

Part X
General Regulations for State Agencies
Chapter 101
ADMINISTRATIVE PROCEDURES
Subchapter I
Policy and Definitions

§ 10101 Policy.

The purpose of this chapter is to standardize the procedures and methods whereby certain state agencies exercise their statutory powers and to specify the manner and extent to which action by such agencies may be subjected to public comment and judicial review.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 71 Del. Laws, c. 48, § 7.)

§ 10102 Definitions.

As used in this chapter:

(1) "Agency" means any authority, department, instrumentality, commission, officer, board or other unit of the state government authorized by law to make regulations, decide cases or issue licenses. Agency does not include the General Assembly, courts, municipalities, counties, school districts, the University of Delaware, Delaware State University, Delaware Technical and Community College and other political subdivisions, joint state-federal, interstate or intermunicipal authorities and their agencies.

(2) "Agency action" means either an agency's regulation or case decision, which could be a basis for the imposition of injunctive orders, penal or civil sanctions of any kind or the grant or denial of relief or of a license, right or benefit by any agency or court, or both.

(3) "Case" or "case decision" means any agency proceeding or determination that a named party as a matter of past or present fact, or of threatened or contemplated private action, is or is not in violation of a law or regulation, or is or is not in compliance with any existing requirement for obtaining a license or other right or benefit. Such administrative adjudications include, without limitation, those of a declaratory nature respecting the payment of money or resulting in injunctive relief requiring a named party to act or refrain from acting or threatening to act in some way required or forbidden by law or regulation under which the agency is operating.

(4) "Court" means the Superior Court of the State except for appeals from the Division of Child Support Services, which will be heard by the Family Court of the State.

(5) "License" means the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law, but it does not include a license required solely for revenue purposes.

(6) "Party" means each person or agency named or admitted in an agency proceeding as a party, or properly seeking and entitled as of right to be admitted as a party to an agency proceeding.

(7) "Regulation" means any statement of law, procedure, policy, right, requirement or prohibition formulated and promulgated by an agency as a rule or standard, or as a guide for the decision of cases thereafter by it or by any other agency, authority or court. Such statements do not include locally operative highway signs or markers, or an agency's explanation of or reasons for its decision of a case, advisory ruling or opinion given upon a hypothetical or other stated fact situation or terms of an injunctive order or license.

(8) "Subordinate" means either:

- a. One or more but less than a quorum of the members of a board constituting an agency; or
- b. Any person or persons designated in writing to act on its behalf.

(9) "Substantive" or "substantive in nature" means, when used in connection with regulations, those regulations allowing, requiring or forbidding conduct in which private persons are otherwise free or prohibited to engage, or regulations which state requirements, other than procedural, for obtaining, retaining or renewing a license or any kind of benefit or recompense.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 65 Del. Laws, c. 228, § 9; 70 Del. Laws, c. 90, § 1; 73 Del. Laws, c. 401, § 1; 80 Del. Laws, c. 234, § 29.)

Subchapter II
Agency Regulations

§ 10111 Organization regulations; rules of procedure.

For the benefit of the public, each agency shall adopt the following regulations:

(1) A general description of its organization, its methods of operations and the manner, including addresses and telephone numbers, whereby the public may obtain information and otherwise deal with the agency; and

(2) A statement of the nature and requirements of all rules of practice and procedure used by the agency to exercise its statutory authority in compliance with this chapter.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2.)

§ 10112 Public information.

- (a) Each agency shall make available promptly to the public upon request, for inspection, originals or legible copies of the following:
- (1) Its regulations, orders, decisions, opinions and licenses;
 - (2) Any documents, papers and other materials considered by the agency in taking agency action; or
 - (3) Any records of the agency reasonably specified by the requesting person.
- (b) When making its documents and other materials available to the public, the agency may:
- (1) Take reasonable precautions to preserve the integrity and security of such documents or materials;
 - (2) Make available only at reasonable, specified intervals documents and materials being actively used by the agency;
 - (3) Limit the availability of information to its regular business hours and place of business;
 - (4) Decline to make available documents and other materials which:
 - a. Relate solely to the agency's internal procedural and personnel practices;
 - b. Pertain to ongoing enforcement investigations which have not yet resulted in agency action;
 - c. Are specifically exempted from disclosure by law; or
 - d. Are confidential or privileged for the same or similar reasons as the Court would hold its records confidential or privileged;
 - (5) Make a reasonable charge for the cost of reproducing or copying such documents or materials.
- (c) The Court shall have jurisdiction of all actions to compel an agency to produce or disclose any documents, materials or information and the agency shall have the burden of sustaining its refusal to produce or disclose as requested.
- (60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2.)

§ 10113 Adoption of regulations; exemptions.

- (a) All regulations, except those specifically exempted, shall be adopted according to the requirements of this chapter.
- (b) Regulations of the following types are exempted from the procedural requirements of this chapter and may be adopted informally:
- (1) Descriptions of agency organization, operations and procedures for obtaining information;
 - (2) Rules of practice and procedure used by the agency;
 - (3) Delegations of authority to subordinates;
 - (4) Nonsubstantive changes in existing regulations to alter style or form or to correct technical errors;
 - (5) Amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations; and
 - (6) Codifications of existing agency or judicial principles of decision derived from previous decisions and rulings.
- Any regulation adopted pursuant to this subsection, along with a copy of the order adopting said regulation, shall be filed with the Registrar of Regulations, and the regulation so filed shall become the official regulation as defined in § 1132 of this title.
- (60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 73 Del. Laws, c. 55, § 1.)

§ 10114 Requests for regulation-making proceedings.

- Proceedings for the adoption, amendment or repeal of a regulation may be initiated by an agency on the motion of an agency member or at the request of any person who so petitions the agency on a form prescribed for that purpose by the Director of the Office of Management and Budget. The agency at its next regular meeting shall either grant the petition and initiate the proceedings specified by this chapter or deny the petition and give its reasons for doing so. If the petition is received by the agency within 5 days of such meeting, the agency may defer action on the petition until the next succeeding regular meeting.
- (60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 75 Del. Laws, c. 88, § 16(5).)

§ 10115 Notice [For application of this section, see 80 Del. Laws, c. 113, § 8]

- (a) Whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication, in full or as a summary, in the Register of Regulations pursuant to § 1134 of this title. Any submission to the Registrar hereunder shall include, to the extent applicable, any agency regulatory statement required to be submitted by the agency pursuant to Chapter 104 of this title.
- (1) The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act and reference to any other regulations that may be impacted or affected by the proposal;
 - (2) The notice shall state the manner in which persons may present their views: (i) if in writing, of the place to which and the final date by which such views may be submitted; or (ii) if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations.
- (b) If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation a minimum of 20 days prior to such public hearing and shall

also be advertised at least 20 days prior to such public hearing by electronic posting on a designated State of Delaware website, approved by the Registrar of Regulations by May 1, 2013, which shall be accessible to the public.

(c) The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

(d) No regulation being proposed to be formulated, adopted, amended or repealed shall be published if the requisite notice prescribed in subsection (a) of this section is not submitted with the proposed regulation to the Registrar of Regulations.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 68 Del. Laws, c. 159, § 1; 71 Del. Laws, c. 48, § 8; 72 Del. Laws, c. 88, § 4; 78 Del. Laws, c. 288, § 6; 80 Del. Laws, c. 113, §§ 5, 6.)

§ 10116 Written submittals.

Before adopting, amending or repealing any regulation, an agency shall give notice as prescribed in § 10115 of this title and shall receive all written suggestions, compilations of data, briefs or other written materials submitted to it by any person. The agency, in its discretion, may designate a subordinate to organize, classify, summarize and make recommendations with respect to the materials, which recommendations may be considered with the materials by the agency in reaching its conclusions.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2.)

§ 10117 Public hearings.

When an agency is required by law to hold public hearings before adopting, amending or repealing a regulation and, otherwise, if an agency in its discretion determines to hold public hearings, in addition to giving opportunity for the submission of written materials, the following shall apply to the conduct of such hearings:

(1) The hearing shall be conducted either by the agency or by a subordinate designated by the agency for that purpose who shall be empowered in connection with such hearing to:

- a. Issue subpoenas, in the agency's sole discretion, for witnesses or other evidence, on the agency's initiative or at the request of any person;
- b. Administer oaths to witnesses; and
- c. Exclude irrelevant, immaterial, insubstantial, cumulative, privileged matter and unduly repetitive proofs, rebuttals and cross-examination.

(2) A record from which a verbatim transcript can be prepared shall be made of all hearings. The expense of preparing any transcript shall be borne by the person requesting it. No part of the public hearing is exempt from this record requirement.

(3) If the hearing notice includes a specific length of time for the holding of the hearing, the hearing shall not adjourn prior to the end of that length of time.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 78 Del. Laws, c. 356, § 1; 80 Del. Laws, c. 327, § 1.)

§ 10118 Agency findings; form of regulations.

(a) The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. The opportunity for public written comment shall be extended for a minimum of 15 days after the final public hearing when 1 or more public hearings are held on the proposal.

(b) At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include:

- (1) A brief summary of the evidence and information submitted;
- (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended;
- (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received;
- (4) The exact text and citation of such regulation adopted, amended or repealed;
- (5) The effective date of the order;
- (6) Any other findings or conclusions required by the law under which the agency has authority to act; and
- (7) The signatures of at least a quorum of the agency members.

(c) In the event an agency makes substantive changes in the proposal as a result of the public comments, evidence and information, the agency shall consider the revised proposal as a new proposal subject to the notice requirements of § 10115 of this title and all other requirements of this subchapter. If the changes are not substantive, the agency shall not be required to repropose the regulation change. Whether a change constitutes substantive or nonsubstantive matter shall be determined by the agency head.

(d) In the event the proposing agency seeks to withdraw its proposal, the proposing agency shall notify the Registrar, in writing, that the proposal is being withdrawn and the Registrar shall publish the withdrawal information in the next issue of the Register of Regulations.

(e) The agency shall file such order with the Registrar of Regulations which shall become the official regulation as defined in § 1132 of this title.

(f) No agency shall adopt a regulation if more than 12 months have elapsed since the end of the public comment period or the last public hearing, whichever is later, on the proposed regulation.

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

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 68 Del. Laws, c. 159, § 2; 71 Del. Laws, c. 48, § 9; 72 Del. Laws, c. 88, § 5; 78 Del. Laws, c. 356, § 2.)

§ 10119 Emergency regulations.

If an agency determines that an imminent peril to the public health, safety or welfare requires the adoption, amendment or repeal of a regulation with less than the notice required by § 10115, the following rules shall apply:

- (1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable;
- (2) The order adopting, amending or repealing a regulation shall state, in writing, the reasons for the agency's determination that such emergency action is necessary;
- (3) The order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days;
- (4) When such an order is issued without any of the public procedures otherwise required or authorized by this chapter, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and
- (5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the Register of Regulations.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 71 Del. Laws, c. 48, § 10.)

Subchapter III

Case Decisions

§ 10121 Application of subchapter.

This subchapter shall apply to all agency case decisions except:

- (1) Decisions relating to the assessment of taxes or tax penalties made by the Tax Appeals Board; or
- (2) Temporary restraining orders and similar orders authorized by law to be issued summarily.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2.)

§ 10122 Notice of proceedings.

Whenever an agency proposes to proceed for a case decision, it shall give 20 days' prior notice to all parties as follows:

- (1) The notice shall describe the subject matter of the proceedings;
- (2) The notice shall inform the parties of the opportunity, if permitted by law, to elect to proceed by informal fact-finding and of the date by which such election must be made;
- (3) The notice shall give the date, time and place the formal hearing will be held if informal fact-finding is not elected;
- (4) The notice shall cite the law or regulation giving the agency authority to act;
- (5) The notice shall inform the party of the right to present evidence, to be represented by counsel and to appear personally or by other representative; and
- (6) The notice shall inform the parties of the agency's obligation to reach its decision based upon the evidence received.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 70 Del. Laws, c. 186, § 1.)

§ 10123 Informal fact-finding.

Where a formal hearing is not required by law and where the parties agree in advance to proceed in such manner, the agency shall acquire the information upon which it bases its decision by means of informal conference or consultation among the parties as follows:

- (1) The agency shall conduct the conference itself or may designate a subordinate to do so;
- (2) The parties may appear in person and by counsel; and
- (3) The parties may submit any relevant factual data, documents, testimony and argument. Only such evidence and argument presented at such conference or presented to the agency and opposing parties before the conference may be taken into consideration by the agency in making its findings and rendering its decision.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2.)

§ 10124 Public hearings; notice.

When required by law or when the parties do not consent to informal proceedings, or when the matters at issue involve price fixing, rate making or similar matters of general public interest, as determined by the agency, the agency shall conduct a formal, public evidentiary hearing to which the following provisions shall apply:

(1) The notice required by § 10122 of this title shall be published in at least 2 Delaware newspapers of general circulation and shall be advertised by electronic posting on a designated State of Delaware website, approved by the Registrar of Regulations by May 1, 2013, which shall be accessible to the public; and

(2) Applicants for licenses, renewals and other rights or benefits shall not be entitled to prior notice of application requirements but shall receive notice of any proposed contest of such applications.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 78 Del. Laws, c. 288, § 7.)

§ 10125 Conduct of public hearings; burden of proof; record.

(a) The hearing may be conducted by the agency or by a subordinate designated for that purpose.

(b) In connection with such hearings, the agency or its designated subordinate may be empowered to:

(1) Issue subpoenas for witnesses and other sources of evidence, either on the agency's initiative or at the request of any party;

(2) Administer oaths to witnesses;

(3) Exclude plainly irrelevant, immaterial, insubstantial, cumulative and privileged evidence;

(4) Limit unduly repetitive proof, rebuttal and cross-examination;

(5) Cause interrogatories to issue and depositions to be taken; or

(6) Hold prehearing conferences for the settlement or simplification of issues by consent, for the disposal of procedural requests or disputes and to regulate and expedite the course of the hearing.

(c) The burden of proof shall always be upon the applicant or proponent.

(d) A record from which a verbatim transcript can be prepared shall be made of all hearings in all contested cases. Transcripts shall be made at the request and expense of any party.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2.)

§ 10126 Proposed orders.

(a) Whenever a subordinate presides over an informal conference or a formal hearing, the subordinate shall prepare a proposed order for the consideration of the agency which shall include:

(1) A brief summary of the evidence and recommended findings of fact based upon the evidence;

(2) Recommended conclusions of law; and

(3) Recommended decision.

(b) When the proposed order is submitted to the agency, a copy shall be delivered to each of the other parties who shall have 20 days to submit in writing to the agency exceptions, comments and arguments respecting the proposed order.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 70 Del. Laws, c. 186, § 1.)

§ 10127 Record.

With respect to each case, all notices, correspondence between the agency and the parties, all exhibits, documents and testimony admitted into evidence and all recommended orders, summaries of evidence and findings and all interlocutory and final orders of the agency shall be included in the agency's record of the case and shall be retained by the agency.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2.)

§ 10128 Decision; final order.

(a) The agency shall make its decision based upon the entire record of the case and upon the summaries and recommendations of its subordinates.

(b) Every case decision of any agency shall be incorporated in a final order which shall include, where appropriate:

(1) A brief summary of the evidence;

(2) Findings of fact based upon the evidence;

(3) Conclusions of law;

(4) Any other conclusions required by law of the agency; and

(5) A concise statement of the agency's determination or action on the case.

(c) Every final order shall be authenticated by the signatures of at least a quorum of all agency members, unless otherwise provided by law.

(d) Every final order shall immediately be mailed or delivered to each party and each other person requesting it.

(e) Every final order may be amended or modified by the same procedure used for the initial adoption of the order.

(f) When any professional licensing board or commission governed by Title 23, 24, or 28, and listed in § 10161(a) of this title, orders, at the conclusion of a hearing, that a license shall be revoked or suspended, the revocation or suspension shall be effective immediately. A written order, pursuant to this section, shall be served no later than 30 days after the hearing date.

(g) When any professional licensing board or commission governed by Title 23, 24, or 28, and listed in § 10161(a) of this title reaches its conclusions of law and determines an appropriate disciplinary action, if any, the Board or Commission shall issue a written decision and order in accordance with this section. However, notwithstanding the provisions of subsection (c) of this section, the decision and order may be issued over the signature of only the President or other officer of the Board.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 77 Del. Laws, c. 369, § 1; 78 Del. Laws, c. 130, § 1.)

§ 10129 Ex parte consultations.

No member or employee of an agency assigned to participate in any way in the rendering of a case decision shall discuss or communicate, directly or indirectly, respecting any issue of fact or law with any person or party, except upon notice to and opportunity for all parties to participate. This section shall not apply to communications required for the disposition of ex parte matters authorized by law or to communications by and among members of an agency, the agency's staff and the agency's attorney.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2.)

Subchapter IV

Licenses

§ 10131 Hearings; notice.

(a) Hearings relating to licenses may be held at a time fixed in the discretion of the agency unless timely requested by a party or required by law or regulation.

(b) Whenever an agency proposes to grant, renew or extend a license, it may do so without notice unless a law or regulation requires notice and opportunity for a hearing.

(c) Whenever an agency proposes to deny an application for a license, timely and properly made, or to revoke, suspend, annul or withdraw a license or where it is required by law or regulation to give notice, it shall first give written notice to the licensee or applicant of the intended action and the reasons therefor. The form of the notice shall comply as far as practicable with § 10122 of this title, except that instead of setting a hearing date, it may afford the party at least 10 days to request a hearing.

(d) Notice of a hearing shall be given at least 20 days before the day it is to be held.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2.)

§ 10132 Effective date of agency's action.

(a) Whenever an application is made to renew a license or for a new license for an activity of a continuing nature, the activity does not become illegal until the application has been finally denied by the agency.

(b) Whenever an agency proposes to revoke, suspend, annul or withdraw a license, such action shall not be effective until a final order is issued, except when the public health, safety or welfare clearly requires emergency action and the agency's order so states.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2.)

§ 10133 Withholding or denying licenses.

No license or renewal for which proper and timely application has been made shall be withheld or denied except for failure of the applicant to comply with the applicable laws and regulations.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2.)

§ 10134 Revoking, suspending, annulling or withdrawing licenses.

No license shall be revoked, suspended, annulled or withdrawn unless the licensee fails to comply with the lawful requirements for retention of such license.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2.)

Subchapter V

Judicial Review

§ 10141 Review of regulations.

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

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

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

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

(e) Upon review of regulatory action, the agency action shall be presumed to be valid and the complaining party shall have the burden of proving either that the action was taken in a substantially unlawful manner and that the complainant suffered prejudice thereby, or that the regulation, where required, was adopted without a reasonable basis on the record or is otherwise unlawful. The Court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency acted.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 48, § 13.)

§ 10142 Review of case decisions.

(a) Any party against whom a case decision has been decided may appeal such decision to the Court.

(b) The appeal shall be filed within 30 days of the day the notice of the decision was mailed.

(c) The appeal shall be on the record without a trial de novo. If the Court determines that the record is insufficient for its review, it shall remand the case to the agency for further proceedings on the record.

(d) The Court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency has acted. The Court's review, in the absence of actual fraud, shall be limited to a determination of whether the agency's decision was supported by substantial evidence on the record before the agency.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2.)

§ 10143 Mandamus for agency action.

Any person aggrieved by the failure of an agency to take action required of it, by law, may bring an action in the Court for an appropriate writ of mandamus.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2.)

§ 10144 Stay pending review.

When an action is brought in the Court for review of an agency regulation or decision, enforcement of such regulation or decision by the agency may be stayed by the Court only if it finds, upon a preliminary hearing, that the issues and facts presented for review are substantial and the stay is required to prevent irreparable harm.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2.)

§ 10145 Commencement of review.

No petition, appeal or other application for relief of the Court shall be considered as having been taken or made until it has been filed with the Prothonotary and served upon the agency in accordance with the rules of the Court.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2.)

Subchapter VI

Registration

§§ 10151 -10155. Definitions; Delaware Administrative Commission created; composition; remuneration; term; duty of agencies; Register of Regulations; powers and duties of Commission.

Repealed by 69 Del. Laws, c. 107, § 2, eff. January 1, 1994.

Subchapter VII

Application of Chapter

§ 10161 State agencies affected.

(a) This chapter shall apply only to the following agencies:

- (1) Appeals Commission, as defined by § 301(b) of Title 4;
- (2) State Banking Commissioner;
- (3) Public Service Commission;
- (4) Real Estate Commission;

- (5) State Human Relations Commission;
- (6) Tax Appeal Board;
- (7) State Insurance Commissioner;
- (8) Industrial Accident Board;
- (9) Environmental Appeals Board;
- (10) Coastal Zone Industrial Control Board;
- (11) State Board of Education;
- (12) Merit Employee Relations Board;
- (13) Division of Boiler Safety;
- (14) Board of Veterinary Medicine;
- (15) Board of Landscape Architecture;
- (16) Board of Clinical Social Work Examiners;
- (17) Board of Architects;
- (18) Board of Podiatry;
- (19) Board of Pilot Commissioners;
- (20) Board of Chiropractic;
- (21) State Board of Electrical Examiners;
- (22) Board of Medical Licensure and Discipline;
- (23) Council of the Delaware Association of Professional Engineers;
- (24) Board of Occupational Therapy Practice;
- (25) Division of Child Support Services;
- (26) Board of Mental Health and Chemical Dependency Professionals;
- (27) State Board of Dentistry and Dental Hygiene;
- (28) Board of Nursing;
- (29) Board of Examiners in Optometry;
- (30) Board of Examiners of Psychologists;
- (31) Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers;
- (32) Board of Professional Land Surveyors;
- (33) Board of Accountancy;
- (34) Board of Pharmacy;
- (35) Board of Geologists;
- (36) Board of Cosmetology and Barbering;
- (37) Commission on Adult Entertainment Establishments;
- (38) Board of Physical Therapy and Athletic Trainers;
- (39) Real Estate Commission;
- (40) Board of Funeral Services;
- (41) Board of Examiners of Nursing Home Administrators;
- (42) Delaware Board of Charitable Gaming;
- (43) Board of Massage and Bodywork;
- (44) Committee of Dietetics/Nutrition;
- (45) Council on Real Estate Appraisers.
- (46) Child Placement Review Board;
- (47) The Professional Standards Board;
- (48) Election Commissioner;
- (49) Board of Plumbing Examiners;
- (50) Manufactured Home Installation Board;
- (51) Division of Professional Regulation; and
- (52) Board of Home Inspectors.

(b) All agencies which are not listed in subsection (a) of this section shall only be subject to subchapters I and II of this chapter and §§ 10141, 10144 and 10145 of this title.

(c) Nothing in this section shall be construed to prevent prosecution under, or be otherwise inconsistent with, Titles 11 and 24.

(d) At a properly convened board meeting, the board president or chairperson of any professional licensing board governed by Title 23, 24, or 28 and listed in subsection (a) of this section that is not already authorized by statute to use hearing panels or committees to resolve cases, may nominate at least 3 members of the board, the 3 members being 2 professional members and 1 public member if practical, to serve on a hearing panel to decide disciplinary complaints and complaints of unlicensed practice. Nominees must be approved by a majority vote of the board members present at the properly convened meeting. The board president or chairperson shall designate 1 member of a hearing panel to serve as the hearing panel chair. Hearing panels shall consist of board members only.

(e) Notice of the panel hearing shall be given and the hearing shall be conducted in accordance with the Administrative Procedures Act, Chapter 101 of this title. All hearings shall be informal without use of rules of evidence. A verbatim record must be kept of all public hearings, a transcript of which must be provided at cost upon a party's request. Decisions of the hearing panel must be made by majority vote of the hearing panel members. Decisions must be based on the evidence presented at the hearing and must be supported by substantial evidence in the record. Decisions must not be based exclusively on hearsay.

(1) If the hearing panel determines that no violation of the applicable provisions of Title 23, 24, 28 or this title or any of the board's rules and regulations promulgated thereunder has occurred, it shall issue an order dismissing the complaint.

(2) If the hearing panel determines that a violation of the applicable provisions of Title 23, 24, 28 or this title or any of the board's rules and regulations promulgated thereunder has occurred, it shall issue an order stating its proposed findings of fact, conclusions of law, and disciplinary sanctions.

(3) If the respondent fails or refuses to appear, the hearing panel may nevertheless proceed to hear the complaint and render a decision.

(f) Orders issued by the hearing panel are not final until approved by the board having jurisdiction. By majority vote of the members present at a properly convened board meeting, the board shall approve or reject the hearing panel's written order based only on the information contained in the order. The board shall overturn the decision of a hearing panel only if it decides that a hearing panel decision is contrary to a specific state or federal law or regulation, is not supported by substantial evidence, or is arbitrary or capricious. If a board does not approve the hearing panel's order, the matter must be remanded to the hearing panel for further proceedings in accordance with the board's written reasons for withholding its approval. Where the respondent is in disagreement with the action of the board, the respondent may appeal the board's decision in accordance with the provisions of the Administrative Procedures Act. The court shall hear the appeal on the record. Stays shall be granted in accordance with § 10144 of this title. Copies of orders must be served personally or by registered or certified mail to each party.

(60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 63 Del. Laws, c. 460, § 15; 63 Del. Laws, c. 461, § 18; 63 Del. Laws, c. 462, § 3; 64 Del. Laws, c. 1, § 2; 64 Del. Laws, c. 39, § 2; 64 Del. Laws, c. 161, § 1; 64 Del. Laws, c. 413, § 4; 64 Del. Laws, c. 476, § 9; 64 Del. Laws, c. 477, § 5; 64 Del. Laws, c. 483, § 2; 65 Del. Laws, c. 172, § 2; 65 Del. Laws, c. 228, § 7; 65 Del. Laws, c. 238, § 1; 65 Del. Laws, c. 378, § 6; 65 Del. Laws, c. 416, § 1; 66 Del. Laws, c. 105, § 10; 66 Del. Laws, c. 128, § 2; 67 Del. Laws, c. 144, § 9; 67 Del. Laws, c. 449, § 2; 68 Del. Laws, c. 297, § 1; 69 Del. Laws, c. 107, § 1; 69 Del. Laws, c. 306, § 3; 70 Del. Laws, c. 143, § 3; 70 Del. Laws, c. 582, §§ 3, 4; 71 Del. Laws, c. 185, § 3; 71 Del. Laws, c. 296, § 18; 71 Del. Laws, c. 298, § 4; 72 Del. Laws, c. 265, § 4; 72 Del. Laws, c. 294, § 54; 72 Del. Laws, c. 338, § 7; 72 Del. Laws, c. 418, §§ 3, 4; 72 Del. Laws, c. 486, § 23; 73 Del. Laws, c. 392, § 1; 75 Del. Laws, c. 105, §§ 6, 7; 75 Del. Laws, c. 365, §§ 5-11; 76 Del. Laws, c. 245, § 1; 76 Del. Laws, c. 413, § 4; 77 Del. Laws, c. 127, § 1; 77 Del. Laws, c. 319, § 1; 77 Del. Laws, c. 463, § 3; 78 Del. Laws, c. 102, § 1; 78 Del. Laws, c. 170, §§ 5-7; 78 Del. Laws, c. 376, § 3; 78 Del. Laws, c. 384, § 2; 79 Del. Laws, c. 168, § 2; 80 Del. Laws, c. 234, § 29.)