights:**

- Added greater flexibility and fairness to the procedures governing the training and licensure of asbestos workers by (1) removing unnecessary certification requirements; (2) authorizing sanctions short of license surrender for minor infractions; (3) allowing applicants to pay cash for their licenses; and (4) extending certain appeal deadlines from 10 to 30 days.
- As a result of a public comment received during this process, OMB is changing its practice to allow prospective asbestos licensees to schedule appointments in New Castle County at least once per month, subject to demand.

## **I. OVERVIEW OF AGENCY AND APPLICABLE REGULATIONS**

The mission of the Office of Management and Budget (OMB) is to provide leadership, partnerships, policy development, planning and objective analysis to maximize the value of state assets, including people, facilities, land and financial resources.

OMB is comprised of the following sections: Office of the Director; Budget Development, Planning and Administration (BDPA); Facilities Management (DFM); Government Support Services (GSS); Human Resource Management (HRM); Office of Pensions; and the Statewide Benefits Office.

Only three regulations administered by OMB are subject to the EO 36 process. These include:

- Regulations Governing the State of Delaware Contractor/Supervisor/Worker Asbestos Training and Certification and Training/Certification for Asbestos Professional Services [No Number Assigned] – This regulation provides for the licensing of those companies and workers involved in the remediation of asbestos in buildings, and establishes training and licensure standards for those involved in asbestos remediation to ensure proper handling and removal of this carcinogenic substance. As set forth below, OMB has submitted to the Registrar of Regulations several revisions to this regulation.
- Regulation 4101 – Architectural Accessibility Standards: This regulation falls within the purview of the Architectural Accessibility Board, an entity charged with ensuring that state-owned, state-leased and state-financed facilities are accessible to persons with physical disabilities. *See 29 Del.C. § 7304.* Although most accessibility standards are governed by the federal Americans With Disabilities Act (ADA), this regulation establishes procedures for the granting of a waiver from the few Board-specific standards that go beyond the requirements of both the ADA and established building codes. The Board did review this regulation but, due to its limited scope, did not make changes to it.
- Regulation 4102 – Annual Prequalification of Contractors and Subcontractors: This regulation establishes the mechanism and standards by which DFM may assign classification and maximum dollar limits to contractors and subcontractors that apply for prequalification for state construction jobs pursuant to 29 *Del.C. § 6962.* Because this regulation is governed by statute, no changes to this regulation are being proposed in connection with this process.

Several other regulations administered by OMB fall outside the purview of the EO 36 process. These include:

- Pension Regulations: The Board of Pension Trustees has adopted regulations to govern various public employee pension plans (including the State Employees' Pension Plan, State Judiciary Pension Plan, and the State Police Pension Plan, among others). Although OMB provides staff support to the Pension Board, it has no authority to amend these regulations and at any rate, these regulations were revised in the spring of 2013 as part of ongoing and regular reviews.
- State Benefits Regulations: Although OMB administers certain group health care and disability insurance programs, the authority to amend and adopt regulations governing those programs belongs exclusively to the State Employee Benefits Committee (SEBC). These regulations were also amended in the spring of 2013 as part of ongoing and regular reviews.
- Regulations Pertaining to the Public Use of the Legislative Mall: This regulation was promulgated in May 2012 and as such is outside the scope of this review.

## II. THE PUBLIC INPUT PERIOD

In addition to the public outreach process described in Section \_\_\_ of this report, OMB partnered with the Delaware Chamber of Commerce, New Castle County Chamber of Commerce, Kent County Chamber of Commerce and the Milford Chamber of Commerce to publicize the public hearings through both placements on their websites and in newsletters to their members. OMB also partnered with the Associated Builders and Contractors and the Delaware Chapter of the American Institute of Architects (AIA Delaware) to encourage input from their members.

Director Visalli personally attended the Sussex County hearing on September 27. All hearings were conducted by Bert Scoglietti, Director of Policy and External Affairs and Jessica Eisenbrey, Manager of Media Relations. In addition, various directors and/or their deputies were also in attendance.

## III. SUMMARY OF COMMENTS RECEIVED

OMB received a total of six comments. Three comments were received during the public hearings, and an additional three comments were received via the online Comment Submission Form.

Three comments were related to OMB's asbestos worker licensing regulation. Those comments, and the Office's response, are as follows:

- Comment: Applicants should not have to travel to the Dover office to renew their license annually. This causes lost time for the applicant. Renewals should be available through the mail. Response: To provide convenience to applicants, DFM does schedule appointments, offers bulk renewals for employers and expedites applications upon request. In addition, **as a result of this public comment, DFM will schedule appointments at least monthly in New Castle County subject to demand.**

However, OMB does not recommend the suggestion to switch to a mail-in renewal. The licensure of individuals and companies involved with asbestos identification and remediation safeguards the health of both the public and the workers themselves. Experience has shown that potential licensees will use fraudulent documentation to obtain a license. As a result, DFM does require presentation of original documentation in order to issue a license. DFM staff has been trained in identifying fraudulent documents to ensure that licenses are issued to only legitimate and qualified applicants.

- Comment: Class "B" training should be increased to 16 hours instead of the current requirement of 12 hours to be consistent with the OSHA Training Requirement for Class II

worker. The 16 hours should be divided into eight hours for roofing materials and eight hours for siding materials.

Response: DFM does not recommend this change. The current 12 hours requirement covers all substances and already exceeds the minimum OSHA required training for a Class II worker. The requested change would increase the burden on affected businesses.

- Comment: Required annual refresher training is overly repetitive and content has not changed. Current workers and supervisors should be able to take the exam and, if they pass, be excused from annual refresher training.

Response: DFM does not recommend this change. The current federal asbestos regulation governing Delaware's program (EPA Model Accreditation Plan 40 CFR Subpart E, Appendix C (D)) requires annual refresher training.

OMB also received 3 comments on items not in regulation. One comment dealt with environmental issues not within the purview of OMB and was referred to DNREC.

#### **IV. REGULATORY CHANGES RESULTING FROM EO 36 PROCESS**

As a result of the EO 36 process, OMB has proposed several revisions to the Regulations Governing the State of Delaware Contractor/Supervisor/Worker Asbestos Training and Certification and Training/Certification for Asbestos Professional Services. These revisions will be published in the July 2013 Register of Regulations. The principal changes to this regulation include the following:<sup>9</sup>

- Removing a requirement that Class "A" Project Supervisors also have certification as Asbestos Abatement Worker, as this requirement is unnecessary and arguably burdensome.
- Allowing applicants to pay for their licenses in cash.
- Adding greater flexibility and fairness to the suspension and revocation process by (1) removing a requirement that a contractor surrender his or her certification if it is suspended or revoked, and (2) specifying that DFM may issue a Letter of Reprimand in lieu of suspension or revocation for minor violations.
- Adding greater flexibility to the Class "A" Project Supervisor Certification process by clarifying that CPR qualification may be obtained from any accredited training facility offering a four-hour course, as opposed to just the American Red Cross or American Heart Association.
- Adding a requirement that a Professional Services Firm must employ at least one Delaware Project Monitor, in accordance with accepted industry practice.
- Extending from 10 days to 30 days the time for requesting an appeal in connection with an Asbestos "A" Abatement Worker Certification.

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<sup>9</sup> All capitalized terms are defined in the regulation.

## Natural Resources & Environmental Control, Department of

**Number of Regulations Subject to EO 36 Process: 113**

**Number of Comments Received: 79**

**Number of Comments Relating to Specific Regulations: 43**

**Number of Regulations Amended or Deleted: 11** (8 amended, 3 deleted)

### ***Highlights:***

- Making it easier for individuals to install or retrofit aboveground storage tanks by (1) providing applicants 1 year to complete a retrofit before they must resubmit plans, as opposed to the current 60 days; (2) requiring DNREC to respond within 90 days to an owner's proposal to allow an alternative approach (*i.e.*, an approach that is not contemplated by Departmental regulations); (3) allowing individuals to submit requests to extend the timeframe for installation approvals (currently, approvals are only good for one year).
- Authorizing the issuance after-the-fact permits for activities requiring wetlands or subaqueous lands permits rather than requiring parties to remove structures, apply and receive the appropriate permits and then replace the structures.
- Consolidating Type I and Type II wetlands permits into one permit to eliminate confusion.
- Extending from 3 years to 6 years the time by which a new large on-site wastewater system can be constructed before the permit expires.
- Providing owners of underground storage tanks with greater flexibility in retrofitting tanks by extending deadlines for compliance and placing timelines on Department responses.
- Proposing regulatory language to bring more clarity to and encourage more participation in the public hearing process, including defined timelines for decision-making and a process for communicating delays to applicants and interested parties.
- The regulatory review process is ongoing. In the coming months, the Department will convene stakeholder groups to discuss possible additional revisions to the regulations governing beach construction, the Coastal Zone Act, and Stationary Generator Emissions.

## **I. OVERVIEW OF AGENCY AND APPLICABLE REGULATIONS**

The mission of the Department of Natural Resources and Environmental Control (DNREC) is to ensure the wise management, conservation and enhancement of the state's natural resources, protect public health and the environment, provide quality outdoor recreation, improve the quality of life, and educate the public on historic, cultural and natural resource use, requirements and issues.

DNREC is comprised of the Office of the Secretary and seven other Divisions with management and oversight of a variety of functions as follows:

**The Office of the Secretary** provides overall management and direction for DNREC. Central administrative functions include policy development, program coordination, information and systems management, financial and human resource management, public information and education, and compliance assistance services.

**The Division of Air Quality** focuses on protecting the public from exposure to air pollutants in the outdoor environment that, over time, can become health hazards. The Division is comprised of two main branches – Engineering and Compliance, and Planning. The Division oversees some 50

regulations that include requirements delegated to the State by the Environmental Protection Agency in order to administer the Federal Clean Air Act. Regulations control emissions of specific pollutants such as air toxics, nitrogen oxides, volatile organic compounds and sulfur oxides which can affect human health. Other regulations provide for oversight of emissions from specific sources such as electrical generating units, cars and trucks, diesel engines and steel plants.

**The Division of Energy and Climate** serves Delawareans by reducing the adverse impacts of energy use on our environment, health and economy. The Division strives to educate, lead by example, and build partnerships to increase energy efficiency and renewable energy, promote sustainable growth and prepare for a changing climate. The Division oversees administration of regulations that include the Coastal Zone Act, Green Energy Program and Environmental Standards for Eligible Energy Resources.

**The Division of Fish and Wildlife** protects, manages and promotes conservation of Delaware's fish and wildlife resources. The Division manages almost 61,000 acres, including 19 wildlife areas and 57 freshwater ponds and marine access areas; performs biological research, mosquito control, and habitat management and restoration; administers fish, wildlife and boating laws; issues fishing and hunting licenses and boat registrations; provides hunting, aquatic and boating safety education; operates public hunting, boat launch and fishing access facilities. Among other things, the Division is responsible for administering regulations for both recreational and commercial harvest that protect and manage fish -- both tidal and non-tidal species, game and non-game wildlife and shellfish including horseshoe crabs, blue crabs, lobster, clams and oysters.

**The Division of Parks and Recreation** operates and maintains 16 state parks; administers land protection programs; provides and plans recreational opportunities and educational and interpretive programs for the public; acquires and develops recreational lands and facilities; and protects natural areas. Parks-managed lands total more than 27,000 acres. The Division oversees regulations that govern activities in State Parks and that protect the State's natural areas.

**The Division of Waste and Hazardous Substances** oversees the handling, transfer, storage, disposal and management of solid waste and hazardous materials through regulations, monitoring, inspections, emergency response and environmental regulation enforcement; manages boiler safety, underground and above ground storage tank sites and hazardous waste sites; and carries out cost recovery procedures in the cleanup of environmental violations and emergency incidents. The Division administers regulations governing the installation, operation and maintenance of the above, as well as underground storage tanks and commercial and industrial boilers.

**The Division of Water** monitors, manages and protects Delaware's ground and surface waters, tidal wetlands and underwater lands; serves as a link to the Delaware River Basin Commission; provides centralized geographic information system services and public education and outreach programs; coordinates citizen volunteer monitoring programs. Regulations under the jurisdiction of the Division include oversight of discharges of wastewater to land and surface waters including on-site treatment systems as well as publicly operated wastewater treatment facilities and management and application of sludge. The Division is also responsible for regulation of marinas, subaqueous lands, tidal wetlands and oil and gas exploration as well as protecting water supplies through allocations, licensing of well drillers and permitting of wells.

**The Division of Watershed Stewardship** manages and protects the state's soil, water and coastlines with an array of watershed programs to ensure proper stewardship of Delaware's natural resources. These programs protect and maintain the state's shoreline and navigable waterways; regulate changes to coastal and urban lands; develop and implement innovative watershed

assessment, monitoring and implementation; promote wise land use and water management practices, while working with agricultural interests, protecting urban communities and providing for public safety. The Division is responsible for administering regulations that establish pollution limits for our streams, rivers, lakes and bays and assuring shellfish health standards are met. Other regulatory authorities include oversight of construction on beaches, management of erosion, sediments and stormwater runoff and construction, operation and maintenance of dams.

The Department has 113 regulations that had not been amended, or subjected to review, during the past three years and 48 regulations which have. Many of the regulations administered by DNREC are the result of State legislation authorizing Delaware to administer federally delegated programs or provide for the management of natural resources through agencies such as the Environmental Protection Agency and the Department of Interior under federal law including the Clean Water Act, Clean Air Act and Resource Conservation and Recovery Act, Superfund, Migratory Bird Treaty Act, as well as state laws that do not have a basis in federal law.

## **II. THE PUBLIC INPUT PERIOD**

As part of the public outreach, the Department made a concerted effort to evoke participation from many of the sectors and interest groups that interact with and whose activities are subject to DNREC regulatory oversight. To that end, DNREC contacted members of approximately 25 councils, committees and stakeholder organizations that work with the Department on a formal and informal basis.<sup>10</sup> Collectively, some 200 individuals received invitations to the three public hearings and were provided contact information in order to be able to submit written comments. Several of these bodies, including the Brownfields Advisory Committee, Parks and Recreation Council and Finfish Advisory Council included EO 36 as an agenda item for discussion at one of the groups' meetings.

## **III. SUMMARY OF COMMENTS RECEIVED**

DNREC received 79 sets of comments from a wide variety of stakeholders including individual citizens, environmental advocacy organizations, individual businesses, industrial facilities, and business advocacy groups. Though a number of comments regarding specific regulatory changes were received, many comments were general in nature and not specific to any regulation while others were directed at regulations that are currently in the process of being revised (onsite-wastewater and stormwater). A number of citizens and advocacy organizations expressed concerns about potentially weakening current regulations and instead proposed strengthening regulations. Other comments addressed state and federal legislation while several proposed process changes not necessarily addressed in regulation. A number of comments addressed multiple issues and/or regulations. Topics that received multiple comments included:

- Proposed on-site wastewater regulations
- Regulations pertaining to water softener systems
- Proposed stormwater management regulations

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<sup>10</sup> The specific groups contacted include, among others, the Governor's Energy Advisory Council; Clean Water Council; Coastal Zone Industrial Control Board; Environmental Appeals Board; Community Involvement Advisory Council; Parks and Recreation Council; Open Space Council; Natural Areas Advisory Council; Council on Greenways and Trails; Council on Boiler Safety; Sea Level Rise Advisory Committee; Recycling Public Advisory Council; Brownfields Advisory Committee; On-Site Systems Advisory Board; Advisory Council on Wildlife and Freshwater Fish; Advisory Council on Shellfisheries; Council on Recreational Fishing Funding; Advisory Council on Tidal Finfisheries; Well Licensing Board; and the Board of Certification for Wastewater Treatment Plant Operators.

- Coastal Zone regulations
- Chronic violator regulations
- Public hearing process
- Reportable quantities of contaminants
- Lack of freshwater or non-tidal wetlands protection in Delaware
- Vapor recovery regulations
- Disappointment in EO 36 and lack of any emphasis on strengthening regulations
- Need to increase permit fees

Additional topics were also raised during the public comment period. DNREC's responses to a number of comments, can be found on the Department's website at [www.dnrec.delaware.gov](http://www.dnrec.delaware.gov).

#### **IV. REGULATORY AND NON-REGULATORY CHANGES RESULTING FROM EO 36 PROCESS**

As a result of Executive Order No. 36, the Department is in the process of amending or deleting a total of 20 regulations (17 amendments, 3 deletion). Proposed language has been drafted for 10 regulatory changes. In an effort to conserve resources and keep this section to a manageable length, these proposed changes are not attached to this report; however, they can be found at [www.dnrec.delaware.gov](http://www.dnrec.delaware.gov).

The Department operates under policies, procedures and law in proposing and adopting new regulations or amendments to existing regulations. The first step in the process is to issue a Start Action Notice to agency management, General Assembly members, interested parties and the State Registrar describing the purpose of the proposed action. Depending on the nature of the action, a stakeholder workgroup may be formed to assist in development of the regulatory language and/or the proposal may be vetted with appropriate existing advisory groups seeking their feedback. The process may also involve public workshops. Proposed new regulations or amendments to existing regulations are published in the monthly State Register. All DNREC regulations are subject to a public hearing prior to promulgation.

Ten of regulatory changes described below will be published in the July 2013 Register of Regulations, with the remaining changes subject to the process described above. It is expected that the remaining revisions will be published in the Register of Regulations later this year. Regulations appearing in the July Register of Regulations (All Title 7 of the Administrative Code):

##### Waste & Hazardous Substances

1301 Title of Regulation: Regulations Governing Solid Waste

1352 Title of Regulation: Aboveground Storage Tanks

##### Water

7503 Title of Regulation: Regulations Governing Oil, Gas and Mineral Exploration

##### Fish & Wildlife

3507 Title of Regulation: Regulations Governing Tidal Finfish

##### Air Quality – Regulations Governing the Control of Air Pollution

1101 Definitions and Administrative Principles

1103 Ambient Air Quality Standards

1104 Particulate Emissions from Fuel Burning Equipment  
1114 Visible Emissions  
1139 Nitrogen Oxides Budget Trading Program  
1143 Heavy Duty Diesel Engine Standards

Proposed changes that will be addressed through stakeholder processes or that will appear in the Register later this year include:

Air Quality

1124 Control of Volatile Organic Compound Emissions – Stage II Vapor Recovery  
1144 Control of Stationary Generator Emissions

Office of the Secretary

101 Regulations Governing Delaware’s Coastal Zone  
Public Hearings

Water

7101 Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems  
7502 Wetlands  
7504 Subaqueous Lands  
Delaware River Basin Commission/DNREC National Pollution Discharge Elimination System requirements

Watershed Stewardship

5102 Regulations Governing Beach Protection and the Use of Beaches

***A. Regulatory Changes Based on Public Input***

Two of the Department’s proposed regulatory changes are the result of public comments. These include the following:

**Ambient Air Monitoring** – Revisions to Regulation 1103<sup>11</sup> – Ambient Air Quality Standards are proposed to bring the regulatory limits up-to-date with current federal requirements. Regulation 1103 currently contains outdated test methods and emission limits. This requires citizens and industry to review both state regulations and federal regulations, and to reconcile the two, in order to understand the requirements that apply in Delaware. This could also lead to state and federal requirements being incorrectly applied. This unnecessary regulatory burden will be eliminated with this revision.

**Sediment and Stormwater Management** – This action is also technically not part of the EO 36 review, as the process for revising this regulation are underway. However, the proposed changes are intended to allow more flexibility in meeting standards to improve water quality and reduce impacts and include management of runoff volume through runoff reduction requirements, and addressing conveyance and flooding by requiring watershed analyses rather than just a site-by-site analysis. These goals are entirely consistent with EO 36. In addition, to improve the plan review and approval process and provide consistency statewide, the proposed regulation revisions include a

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<sup>11</sup> All regulations cited in this section may be found in Title 7 of the Delaware Administrative Code. For ease of reference, regulations will be referred to by their numbers only (for example, “Regulation 1103”).

requirement for a three-step plan review and approval process. The first step is the project application meeting. The second step is the preliminary Sediment and Stormwater Management Plan, and the third step is the Sediment and Stormwater Management Plan. Each step is described in regulatory language. Checklists and examples are provided in the Technical Document. Proposed changes have been published in the State Register with a public hearing held April 23, 2013.

### ***B. Proposed Regulatory Changes Based on DNREC Review***

**Air Administrative Principles** – Revisions to Regulation 1101 – Administrative Principles are proposed to correct an outdated reference. In 2008, Delaware’s air regulations were established in Regulation 1100. Regulation 1101 currently refers to the prior “Regulations Governing the Control of Air Pollution.” This outdated reference could lead to citizens and industry searching for documents that no longer exist, or potentially to an incorrect regulatory interpretation. This unnecessary regulatory burden will be eliminated with this revision.

**Nitrogen Oxides (NO<sub>x</sub>) Budget Trading Program** – Regulation 1139 established Delaware’s participation in the NO<sub>x</sub> Budget Trading Program, a multi-state NO<sub>x</sub> emissions cap and trade program, established pursuant to Title 40, Part 96 of the Code of Federal Regulations (40 CFR Part 96) and 40 CFR Part 51.121. The underlying federal program was replaced by the federal Clean Air Interstate Rule (CAIR). Given this, DNREC will repeal Regulation 1139 because it no longer serves its intended purpose.

**Particulate Emissions From Fuel Burning Equipment** – Sections 1.2 and 1.4 of Regulation 1104 should be revised to clarify that the exemption is for the capacity of the unit and not the operating rate. The change is needed to make clear that the capacity of the unit, not the actual heat input, is the determining factor to determine whether a unit is exempt from the regulation.

**Visible Emissions** – Regulation 1114 should be amended to delete Section 2.3, which established an alternate standard for a refinery unit prior to installation of modern pollution control equipment in 2006. The installation of this equipment now makes this standard obsolete and the unit now complies with the new standard. This is a burdensome requirement to administer and track and is no longer relevant or necessary.

**Heavy Duty Diesel Engine Standards** – Regulation 1143 should be repealed as applies to heavy-duty diesel engines produced for the 2005 and 2006 model years, and to new motor vehicles with a gross vehicle weight rating (GVWR) of greater than 14,000 pounds containing such engines that are sold, leased, offered for sale or lease, imported, delivered, rented acquired, or received in the State of Delaware. This regulation was developed and adopted as a backstop to an anticipated EPA regulation. EPA has successfully adopted standards and this regulation is no longer needed. DNREC will repeal this regulation.

**Oil, Gas and Mineral Exploration** – The Department proposes to repeal Regulation 7503 – Oil Gas and Mineral Exploration Regulations in their entirety. The regulations are outdated and do not reflect current industry standards. Oversight of these activities are now more comprehensively addressed in a body of federal and state laws including the Coastal Zone Act, Coastal Zone Management Act and Wetlands and Subaqueous Lands Act.

**Aboveground Storage Tanks** – Currently, if a tank owner/operator has not done a retrofit in 60 days, they are required to resubmit their plans. The Department proposes to extend this time period to one year. In addition, if an owner proposes an alternative approach to what the Department’s regulations allow, the Department is required to provide a response in writing to approve or deny. However, there is currently no timeframe for this. The Department will require that it must

respond in 90 days. Finally, installation approvals are only good for one year. Currently the regulation does not contemplate an extension. The Department will add language that it will consider an extension upon request.

**Solid Waste, including Infectious Waste** – The Department proposes to amend our *Regulations Governing Solid Waste 1301* to afford regulated parties the opportunity to propose alternative packaging methods for infectious waste. Currently the regulations prescribe how infectious waste must be packaged. This proposed change will allow flexibility for regulated parties to meet standards to protect the public while potentially achieving efficiency and savings. DNREC also proposes to allow infectious waste package labeling consistent with federal DOT requirements, rather than applying inconsistent state and federal requirements. Finally, we propose to amend our regulations with regard industrial landfill capping and grading, to allow soil-equivalent material to be used as the final grading layer, as well as alternate materials if approved by the Department, providing more flexibility for landfill operators.

**Black Sea Bass** – Current regulations limit the issuance of black sea bass permits to those who were fishing commercially during 1994 through 2001. These black sea bass regulations, while necessary to comply with both National Marine Fishery Service regulations and the Atlantic States Marine Fisheries Council and Interstate Fishery Management Plan, should be updated so that the rewording will provide the flexibility to award these permits to someone that was too young to have been fishing during 1994 through 2001. However, the number of licenses issued in any one year will be capped at 6.

### ***C. Proposed Regulatory Changes Subject to Stakeholder Input***

**Stage II Vapor Recovery** -- Multiple comments proposed elimination of the Stage II Vapor Recovery Requirements. Currently gas stations are required to be equipped with systems on the pump to recover vapors that escape as we fill our cars and trucks. Newer model cars and trucks are being built with on-board systems that prevent the release of these vapors. Because of the modernization of the fleet several suggested eliminating this requirement. The Department agrees and proposes to make revisions to Section 36.0 of Regulation 1124. The issue driving this is known “incompatibility between Stage II and ORVR equipped vehicles.” Delaware continues to get significant air quality benefit from Stage II (*i.e.*, about 0.6 tons per day now), and will until 2018/19. The Department agrees with the suggestion of removing the Stage II requirement for new stations at a point when the overall benefit of Stage II becomes small, and phasing out the requirement for existing stations on or about 2018 (*i.e.*, the benefit drops to 0.1 tons per day in 2017). However, the Department does not agree the changes are as ripe as portrayed, and it cannot reasonably prepare underline/strikeout text at this time without stakeholder input. This regulation is currently under revision (SAN 2011-19), and the Department anticipates proposing changes at a public hearing this summer. Stakeholders, including commenters, will be invited to participate in regulatory workgroup.

**Coastal Zone Act** – Several citizens and organizations commented about the Coastal Zone Act regulations. The Department proposes to convene a stakeholder group to consider potential revisions to the regulations such as addressing the status of electrical generating units, environmental indicators, renewable energy, recycling facilities and cleaning up and reusing brownfields.

**Beach Construction** – Public comments raised concerns about the process DNREC uses to determine whether construction can be allowed on beach front areas and how that construction may be permitted. The Department proposes to convene a stakeholder group to review and incorporate into its Beach Construction regulations the “Four-Step Process” that has been used as guidance to

determine how structures may be built seaward of the state's building line designed to protect coastal dunes.

**Control of Stationary Generator Emissions** – Regulation 1144 currently requires post combustion emission controls on new “emergency only” generators. This requirement should be dropped because it is an unintended outcome of the adoption of federal requirements. In addition, the recordkeeping and reporting requirements in this regulation should be updated to require only the information that is absolutely necessary. DNREC is proposing a stakeholder process with regulated parties to develop the proposed language.

**Public Hearings** – Several commenters raised concerns about the Department's public hearings and suggested guidance on roles, responsibilities and participation. DNREC proposes to adopt administrative regulations guiding our public hearings which fall primarily into two categories; those held on permit applications or draft applications and those held to receive comments on proposed regulations. The draft regulation for permit hearings includes proposed timelines for decision-making and a process for communicating any delays to the applicant and interested parties. Proposed language may be found at [www.dnrec.delaware.gov](http://www.dnrec.delaware.gov).

**On-site Wastewater Regulations** – While not technically part of the EO 36 review, the Department is in the process of revising the “Regulations Governing the Design, Installation, And Operation of On-Site Wastewater Treatment and Disposal Systems”. Although this process is well underway, EO 36's overriding goals of improving efficiency and reducing regulatory burdens are being applied as this process moves forward. The Department has conducted 11 public workshops and two public hearings and will be holding another hearing on further amendments in response to comments received at the last hearing, many of which were also received as part of the EO 36 process. Changes the Department anticipates proposing include the elimination of a requirement to transfer certain permits from seller to buyer prior to a property transfer and extending the time under which a new large on-site wastewater system can be constructed before the permit expires from three years to six years.

**DRBC/DNREC NPDES permitting** – Comments proposed to eliminate the duplication of permitting between the Delaware River Basin Commission and the Department regarding National Pollution Discharge Elimination System permits. The Department agrees and has existing regulations in place that could allow the elimination of dual requirements. DRBC continues to consider this issue among all of the member states and will be seeking a consistent resolution later this year.

**Wetlands** – The Department will amend Regulation 7502 to increase the Department's ability to address permitting issues and violations. Proposed changes will allow the Department to issue after-the-fact permits for activities that have occurred without the appropriate approval. Currently, illegal structures must be removed and a permit issued before they can be replaced. The amendment also allows the Department to seek administrative remedies for violations whereas current requirements limit enforcement to civil or criminal actions. The Department also proposes to add a provision in the wetlands regulations that authorize Letters of Authorizations and Statewide Activity Approvals to include Repair and Replace approvals for existing serviceable structures. This type of permit exists in the Subaqueous Lands regulations and has helped to expedite reviews. Also proposed is a consolidation of the Type I and Type II permits into one permit as the existing redundant structure is unnecessary and can be confusing. Finally we propose adding emergency waiver language to waive permitting requirements to protect public health and property as authorized in Senate Bill 64 passed in 2012.

**Subaqueous Lands** – DNREC will amend Regulation 7504 to increase the Department’s ability to address permitting issues and violations. Proposed changes will allow the Department to issue after-the-fact permits for activities that have occurred without the appropriate approval. Currently, illegal structures must be removed and a permit issued before they can be replaced. The amendment also allows the Department to seek administrative remedies for violations whereas current requirements limit enforcement to civil or criminal actions. DNREC also proposes to update the emergency waiver language already contained within the Subaqueous Lands regulations to include a statement that allows an emergency waiver when imminent or catastrophic damage or loss of major infrastructure is likely.

***D. Proposed Non-Regulatory Changes Based on Public Input***

In addition to the regulatory changes described above, as a result of both public comment and internal review, DNREC has identified several non-regulatory changes that could further advance the concepts of regulatory burden reduction.

**Marinas** - Develop a streamline Marina Operations and Maintenance Plan for use by the public.

Currently marinas are required to develop a site specific plan for review. This is an inefficient and burdensome process. The WSLS will develop an Operations and Maintenance plan that can be adopted by marinas.

## Safety and Homeland Security, Department of

**Number of Comments Received:** 2

**Number of Comments Relating to Specific Regulations:** 2

**Number of Regulations Amended or Deleted:** 1 (1 amended, 0 deleted)

### **Highlights:**

- The Department has only one regulation subject to the EO 36 process: Regulation 1205 (Electronic Red Light Safety Program). The Department is amending this regulation (1) to focus on the safety aspects of the program where it formerly focused on the financial benefits to the State; (2) to provide greater flexibility in administration by generalizing the number of cameras under the Program instead of giving a specific number; and (3) clarifying information regarding appeals.
- Although the Department administers but does not have the power to amend the rules of the Alcoholic Beverage Control (ABC) Commission, the Department requested as part of the EO 36 process that the ABC Commission review all 77 of its Rules. That process is ongoing, with proposed revisions expected in the months to come.

## **I. OVERVIEW OF AGENCY AND APPLICABLE REGULATIONS**

### **A. Agency**

The Delaware Department of Safety and Homeland Security (DSHS) promotes and protects the safety of people and property in Delaware. The Department is committed to protecting the lives and property of our citizens and visitors. The Department is responsible for emergency communications, management of man-made and natural disasters, and enforcing the laws of the State of Delaware. The Department is also charged with ensuring that the gambling facilities in Delaware operate in a legal manner and alcohol and tobacco laws are adhered to.

The Office of the Secretary serves as the primary point of contact for the general public on matters affecting the Department and its responsibility to the community. It serves as the central point for coordination of departmental policy and fiscal activity. In addition, the Office of the Secretary serves as a liaison to the Governor's office, other state and non-state agencies, members of the General Assembly, and the community at large.

The Department is responsible for ten divisions:

- The **Delaware State Police** exists to enhance the quality of life for all Delaware citizens and visitors by providing professional, competent, and compassionate law enforcement services. The State Police monitor over 4,600 miles of roadway and respond to more than 150,000 calls for service annually.
- The **Capitol Police**'s mission is to improve the quality of life by striving to provide a secure environment on state-owned property, including courts and office buildings, through the delivery of police services.
- The **Office of Highway Safety** serves Delaware by providing funding through grants for more than 100 highway safety-related education and enforcement programs.
- The **Delaware Emergency Management Agency** responds to and provides assistance during natural and man-made disasters. DEMA is responsible for the administration of state-wide planning, training, mitigation and coordination of effective emergency responses.

- The **Division of Communications** supports public safety through the installation, removal, repair, modification and alignment of the state’s communications systems and electronic equipment.
- **Delaware Enhanced 911 (E911)** protects and enhances public safety and health by facilitating the operation and maintenance of state-of-the-art Enhanced 911 services.
- The **Division of Alcohol and Tobacco Enforcement (DATE)** is a law enforcement agency that enforces state laws concerning alcohol beverages and youth access to tobacco.
- The **Delaware Division of Gaming (DGE)** enforces state laws regarding casino gaming and conducts investigations involving licensing, vendors, and employees in Delaware casinos.
- The **Delaware Disabilities Council** is charged with working to ensure that people with developmental disabilities enjoy the same quality of life as the rest of society.
- The **State Council for Persons with Disabilities** unites, in one Council, disability advocates and state agency policy makers to ensure that individuals with disabilities are empowered to become fully integrated within the community.

## B. Regulations

The Department has only one regulation subject to the EO 36 process, and has a mere 10 total regulations within its purview. The regulation subject to the EO 36 process is Regulation 1205 – Electronic Red Light Safety Program. Adopted in 2005, the program is jointly administered by the Department of Transportation and the Delaware State Police but is registered under the Office of Highway Safety. As per below, the Department is amending this regulation.

The Office of the Secretary has four regulations governed by the Administrative Procedures Act, all of which are less than three years old. These regulations include:

- 100 – Regulations Governing Community Firearm Recovery Programs (adopted 9/11)
- 101 – Regulations Governing the Relief from Disabilities Board (adopted 6/12)
- 102 – Regulations Governing Security Systems and Protective Services (adopted 6/12)
- 200 – In-Building Communications Systems Regulation (adopted 5/11)

In addition to the above, the Division of State Police administers two regulations relating to regulated professions. Both regulations of these regulations below were amended in 2012:

- 2300 – Pawnbrokers, Secondhand Dealers and Scrap Metal Processors
- 5500 – Bail Enforcement Agents

In addition, the Division of State Police, State Bureau of Identification (SBI) administers the following two regulations for the Board of Examiners of Private Investigators & Private Security Agencies and the Board of Examiners of Constables, respectively:

- 1300 – Board of Examiners of Private Investigators & Private Security Agencies
- 2400 – Board of Examiners of Constables

Although the Department administers these regulations and provides staff support to the boards, the power to adopt or amend the regulations is vested in the boards themselves. *See* 24 *Del.C.* § 1304, 10 *Del.C.* § 2702. In addition, both boards review their respective regulations on a quarterly basis, and both regulations have been updated within the past two years.

Finally, the Division of Alcohol and Tobacco Enforcement administers the rules and regulations of the Delaware Alcoholic Beverage Control Commission (“ABC Commission”), and the Department provides staff support to the ABC Commission. However, the power to adopt or amend such rules and regulations is vested in the ABC Commission itself. *See* 4 *Del.C.* § 304.

## **II. THE PUBLIC INPUT PERIOD**

Public hearings were held in accordance with the schedule set forth in the first section of this report. In addition to the public outreach process described in that section, Secretary Schiliro personally appeared at the initial hearing in Sussex County. Even though no one appeared to make recommendations at this event, one person did appear and gave praise to the work that the Department does for the State. All division directors also participated and were in attendance at all of the public hearings.

## **III. SUMMARY OF COMMENTS RECEIVED**

The public hearings did not result in any public comments or request for changes to existing regulations. The Department did receive two comments during the submission period. The comments were submitted via the online Comment Submission Form on February 28, 2013. Both comments were from the same individual.

The first suggestion pertains to Private Investigators and Private Security Agencies (Title 24, Chapter 13). The individual believes that the language and requirements in the Regulation are geared towards industrial security guards that are deployed at commercial and manufacturing properties. This requires each guard to have individual certification. He feels this creates an undue monetary hardship, with the costs of individual certifications being passed on to the event sponsor. He believes that this regulation could be streamlined.

The second comment submitted by this individual concerns Title 28, Chapter, Subchapter II. This regulation pertains to outdoor music festivals. He believes this regulation “singles out a particular type of special event” which “requires redundant applications and processes that are already addressed elsewhere with other state and local regulations.” He believes this regulation should be eliminated.

The individual that submitted the above recommendations appeared before the Board of Examiners of Private Investigators and Private Security Agencies prior to submitting the two recommendations and made a formal proposal to the Board regarding these two suggestions. The Board had already placed the proposals on their agenda for consideration at a future quarterly meeting. If deemed appropriate, the Board will modify the current regulations.

## **IV. REGULATORY CHANGES RESULTING FROM EO 36 PROCESS**

As stated above, the Department has only one regulation subject to the EO 36 process: Regulation 1205, relating to the Electronic Red Light Safety Program. The Department is amending this regulation (1) to focus on the safety aspects of the program where it formerly focused on the financial benefits to the State; (2) to provide greater flexibility in administration by generalizing the number of cameras under the Program instead of giving a specific number; and (3) clarifying information regarding appeals. The Department anticipates that the above revisions will be published in the August 2013 *Register of Regulations*.

Also as stated above, the Department has only one regulation within its purview that is subject to the EO 36 process. However, in the spirit of this process, the Department requested that the ABC Commission review all 77 rules that are administered by the Commission. Commissioner John Cordrey, Deputy Commissioner Wiest, Division of Alcohol and Tobacco Enforcement Director Yeomans, Supervising Agent Jones and Agent Loiseau have engaged in a detailed review of the Commissioner’s rules.

The meetings started in November 2012 with the most recent meeting March 20, 2013. The Committee has reviewed all rules through rule number 48. Commissioner Cordrey anticipates that it will require two more meetings to complete the review or about one month. After the review is complete, the Office of Alcohol Beverage Control and the Department of Alcohol and Tobacco Enforcement will forward their proposed changes and set the required public hearings. The Commissioner will solicit comments from the industry and the public. Any changes will then be submitted to the State Registrar.

## State, Department of

**Number of Comments Received: 7**

**Number of Comments Relating to Specific Regulations: 1**

**Number of Regulations Amended or Deleted: 0** (Note: The Department has no authority to adopt or amend the vast majority of regulations it administers. As per below, however, it has recommended 124 regulations to regulations governing various boards and commissions.)

### **Highlights:**

- Although the Department's Division of Professional Regulation administers numerous regulations adopted by boards and commissions for which the Division provides staff support, it generally has no authority to adopt or amend these regulations.
- Notwithstanding that fact, the Division performed its own internal review of the regulations governing these boards and commissions, with the goal of recommending specific changes to obsolete, incorrect, or unduly burdensome regulations.
- **As a result of its review, the Division recommended 124 revisions to regulations governing the operation of 35 different boards and commissions for which the Division provides support.** Those recommendations are currently being considered by the boards for possible adoption. Some of the recommended changes include revisions relating to license renewals (53 recommendations); audits of continuing education requirements (16); inactive status for members of regulated professions (14); online services (5); and fees (4).
- Effectuating the changes identified will result in information accuracy and greater efficiency in professional licensing processes.

## **I. OVERVIEW OF AGENCY AND APPLICABLE REGULATIONS**

The Department of State has a sevenfold mission:

- To promote Delaware's economy and generate state revenue;
- To manage and facilitate citizen access to governmental, educational and recreational information;
- To preserve and promote Delaware history, art and culture;
- To assist and provide direct services to Delaware veterans and their families;
- To promote equal opportunity and protection for all persons;
- To provide regulatory, licensing, investigative and consumer services to protect the public's health, safety and economic welfare; and
- To administer the State's public and merit employment relations and government ethics laws.

The Department of State contains the following divisions and offices: Office of the Secretary; International Trade and Development Group; Government Information Center; Division of Corporations; Office of the State Bank Commissioner; Division of the Arts; Division of Libraries; Division of Historical and Cultural Affairs; Delaware Public Archives; Commission of Veterans Affairs; Delaware Veterans Home; Division of Professional Regulation; Public Service Commission; Division of the Public Advocate; Office of Human Relations; Commission for Women; Public Employment Relations Board; Merit Employee Relations Board; and Public Integrity Commission.

Agencies with regulations are as follows:

**State Bank Commissioner** – The Office of the State Bank Commissioner licenses and provides regulatory oversight of 14 banks, 30 non-deposit trust companies, two building and loan associations

and more than 600 other licensed financial service providers such as mortgage brokers and lenders, consumer finance companies, check sellers and money transporters. The Office also licenses more than 1,400 mortgage loan originators. The Bank Commissioner is appointed by the Governor and is responsible for developing and issuing state regulations that govern the activities of such persons.

**Division of Professional Regulation** – The Division of Professional Regulation (DPR) provides administrative and investigative support for 35 boards and commissions that regulate 53 professions, trades and events. The agency has more than 80,000 licensees. However, DPR has no authority to adopt or revise regulations relating to those boards and commissions, in which that power is vested.

**Public Service Commission** – The Delaware Public Service Commission (PSC) currently has 29 regulations in place specifying the requirements for regulated public utilities and procedures for interacting with the division. These include the overall Rules of Practice and Procedure, general utility regulatory requirements and specific regulations governing electric, gas, telecommunications, basic cable, water, wastewater, vehicle franchise notifications and intrastate gas pipeline safety.

**Employment Boards** – The Merit Employee Relations Board (MERB) and the Public Employment Relations Board (PERB) are committed to ensuring due process and fair process in all cases brought before them. The regulations that apply to both boards help guide the hearing process and provide for a clear explanation of the rights of the parties involved in that process.

**Division of the Arts** – The Division of the Arts has a set of regulations instituted in 2010 that govern the process for making grants to individual artists and arts organizations, as well as community-based organizations, arts education providers and regional/national nonprofit organizations. The regulations address specifics of the grant award process and set out a procedure to appeal grant decisions.

**Human Relations Commission** – The Human Relations Commission has two sets of regulations which relate to the Commission and staff's administration of federal Equal Accommodation and Fair Housing law.

## **II. THE PUBLIC INPUT PERIOD**

The public outreach process is described in the first section of this report. In addition to the process described in that section, the Department sent out news releases on December 13, January 7 and January 23 regarding the upcoming hearings to print, radio, television and online media outlets statewide.

Because a great majority of the regulations within our Department directly relate to professions and events governed by boards and commissions supported by the Division of Professional Regulation, the Director of the Division of Professional Regulation sent a letter in December to all members of such boards and commissions, informing them of the EO 36 process and requesting that each board and commission review the regulations they promulgate for possible streamlining or elimination.

Secretary Jeffrey Bullock personally conducted the public hearings in Kent and Sussex Counties. Chief Deputy Secretary of State Rick Geisenberger presided over the public hearing in New Castle County. Deputy Secretary of State James Collins attended the hearings in Kent and Sussex Counties. The proceedings were conducted by the Division of Professional Regulation's Chief Hearing Officer, Roger Akin, Esq. Also in attendance were those division directors whose offices were governed by regulation or provided staff support to boards and commissions with regulations.

### III. SUMMARY OF COMMENTS RECEIVED

#### A. Public Comments

No input was received at either the Kent County or New Castle County hearings conducted by the Department. One citizen provided comments at the Sussex County hearing. That individual is the Licensure Chair of the Delaware Dietetic Association. She spoke in favor of the continued vigilance of the Delaware Board of Dietetics/Nutrition in licensing and ensuring the professional competence of dietitians and nutritionists.

The Department has also received one comment by correspondence, two comments by email and three comments on “Comment Submission Forms” prepared for the input solicitation process. Those comments are summarized below by board or profession.

- *Board of Medical Licensure and Discipline*

Two separate comments were received, one of which falls under the regulatory purview of the Board. The commenter stated that the per-page fees allowed by Board regulation for copies of medical records to be transferred from one physician to another are too high and “unreasonable.” (Bd. Reg. 29.0). He further argued that there is a substantial discrepancy between fees which may be charged by physicians and the maximum fees which may be charged by public agencies for photocopies. The commenter’s letter was accompanied by a petition signed by 246 individuals.

A second comment regarding the medical profession was received by email from a Maryland physician. He stated that he is a geriatrician who sees no patients below the age of 65. He questions the need for the statutory requirement that all physicians renewing licenses with the Delaware Board certify that they have undertaken training in “recognition of child sexual and physical abuse.” (24 *Del. C.* § 1723(c)). This comment is more appropriately addressed to the General Assembly.

- *Board of Electrical Examiners*

A comment received from a New York law firm criticized a regulation proposed by the Board which would define electrical work to be performed by licensees to include work covered by the National Electrical Code. The commenter contends that such a regulation would create an “unnecessary burden” on the electrical construction industry, and suggests an exception for maintenance and operations activities performed in commercial real estate facilities. The commenter notes that such work is currently performed by “trained and qualified persons.”

- *Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners*

Though primarily directed at regulations of the Department of Natural Resources and Environmental Control, three submission forms pertained, in part, to the licensed installation of water softeners. The three commenters take issue with any requirement that water softeners be installed in Delaware by Master Plumbers only. One commenter argued that certified pump installers and other certified water professionals be permitted to perform such work. Two commenters argued that Water Conditioning Installers licensed in other states be permitted to perform such work in Delaware by reciprocity or that a new license be created in Delaware specifically for this purpose.

#### B. Internal Review Process

In light of the lack of significant public input, the Department and its constituent offices and divisions undertook their own review of regulations for possible streamlining or elimination. As set forth below, the Department was already engaged in the process of reviewing certain sets of regulations. Further discussion follows.

- **Division of Professional Regulation**

The Division of Professional Regulation performed an internal review of regulations relating to professions and events governed by the various boards and commissions that it supports with administrative and investigative staff. Because only the individual boards and commissions have the power to propose regulation changes, these are only recommendations. These boards and commissions have been adding the recommendations to meeting agendas for discussion and establishing committees to undertake reviews.

The goal of the review of regulations was to identify rules that are obsolete or incorrect due to system-related changes or that impose obstacles to efficient operating procedures or optimal utilization of our licensure system and online services. The staff focused on rules that they encounter in the course of business, such as setting up online renewals, training new staff, developing operating procedures, or creating/revising forms.

**In total, the Division of Professional Regulation identified 124 recommended revisions to regulations governing the operation of 35 different boards for which the Division provides support.** An executive summary is below:

#### *License Renewal – 53 issues*

Forty-four sections in 22 professions still refer to, or imply existence of, paper renewal forms. For example, three rules on hardship requests (continuing education extensions) require the renewal fee to be submitted with the requests.

The most significant were those that deal with late renewal:

- Overlap of renewals due to prolonged three-year late periods
- Requirement for notarized statements attesting to non-practice after expiration
- Absence of rule on length of late period

Finally, several issues have arisen as a result of the Architect Board's rule changes last year in which they adopted a national continuing education model. It appears that the impact on renewal and audit operations was not fully grasped. They also deleted, presumably by accident, their rule for proration of continuing education for the first renewal.

#### *Audits – 16 issues*

Twelve of these issues pertain to hinging the due date of documentation on the date the licensee receives the audit notice instead of the date of the notice itself, an issue that has arisen in rule-to-show-cause hearings. Although we no longer have pre-renewal audits in any profession, a few rules remain that refer to the audit taking place before the renewal.

#### *Inactive Status – 14 issues*

Inactive status has always been somewhat problematic because of inconsistency from profession to profession. Most professions' inactive rules fall into two categories. One type renews the inactive license online every two years, in the same manner and on the same cycle as the actives, for an indefinite period of time. The other type is given a "fixed period" (e.g., five years) of inactive status and doesn't have to renew it; if not reactivated to active status by the end of the fixed period, the license simply terminates.

The rules on inactive licenses in three professions – Social Work, Mental Health and Podiatry – call for renewal but also impose a limit on how long a licensee may remain inactive. It is the combination of a renewable inactive with a limited period that makes it impossible to fully automate the renewals as we have in professions that have renewable inactive licenses but no limitation (e.g.,

Nursing, Real Estate, Physical Therapy, Electrical, Occupational Therapy, etc.). For Social Work, we cannot put a renewal application online because they require inactive licensees to renew every year while active licensees renew every two years. Our recommendations ask these Boards to choose one of the two categories that we can automate – either a renewable inactive with no limitation or a fixed period inactive – instead of the “hybrid” that they have now.

Two professions – Nursing Home Administrators and Medical (Physician Assistant and Genetic Counselor) – have statutory authority for inactive status but have not promulgated rules, and the inactive status has not been implemented. We hope that, when they automate, we can avoid the “hybrids” described above.

#### *Online Services – 5 issues*

Rules that require address changes or duplicate requests to be submitted in writing or by certified mail conflict with use of the demographic and duplicate license online services. Another rule even states that no action will be taken on any matter unless submitted to the Board in writing by mail.

#### *Fees – 4 issues*

One rule (Land Surveyors) still describes the obsolete prorated license fee due on Board approval. The Medical rules quote specific (obsolete) fee amounts for application and renewal.

#### *Initial Application – 1 issue*

One reference we noted appears to conflict with delegation of authority to “fast-track” an application by requiring Board review of Architect reciprocity applications.

In addition to these proposed changes, the public comments related to regulations will also be passed on to the respective boards for possible action.

### • **Office of the State Bank Commissioner**

As stated above, the Office of the State Bank Commissioner (OSBC) did not receive any public comments on the Office’s regulations. However, OSBC is in the process of updating 22 regulations that apply to non-bank businesses licensed by the Bank Commissioner to provide financial services to consumers in Delaware. The purpose of the review is to incorporate changes in state and federal law that apply to the licensees, as well as to update the regulations to reflect modern business practices and to bring more clarity, uniformity, and consistency to the governing regulations. Such uniformity and consistency is especially notable for businesses who are engaged in multiple activities regulated by the Bank Commissioner.

Consistent with the spirit of Executive Order 36, the OSBC had begun the process of amending some of its regulations before the public hearing process for the Department of State was complete. The first four proposed revised regulations, dealing with Chapter 23 (Sale of Checks and Transmission of Money) and Chapter 27 (Cashing of Checks, Drafts or Money Orders) of Title 5 of the Delaware Code, were published in the April 1, 2013 edition of the Register of Regulations. The 22 regulations under review are promulgated in accordance with various licensing chapters in Title 5, as follows:

#### Chapter 21 (Mortgage Loan Brokers):

- 2101 (Operating Regulation)
- 2102 (Minimum Records)
- 2103 (Schedule of Charges)
- 2104 (Minimum Disclosure and Agreement Requirements)

- 2105 (Report of Delaware Loan Volume)
- 2106 (Report of Delaware Assets)

Chapter 22 (Licensed Lenders):

- 2201 (Operating Regulation)
- 2202 (Minimum Records)
- 2203 (Schedule of Charges)
- 2204 (Surety Bond or Irrevocable Letter of Credit)
- 2205 (Report of Delaware Loan Volume)
- 2206 (Report of Delaware Assets)

Chapter 23 (Sale of Checks and Transmission of Money)

- 2301 (Operating Regulation)
- 2303 (Report of Delaware Volume)

Chapter 27 (Cashing of Checks, Drafts or Money Orders)

- 2701 (Operating Regulation)
- 2702 (Minimum Records)

Chapter 29 (Financing the Sale of Motor Vehicles)

- 2901 (Operating Regulation)
- 2902 (Minimum Records)
- 2903 (Report of Delaware Loan Volume)
- 2904 (Report of Delaware Assets)

Chapter 34 (Pre-need Funeral Contracts)

- 3401 (Operating Regulation)
- 3402 (Surety Bond or Irrevocable Letter of Credit)

The OSBC strives to protect the public interest by ensuring compliance with consumer financial service laws and regulations and ensuring the financial health of the State's financial institutions while also making Delaware an attractive jurisdiction to expand financial products and services. Because we can always be doing a better job, the OSBC will continue to monitor the effectiveness and consistency of its regulations.

- **Merit Employee Relations Board/Public Employment Relations Board**

The Merit Employee Relations Board (MERB) and the Public Employment Relations Board (PERB) are committed to ensuring due process and fair process in all cases brought before them. In an effort to provide additional transparency, board staff has in the last couple of months made their decisions available online on their respective websites (decisions going back to 1984 for PERB and 1995 for MERB).

The merger of the MERB and PERB under one executive director during the Markell administration has brought best practices of mediation, arbitration and administrative decision making to the MERB. It has also allowed us to move cases along in a more expeditious manner, fully adhering to the Administrative Procedures Act.

- **Public Service Commission**

The Delaware Public Service Commission (PSC) administers an open and active regulatory regime governing the State's relatively small number of regulated utilities all of which actively participate in the rulemaking process. In general, there are ample opportunities for businesses and individuals to

be involved in recommending regulatory changes including informal public workshops and formal ratemaking and rulemaking procedures.

While no comments from the public were received during the comment period regarding PSC regulations, the Commission and staff remain open to recommendations that would simplify, improve and expedite the regulatory process. The PSC takes up recommendations on a regular basis through its normal procedures and frequent proceedings.

The PSC's Administrative Codes are routinely updated to reflect legislative changes and process changes permitted by Commission Order. Dates of last revision vary from 1990 to the PSC's most recent Renewable Portfolio Standard update in May 2012 (*see Table 1 below*).

To increase transparency and lower the costs for the public and businesses to participate in the regulatory process, the PSC is currently developing an automated e-filing system which will require some regulatory changes. The PSC anticipates reviewing and potentially updating the following Administrative Codes during CY 2013: Rules of Practice and Procedure (1001); and Rules for Depending on Commission direction, the PSC staff may review and update additional regulations to ensure compliance with any current legislative changes.

- **Division of the Arts**

The regulations governing the grant-making process are less than three years old and have proven to be effective thus far.

- **Human Relations Commission**

The State Human Relations Commission (SHRC) has not formally reviewed its regulations for Equal Accommodations or Fair Housing, but has had conversations with its Deputy Attorney General about possibly amending the current Equal Accommodation regulation regarding the filing of complaints and the hearing process. The matter has been placed on the agenda for the Commission's April meeting.

- **Division of Corporations**

The Division of Corporations does not issue any regulations through the Registrar of Regulations. However, the Division does work closely with hundreds of small businesses and law firms in Delaware that provide incorporation services. Legislation enacted in 2006 authorized the Secretary of State to develop qualifications for registered agents to be listed on the Division's website. The Division developed such an internal policy shortly thereafter and currently lists over 100 agents on its website. In response to requests from businesses that the Division provide clear, transparent, and consistent application of these qualifications, the Division compiled and posted these qualifications in a single comprehensive "Registered Agent Listing Standards" document in 2012. These standards are provided to any agent requesting to be listed on the website.

## Transportation, Department of

**Number of Comments Received: 43**

**Number of Comments Relating to Specific Regulations: 28**

**Number of Regulations Amended or Deleted: 23** (16 amended, 7 deleted)

### ***Highlights:***

- In response to comments that small businesses should not be held to the same standard of review as larger businesses that generate more average daily trips, the Department is revising its *Subdivision Streets Manual* to outline a new process for obtaining approval for commercial plans that produce less than 199 average daily trips.
- The Department requires the installation of multi-use paths, or a payment in lieu of installation, for all development plans. In response to comments that this requirement places a hardship on developments in less-dense areas, the Department will amend the applicable regulation to allow for more flexibility when development occurs in lower-density areas.
- In response to comments that it is inequitable to require new entrance permits whenever ownership of a parcel changes, even when the parcel's use remains the same, the Department is amending its *Subdivision Streets Manual* to make it clear that a change in ownership will not require a new permit.
- As a result of its internal review, the Department (1) will delete 7 DMV regulations that are outdated or superseded by statute, and (2) will clarify and consolidate an additional 15 DMV regulations that are duplicative or otherwise should be streamlined.

## **I. OVERVIEW OF AGENCY AND APPLICABLE REGULATIONS**

### **A. Agency**

The Department of Transportation is responsible for the care, management and control of nearly all public roads in the state. Beginning in the late 1960s, the state assumed responsibility for public transit, formally handled by private companies. In addition, the Department oversees the work performed by public carriers including railroads, taxi, limousines, and others engaged in the business of moving people and goods. DelDOT is also responsible for administering the state's motor vehicle laws, which include controlling the actions of vehicle operators, the condition of the vehicles and the means for collecting all taxes and fees associated with them. Lastly, the department has general supervision over the state's aeronautics program. DelDOT is comprised of nine divisions, including the following:

- Transportation Solutions: The Division of Transportation Solutions develops, constructs and maintains the State's infrastructure. In addition, this division provides support services to other divisions within the Department.
- Maintenance & Operations: The mission of Maintenance & Operations is to maintain the state's road transportation network in a state of good repair. Among other responsibilities, the division provides emergency response to weather events; manages the Community Transportation Fund (CTF); and manage DelDOT's equipment fleet maintenance.
- Planning: The Planning Division is responsible for the Department's planning and permitting functions. In addition, the Planning Division provides transportation information and advice to local governments in connection with land use decisions and collecting, analyzing, and publishing transportation-related data.

- Delaware Transit Corporation: DTC is the entity responsible for managing and operating the DART First State system of Paratransit and fixed-route bus and train services.
- Motor Vehicles: The Division of Motor Vehicles monitors and processes over 850,000 registered vehicles and over 650,000 licensed drivers. Among other responsibilities, DMV is responsible for vehicle inspection and titling, issuing driver's licenses), licensing fuel dealers, and managing toll services on Rt. 1 and I-95.

Other divisions within DelDOT include Finance, Human Resources, Public Relations, and Technology & Support Services.

## **B. Regulations**

The Department is responsible for the administration of 76 regulations in total. Of that number, 66 regulations were subject to the EO 36 process. Many department regulations are a reflection of state code or by direction of the federal government, as the department is a recipient of federal funding. For instance, the Federal Aviation Administration dictates the regulations governing aeronautics. The Federal Transit Authority establishes the procedures for operating and providing transit services. The Federal Highway Administration provides direction on the department's design and utility manuals, as well as the Manual on Uniform Traffic Control Devices. In addition, the majority of DMV's regulations are a result of federal standards.

The regulation administered by the Department that most affects the public is the *Standards and Regulations for Subdivision Streets and State Highway Access* (the "*Subdivision Streets Manual*"). The *Subdivision Streets Manual* currently consists of nine chapters, and it regulates many aspects of the commercial and residential development process including traffic impact studies, entrance permits, multi-use paths, and other issues. Specific issues relating to the *Subdivision Streets Manual*, and the Department's response to public comments relating to this regulation, are detailed below.

## **II. THE PUBLIC INPUT PERIOD**

Public hearings were held in accordance with the schedule set forth in the first section of this report. In addition to the public outreach process described in that section, DelDOT also reached out via email to various stakeholders, including civic associations, chamber of commerce organizations, state legislators, the Committee of 100, the Home Builders Association of Delaware and the American Council of Engineering Companies of Delaware.

Secretary Bhatt personally attended and conducted the Kent County hearing. The New Castle County and Sussex County hearings were conducted by Deputy Secretary Nicole Majeski. Also, attending the hearings from the department were Policy Advisor Dawn Hopkins, Director of Public Relations Geoff Sundstrom and Assistant Director of Development Coordination Mark Cote.

## **III. SUMMARY OF COMMENTS RECEIVED**

DelDOT received a total of 43 comments from 24 individuals and organizations. Twenty-nine (29) comments were received during the hearings (24 Sussex, 0 Kent, 5 New Castle County). An additional 14 comments were received via the online Comment Submission Form.

### **A. *Standards and Regulations for Subdivision Streets and State Highway Access***

The most frequent regulation on which the department received comments was DelDOT's *Standards and Regulations for Subdivision Streets and State Highway Access*, which received 28 comments. Comments regarding this regulation include the following:

- Small Businesses: The Department received 5 comments relating to the impact the *Standards and Regulations for Subdivision Streets and State Highway Access* regulations have on small businesses. The Department received comments that many small businesses do not generate a significant number of average daily trips and should not be held to the same review as a larger business producing a significant number of average daily trips, thus impacting the transportation network. As one commenter stated at the Department's public hearing in Sussex County, "If you're a pharmacy or a Walmart, you're pretty much subject to the same process. And there's just a lot of things you have to through, that these smaller projects and smaller businesses are subject to that they're put under the same scrutiny as the larger ones."
- Multi-Use Paths: The Department received 5 comments regarding the requirement to install or pay a fee in lieu for multi-use paths. All comments received recommended removing this requirement.
- Entrance Permits: The Department received 9 comments regarding entrance permits. Most of the comments expressed frustration over having to get a new entrance permit when ownership of a parcel changed, even though the use of the building was not changing or an acceptable use under the local jurisdictions land use code was being put in place.
- Traffic Impact Studies: The Department received eight comments regarding traffic impact studies. Although not technically part of the EO 36 process, DelDOT did enact significant revisions to its regulations concerning Chapter 2 of the *Standards and Regulations for Subdivision Streets and State Highway Access* relating to traffic impact studies during the EO 36 review period. All comments received on traffic impact studies during the EO 36 process were submitted as part of the record and considered during the Chapter 2 review process. The changes the Department is making to Chapter 2 will significantly improve the efficiency and predictability of the traffic impact study process.

## **B. Overall Development Plan Review Process**

During the hearings and public comment period, the Department also received 7 comments regarding the overall approval process for reviewing development plans or entrance permits. While this process is not regulated by a regulation, the Department felt it was important to address this in the report due to the fact that its overall review process does have an impact on economic development.

The comments indicated a general consensus that the process takes too long; entrance plans and subdivision plans should not be held to the same review process; divisions are commenting on areas of the plan that are outside their expertise; multiple reviews are taking place and if a conflict arises between divisions; and the Division of Planning should have the ultimate authority to make the final decision.

Development Coordination, a section of the Division of Planning, is responsible for the development review process. In an effort to give more predictability to the process, Development Coordination developed two years ago an internal policy of committing to review plan submission and provide comments within 42 days. Prior to this process being in place, there were no deadlines or certainty as to when comments would be issued. Once a plan is received within Development Coordination, it is then shared with all of the relevant divisions within DelDOT for their review and comment. The Department has also instituted a SharePoint System to be able to distribute the plans to the various divisions electronically. This process has also improved internal efficiencies and review time.

In an effort to address the concerns raised regarding multiple reviews and address conflicts amongst divisions, internal policies are being drafted to state that a division shall only comment on areas of a plan that fall under their expertise. In the event a conflict does arise, the Division of Planning will have the final say. This should eliminate the number of comments and reviews that are currently taking place. Once this new procedure is in place, we will be able to re-evaluate the 42 day review period in the hopes of reducing it further.

### **C. Other Comments**

The Department received several comments requesting changes that would require legislation. These included comments on the following subjects:

- Outdoor Advertising: One commenter requested that the spacing distance for an electronic billboard from another billboard and from an intersection be reduced, to be more in line with other states. Although the Department does have a regulation governing Outdoor Advertising, the distance-between-signs and other requirements are prescribed by statute (17 *Del. C.* § 1110). specifically regulates the installation of electronic billboards. Thus, fulfillment of the commenter's request would require legislative action.
- Brick Mailboxes: One commenter requested that the Department grandfather existing brick mailboxes within the right-of-way from the provisions of Title 17, Section 525, which gives DelDOT the authority to remove artificial obstructions placed within the clear zone that are a hazard to safe passage. With regards to brick mailboxes within a subdivision, in order for the Department to accept subdivision streets into the state maintenance system, the streets must be up to DelDOT standards. Illegal, fixed structures within the clear zone of the right-of-way are prohibited, regardless of the length of time they have been in place.
- DMV Regulation - Z Endorsements: The Department received a comment suggesting that a DMV regulation requiring a criminal background check for a Z Endorsement is redundant to what other states are requiring and will cause an increase in unemployment. Although, this requirement does appear in a DMV regulation, the requirements for obtaining a Z endorsement are specified by statute, including the need to have criminal history for employees. The intent of this provision is to ensure the safety of the public using these services.

The following additional comments were received by the Department received on issues not impacted by a specific regulation:

- Grass Cutting: A commenter expressed concern that grass cutting along roadways does not occur as frequently as necessary. The Department did reduce the number of times it cuts the grass as a cost savings measure a few years ago, due to the department's financial situation.
- Railroad Crossings: The Department received a comment regarding the need to improve railroad crossings. DelDOT does not regulate or control the rail crossing in the state. The railroad companies are the responsible party, which are regulated by the Federal Railroad Administration. DelDOT does inspect crossings and reports problem conditions to the railroad, and works with them to manage impacts to traffic due to railroad-related construction and maintenance, and in the creation of necessary detours.
- Contracts: The Department received a comment in writing questioning why DelDOT is not paying the full rate to engineering consultants working on DelDOT contracts. While the comment was referenced as a regulation, DelDOT's contract process is a practice. DelDOT's standard contract language allows prime and subconsultants to annually submit a

certified payroll listing of actual salaries in effect as of December 1, for approval by the department. However, in late October 2009, DelDOT notified our consulting firms that the department would not entertain any requests for salary increases through the end of the fiscal year (June 2010), due to the financial condition of the department and the state. This practice remains in place from a financial standpoint.

#### IV. REGULATORY CHANGES RESULTING FROM EO 36 PROCESS

##### A. Revisions to the *Standards and Regulations for Subdivision Streets and State Highway Access*

Concurrent with the EO 36 process, the Department has been working with a consultant for more than a year to do a complete review and streamlining of the *Standards and Regulations for Subdivision Streets and State Highway Access*. As a result of this review and in particular, the numerous comments received by the Department during the EO 36 process, DelDOT is making several important revisions to the *Standards and Regulations for Subdivision Streets and State Highway Access*. These revisions, which will be published in the August 2013 Register of Regulations, include the following:

- Small Businesses: As a result of comments that small businesses do not generate a significant number of average daily trips and should not be held to the same review as a larger business producing a significant number of average daily trips, the Department is revising Chapter 1 of the *Subdivision Streets Manual* to outline a new process for obtaining approval for commercial plans that produce under a 199 average daily trips. A copy of the draft proposal can be found on the Department's website at [www.deldot.gov](http://www.deldot.gov).
- Multi-Use Paths: As set forth above, the Department has been requiring the installation of multi-use paths or a payment in lieu of for all development plans. The Department recognizes that this requirement may put a hardship on developments that are occurring in Level 3 and Level 4 development areas, where there is less density and interconnectivity is not possible. As a result, the Department will amend this regulation to allow for more flexibility when development is occurring in Level 3 and Level 4 areas. A copy of the draft proposal can be found on the Department's website at [www.deldot.gov](http://www.deldot.gov).
- Entrance Permits: Several commenters expressed frustration over having to get a new entrance permit when ownership of a parcel changes, even in instances where use of the building did not change or an acceptable use under the local jurisdictions land use code was being put in place. As long as the use is still the same or an acceptable use that will not create more average daily trips, the Department agrees that a new permit should not be required for a simple ownership change. Thus, the Department is amending Chapters 1 and 8 of the *Standards and Regulations for Subdivision Streets and State Highway Access* to directly state that a change in ownership will not require a new permit.
- New Development Coordination Manual: In addition to the revisions to the *Standards and Regulations for Subdivision Streets and State Highway Access* described above, the Department is in the process of finalizing a more condensed and streamlined regulation that will now be referred to as the *Development Coordination Manual*. The new regulation will be reduced from nine chapters to eight. It is the department's goal to be able to provide a more streamlined approach to the review process, while still ensuring the safety of residents and the traveling public. The Department intends to finalize the new *Development Coordination Manual* and publish it in the Register of Regulations this fall.

## B. Changes Resulting from Internal Department Review

In addition to the public comment process described above, the Department underwent an internal review of its regulations to determine if additional regulatory revisions were possible. As a result of that review, the Department is eliminating the following seven DMV regulations, which will appear in the August 2013 Register of Regulations:

- Regulation 2202 - Issuance of Duplicate Driver's Licenses: Stipulates an unnecessary policy that the division no longer performs.
- Regulation 2214 – Waiver of Written Examinations for Certain New Residents: This regulation is no longer needed because it is already covered under 21 *Del. C.* § 2713.
- Regulation 2251 – Assessment of a Fee When Assigning a Special Serial Number on a Motor Vehicle: This regulation is no longer needed because it is superseded by 21 *Del. C.* § 2310.
- Regulation 2264 – Use of Dealer License Plates on Boat Trailers: This regulation is no longer needed.
- Regulation 2272 – Authorization of Police Agencies to Issue Vehicle Inspection Notices: This regulation is no longer needed because it is now covered under 21 *Del. C.* § 2144(a).
- Regulation 2274 – Distribution of Literature Advertising Businesses: This regulation is no longer needed because existing ethics laws cover this action.
- Regulation 2275 – Requirements for Licensing of Vehicle Dealers: This regulation is no longer needed because it is now covered under Title 21, chapter 63.

In addition, the Department has identified 15 additional regulations administered by DMV to be clarified and consolidated, which will appear in the September 2013 Register of Regulations. They include the following:

- Regulation 2203 – Implied Consent and Administrative *Per Se* Other Administrative Hearings of Record
- Regulation 2204 - Police Authorization to Pick Up Suspended or Revoked Driver Licenses, Vehicle Registration Cards, License Plates or Certificates of Title
- Regulation 2205 - Authorization of Judges and Aldermen in Delaware Courts to take Possession of Drivers' Licenses
- Regulation 2207 – Suspension of Permanent Licenses
- Regulation 2208 – Concerning Driver Improvement Problem Driver Program
- Regulation 2209 – Driver's License for Armed Forces Personnel
- Regulation 2211 – Issuance of Restricted Driving Privileges as the Result of a Suspension or Revocation Order Received from Family Court Relative to a Juvenile Being in Violation of 21 *Del.C.* §4177
- Regulation 2212 – Issuance of Occupation Driver's License After Conviction of No Insurance on a Vehicle
- Regulation 2215 – Fee for Exchange of Driver License at Age 21

- Regulation 2216 – Periods of Revocation for Persons Convicted Under 21 Del. C. § 4177L
- Regulation 2218 – Commercial Driver Training Schools
- Regulation 2219 – Motorcycle Rider Education Courses Provider Requirements
- Regulation 2220 – Determining Non-U.S. Citizen Driver License and Identification Card Expiration Dates
- Regulation 2255 – Registration Plates on Driver Education Cars
- Regulation 2281 – Accounts Receivable Procedure/Uncollectible Checks

## V. CONCLUSION

In sum, as a result of the EO 36 process, the Department will amend or delete a total of 23 regulations (16 amended, 7 deleted), with significant revisions to the Department's *Standards and Regulations for Subdivision Streets and State Highway Access*. All of the foregoing changes will be published in the August 2013 and September 2013 Register of Regulations. Additionally, such changes can be viewed on the Department's website at [www.deldot.gov](http://www.deldot.gov).

In addition, the Department is finalizing a more condensed and streamlined regulation to replace the *Standards and Regulations for Subdivision Streets and State Highway Access*. The new regulation will be referred to as the *Development Coordination Manual*. The Department intends to finalize the new *Manual* and publish it in the Register of Regulations this fall.