

DEPARTMENT OF LABOR
DIVISION OF INDUSTRIAL AFFAIRS

Statutory Authority: 19 Delaware Code, Sections 105(a)(8) and 3603; 29 Delaware Code, Section 8503(7) (19 **Del.C.** §§105(a)(8) & 3603; 29 **Del.C.** §8503(7))

FINAL

FINAL ORDER

1329 Delaware Contractor Registration Act Regulations

I. NATURE OF PROCEEDINGS

Pursuant to its authority under 29 *Del. C.* § 8503(7), 19 *Del. C.* § 105(a)(8) and 19 *Del. C.* § 3603 the State of Delaware, Department of Labor's Division of Industrial Affairs (herein "the Division") proposed regulations. The Division's purpose in proposing these regulations is to provide guidance to entities seeking to register under the Delaware Contractor Registration Act. The proposed regulations will also provide guidance on enforcement procedures of the Delaware Department of Labor and outline the administrative process for entities found by the Department to in violation of the Delaware Contractor Registration Act.

Notice of a public comment period of thirty (30) days on the Division's proposed regulations was published in the *Delaware Register of Regulations* for July 1, 2021 as well as in two Delaware newspapers of general circulation in accordance with 29 *Del. C.* § 10115. This is the Division's Decision and Order adopting the proposed regulations.

II. PUBLIC COMMENTS

The Division received public comments in response to its notice of intention to adopt the proposed regulations apart from comments praising the Division's efforts. The Division received written comments suggesting changes to the proposed regulations.

III. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Notice of the proposed regulation was published in the *Register of Regulations* on July 1, 2021. In addition, notice of the proposed regulation was published in *The News Journal* on July 3, 2021 and *Delaware State News* on July 5, 2021. The Division received one public comment at the public hearing on July 26, 2021.

In addition, the Division received nine written submittals regarding the proposed regulation. Most of the evidence and information received was repetitive in nature from the comments received by the Department. Some of the comments concerned the authority that has been granted to the Secretary of Labor in denying, suspending and or revoking a Certificate of Registration. Also, there was concerns about the Department requiring contractors to submit surety bonds while under investigation. In addition, there were questions regarding the ability for a contractor seek judicial review in a higher court prior to having their certificate suspended or revoked by the Secretary of Labor. The Division also received a public comment that the Regulations match the expectations and core principles that were discussed and wish to adopt the Regulations as written with no changes.

IV. FINDINGS AND CONCLUSIONS

The Division reviewed and considered the written submittals in addition to the public comment provided during the public hearing. The Division clarified language by adding subsection 13.3 in response to the comments seeking clarification on the judicial review process. In accordance with 29 **Del. C.** § 10118(c), the Division determined the addition of subsection 13.3 are not substantive, and as a result, is not required to repropose the changes. Accordingly, the Division finds that it is appropriate to adopt the proposed regulation, 19 **DE Admin. Code** 1329, pursuant to 19 **Del.C.** §§105(a)(8) & §3603 and 29 **Del.C.** §8503(7). The text of 19 **DE Admin. Code** 1329 shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 19 **DE Admin. Code** 1329 Contractor Registration Act in the Administrative Code of Regulations for the Division.

V. ORDER

AND NOW this 16th day of August 2021, it is hereby ordered that:

1. The Division's regulations are adopted;

2. The text of the final regulations shall be in the form attached hereto as Exhibit A;
3. The effective date of this Order is ten days from the date of its publication in the *Delaware Register of Regulations* in accordance with 29 *Del. C.* §10118(e); and
4. The Division reserves to itself the authority to issue such order and further orders concerning its Regulations as it deems appropriate.

IT IS SO ORDERED.

Department of Labor

Karryl Hubbard, Secretary of Labor

1329 Delaware Contractor Registration Act Regulations

1.0 General Provisions

- 1.1 Purpose and scope. The regulations set forth in this part contain the procedures established by the Department of Labor for carrying out its responsibilities in the administration and enforcement of 19 **Del.C.** §3601 et seq., the Delaware Contractor Registration Act.
- 1.2 Address; office hours. Questions may be addressed to: Office of Labor Law Enforcement Contractor Registration Administrator at 4425 North Market Street, Wilmington Delaware 19802. The office is open daily from 8:00 a.m. to 4:30 p.m. except Saturdays, Sundays, and Legal Holidays.
- 1.3 Definitions.
 - 1.3.1 Except as otherwise specified below, the terms used in this regulation shall have the meanings set forth in the Delaware Contractor Registration Act. Where the meanings of terms are not defined in the Delaware Contractor Registration Act or below, their meanings shall be inferred from other applicable statutes or case law.
 - 1.3.2 The following words and terms, when used in this regulation, shall have the following meanings:
 - "Administrator" means the Office of Contractor Registration Administrator or their designee.
 - "Corporate officer" or "officer of a corporation" means any person who fills an office provided for in the corporate charter or articles of incorporation. As to persons engaged in the construction industry, the term "officer of a corporation," includes a member owning at least 10 percent of a limited liability company.
 - "Day" means calendar day unless otherwise specified.
 - "Hearing" means an administrative hearing pursuant to 19 **Del.C.** §3608 before the Delaware Secretary of Labor or their designee.
 - "Party" means any employee, employer or the Department of Labor.
 - "Secretary" or "Secretary of the Department of Labor" means the Secretary of the Delaware Department of Labor or their designee.
- 1.4 Attorneys; form of appearance on behalf of parties.
 - 1.4.1 An attorney admitted to practice before the State of Delaware Supreme Court may appear on behalf of a party by providing written notice of appearance. To constitute an appearance, a form, letter, or document shall contain the names of the parties, the Department's docket number if known, the name of the party that the attorney represents, and the attorney's address, telephone number, facsimile number, and e-mail address.
 - 1.4.2 If a party appears through an attorney, all papers shall be served on the attorney with the same force and effect as though served on the client.
 - 1.4.3 An attorney may withdraw his appearance by providing written notice of withdrawal to the Department, certifying that a copy of the notice of withdrawal was mailed to all parties.
- 1.5 Parties' obligation to keep Department informed of change of address or status. The parties shall promptly notify the Department of any change in address, telephone number, contact information, or other material change in business status while the charge is pending.
- 1.6 Liberal construction of regulations. These regulations shall be liberally construed by the Administrator to permit the Department to discharge its statutory duties under the Delaware Contractor Registration Act.
- 1.7 Practice where regulations do not govern. In any circumstance that arises not governed by these regulations, the Administrator shall exercise discretion in order to permit the Department to discharge its statutory duties

under the Delaware Contractor Registration Act while ensuring procedural due process to employers and other parties.

- 1.8 Validity of regulations if any portion declared invalid. If any portion of these regulations is adjudged by a court of competent jurisdiction to be invalid, or if by legislative action any portion loses its force and effect, the ruling or action will not affect, impair or void the remainder of these regulations.
- 1.9 Amendment of regulations. The Administrator may rescind, amend or expand these regulations from time to time as necessary to comply with the purpose of the Delaware Contractor Registration Act and such new regulations shall be submitted to the Registrar of Regulations' office in accordance with the provisions of 29 Del.C. §10161(b).

2.0 Registration of Contractors

- 2.1 No contractor shall be registered in accordance with the Delaware Contractor Registration Act until a completed application has been submitted. A completed application shall include, at a minimum, the following documents:
 - 2.1.1 The name, principal business address, telephone number, fax number and email address of the contractor. Should the contractor not possess a fax number or email address, the contractor shall simply state, "not applicable".
 - 2.1.2 The type of business entity- corporation, partnership, sole proprietorship, limited liability company, or whatever other form of business entity.
 - 2.1.3 If the business is not headquartered within Delaware, the name and address of a custodian of records and agent for service of process within Delaware. This agent shall be authorized to receive subpoenas and accept service of litigation documents.
 - 2.1.4 The name of any person, the date and nature of any violation, conviction or judgment, and all additional information requested by the Department if the contractor or a person holding a financial interest in the contractor's business has done any of the following within the preceding 2 years:
 - 2.1.4.1 Held a financial interest in a licensed entity that was cited by the Delaware Department of Labor for a violation of any labor law.
 - 2.1.4.2 Been convicted of home improvement fraud under 11 Del.C. §916 or new home construction fraud under 11 Del.C. §917.
 - 2.1.4.3 Been found to have engaged in an unlawful practice under 6 Del.C. §2513.
 - 2.1.5 The Federal Employer Identification Number, the State Taxpayer Identification Number, the Individual Tax Identification Number, or any other tax identification number which the contractor uses in completing tax forms.
 - 2.1.6 Proof of Delaware workers' compensation insurance or proof that under 19 Del.C. Ch. 23, of the Delaware Code the contractor is not required to carry valid Delaware workers' compensation insurance.
 - 2.1.7 Proof of a State business license.
 - 2.1.8 A safety plan that is compliant with the requirements established by the Occupational Safety and Health Administration, or satisfactory proof that no such safety plan is required. If a contractor is actively working with Delaware's Office of Safety & Health Consultation or another private health and safety consultant on the creation of such a safety plan, then the Department will take that into consideration.
- 2.2 A contractor seeking renewal of their license shall notify the Department of any changes in their status at the time of renewal.

3.0 Fees

- 3.1 A contractor who has or seeks a State contract under 29 Del.C. Ch. 69, Subch. IV must pay an initial annual non-refundable registration fee of \$300.00 to the Department with the application prior to performing construction services or maintenance in Delaware.
 - 3.1.1 The non-refundable registration fee for the second annual registration is \$300.00.
 - 3.1.2 Upon successful completion of 2 consecutive years of registration, a contractor may renew their current registration for a 2-year period and pay a non-refundable registration fee of \$500.00. The Department may only grant a 2-year registration if the contractor has not violated the Delaware Contractor Registry Act or any other labor laws during the registration period that is expiring and submits a renewal application no less than 30 days before the expiration date of their current registration.
 - 3.1.3 A contractor who is performing public work on July 1, 2021, shall submit the registration application form and fee to the Department no later than August 1, 2021.

3.2 A contractor who does not have or seek a State contract under 29 Del.C. Ch. 69, Subch. IV of the Delaware Code must pay an initial annual non-refundable registration fee of \$200.00 to the Department with the application prior to performing construction services or maintenance in Delaware.

3.2.1 The non-refundable registration fee for the second annual registration is \$200.00.

3.2.2 Upon successful completion of 2 consecutive years of registration, a contractor may renew their current registration for a 2-year period and pay a non-refundable registration fee of \$300.00. The Department may only grant a 2-year registration if the contractor has not violated the Delaware Contractor Registry Act or any other labor laws during the registration period that is expiring and submits a renewal application no less than 30 days before the expiration date of their current registration.

4.0 Issuance and Term of a Certificate of Registration

4.1 Except as otherwise required by the Delaware Contractor Registration Act, upon receipt of a completed, accurate application and the application fee, the Department shall issue a certificate of registration to the contractor as long as it satisfies all of the requirements of the Delaware Contractor Registration Act. A certificate of registration is valid as follows:

4.1.1 For 1 year from the date of registration; or

4.1.2 For 2 years from the date of registration, if the contractor successfully completes 2 years of registration and then reapplies no less than 30 days before the expiration date of their current registration.

4.2 A certificate of registration must be renewed no less than 30 days before the expiration date of the certificate. The Department may deny the certificate of registration if the contractor has violated the Delaware Contractor Registration Act or any law referenced under 19 Del.C. §3605(b)(4) during the registration period that is expiring.

4.3 A certificate of registration is not transferable to a successor entity or other entity or person.

4.4 A registered contractor who allows the certificate of registration to expire before applying to renew the certificate must subsequently apply for a registration certificate as if for the first time.

5.0 Rejection

5.1 The Department shall reject an application that is incomplete or contains inaccurate information.

5.2 The Department may reject a submitted incomplete application after 15 days has passed if the contractor fails to provide the required information under 19 Del.C. §3605 to the Department.

5.3 If a contractor knowingly supplies incomplete or inaccurate information to the Department, then all of the following apply:

5.3.1 The application for registration must be rejected;

5.3.2 The contractor may not apply for registration until 1 year from the date of the notice of disqualification;

5.3.3 The contractor is subject to other applicable penalties, including liability under 6 Del.C. Ch. 12.

6.0 Denial, Suspension or Revocation of Certificate of Registration

6.1 The Department may deny, suspend, or revoke a certificate of registration if the contractor or any officer, partner, director, stockholder, or agent of the contractor does any of the following:

6.1.1 Knowingly fails to comply with any requirement of the Delaware Contractor Registration Act;

6.1.2 Willfully makes a misstatement or omits a material fact in an application for or renewal of a certificate of registration;

6.1.3 Fails to provide all information, including records, forms, or documents, requested by the Department under the Delaware Contractor Registration Act;

6.1.4 Performs work without full compliance with the Delaware Contractor Registration Act;

6.1.5 Contracts with or uses a subcontractor who is not registered under the Delaware Contractor Registration Act in the completion of a public works project

6.1.6 Fails to cooperate with, or interferes with, an investigation by the Department, including failure to comply with investigative subpoenas;

6.1.7 Violates a criminal or civil law or regulation related to the ability of the contractor to comply with the labor laws of Delaware.

7.0 Surety Bonds

- 7.1 The Department may require as a condition of initial or continued registration that a contractor who has violated either the Delaware Contractor Registration Act or the Prevailing Wage Law must provide a surety bond payable to the Department.
- 7.2 The Department shall require a surety bond if there is a pending investigation or litigation of a violation of a State or federal labor law alleged against the contractor which the Secretary finds would constitute a knowing violation of the Delaware Contractor Registration Act.
- 7.3 The surety bond must be in the amount and form that the Secretary deems necessary for the protection of the contractor's workers, but must not exceed \$10,000 per worker.
- 7.4 The surety bond must be released upon a final adjudication of the investigation or litigation under subsection 7.2 if the final adjudication is in favor of the contractor.

8.0 Investigations

- 8.1 Timing of investigations.
 - 8.1.1 The Department shall promptly initiate an investigation into alleged violations of the Delaware Contractor Registration Act when:
 - 8.1.1.1 The Department receives a complaint; or
 - 8.1.1.2 The Department, on its own motion, determines to initiate an investigation.
 - 8.1.2 The Department shall complete its investigation as promptly as possible.
- 8.2 The Department shall coordinate with other state agencies where appropriate. All Divisions and units of the Department shall cooperate with any investigation.
- 8.3 Investigatory procedures.
 - 8.3.1 All investigatory powers granted by 19 Del.C. §108 shall be available to the Department. In its discretion, the Department may conduct investigations using, among other things, written requests for information, investigatory conferences, subpoenas, on-site visits, interviews, and depositions as provided by these regulations.
 - 8.3.2 In connection with an investigation, the Department may require the submission of information relating to:
 - 8.3.2.1 The employer's books and records;
 - 8.3.2.2 The employment records of employees;
 - 8.3.2.3 The employer's accounts and payroll records;
 - 8.3.2.4 The employer's procedures for hiring and selecting employees; and
 - 8.3.2.5 Such other information as the Department determines to be reasonably necessary to carry out the provisions of the Delaware Contractor Registration Act.
- 8.4 Requests for Information.
 - 8.4.1 The Department may serve requests by certified mail for information to assist the Department in its investigation. Unless otherwise specified in a request for information, the response shall be due to the Department within 15 days from the date of the request.
 - 8.4.2 If an employer fails to provide all information, including records, forms, or documents, requested by the Department under the Delaware Contractor Registration Act the Department may, deny, suspend, or revoke the employer's registration until the information is received by the Department, under 19 Del.C. §3607.
- 8.5 On-Site Visits.
 - 8.5.1 The Department may conduct on-site visits to assist in the investigatory process for the purpose of gathering evidence, interviewing witnesses, observing an employer's place of business or work site, and reviewing documents.
 - 8.5.2 The Department is not required to provide the employer with any notice prior to its on-site visit.
 - 8.5.3 The employer shall grant access to its premises, documents, and employees during the Department's on-site visit.
- 8.6 Subpoenas.
 - 8.6.1 The Administrator may issue a subpoenas to assist the investigatory process. The Administrator shall issue a subpoena in the name of the Department, and the subpoena shall direct the person designated to personally appear and bring any books, records, documents and any other evidence that relates to any violation under investigation, or, in lieu of personal appearance, to produce any books, records, documents and any other evidence which relates to any violation under investigation.
 - 8.6.2 A subpoena shall state the time and place where the person designated is directed to appear.

8.6.3 A subpoena shall be served either by personal service by any person 18 or more years of age by delivery of a copy thereof to the person named therein, by overnight delivery by commercial courier, or by registered or certified mail, return receipt requested.

8.7 Depositions.

8.7.1 The Department may take depositions of witnesses under oath as part of any investigation when, in the discretion of the Administrator, such depositions will aid the investigatory process.

8.7.2 Any deponent shall have the opportunity to be represented by licensed Delaware counsel at their deposition and shall be notified of that right by the Department.

8.8 Enforcement of subpoenas. If any person fails to comply with a subpoena issued by the Department, he shall be subject to the appropriate enforcement provisions of the Delaware Contractor Registration Act.

9.0 Issuance of Findings

9.1 Following an investigation in which the Department makes an initial determination that a contractor or applicant has violated one or more provisions of the Delaware Contractor Registration Act, the Department may do one or more of the following:

9.1.1 Deny, suspend or revoke a certificate of registration;

9.1.2 Require the posting of a surety bond;

9.1.3 Impose an administrative penalty.

9.2 The Department shall notify the contractor in writing of its intention to take an action described in subsection 9.1 of this regulation. This notice shall comply with the requirements of 19 Del.C. §3608(b). The notice shall be sent by certified mail or, where possible, through secure email with a return receipt proving it was viewed by the recipient.

10.0 Request for Appeal

10.1 A request for a hearing must be made in writing, addressed to the Secretary, and made within 10 business days from the receipt of the notice of the Department's intention to take one or more of the actions described in subsection 9.1 of this regulation.

10.2 The request for a hearing should be addressed as follows: Delaware Secretary of Labor, c/o LLEO Construction Industry Administrator, 4425 North Market Street, Wilmington Delaware 19802.

10.3 The Office of Contractor Registration shall review all requests for hearings under subsection 10.1 of this regulation to determine if the dispute can be resolved at an informal settlement conference as provided under Section 11.0 of this regulation. If the appellant refuses to participate in a settlement conference or a settlement is not reached at the settlement conference, the Office of Contractor Registration shall forward the hearing request to the Secretary to schedule a hearing.

10.4 If a hearing is not requested as required under subsection 10.1 of this regulation, the initial written determination of the Department is final.

11.0 Informal Settlement Conference

11.1 The Office of Contractor Registration shall review all requests for a hearing submitted under 19 Del.C. §3608.

11.2 The Office of Contractor Registration will document the date of receipt regarding the request for a hearing. Any hearing request received within 10 business days from the date of receipt of the Department notice required under 19 Del.C. §3608(b) shall secure all of the contractor's rights to the appeal process as outline in the Delaware Contractor Registration Act.

11.3 The Office of Contractor Registration shall determine if the requested appeal may be able to be resolved in an informal settlement conference.

11.4 If the Office of Contractor Registration agrees to engage in an informal settlement conference, it will take the following action:

11.4.1 The Office of Contractor Registration will contact the contractor to offer to participate in an informal settlement conference.

11.4.2 Prior to such a conference, the Office of Contractor Registration will provide written notice (Notice of Informal Settlement Conference) to the contractor that the Department has received the timely request for an appeal. The notice must state that the contractor's rights to the appeal process will remain unless a settlement is reached. The notice will inform the contractor that participation in the informal settlement conference is voluntary and not required under the conditions of the appeal process.

- 11.4.3 If the informal settlement conference does not result in an agreement, or there is no longer participation, the Office of Contractor Registration will forward the request to the Secretary of the Department of Labor to schedule a hearing.
- 11.5 If the Office of Contractor Registration determines the dispute cannot be resolved through an informal settlement conference or the contractor does not agree to engage, then the Office of Contractor Registration shall forward the hearing request to the Secretary of the Department of Labor to schedule a hearing.

12.0 Appeal Hearing

- 12.1 The Secretary of the Department of Labor may serve as hearing officer in the hearing, or may appoint a designee to serve as hearing officer. The hearing officer will rule upon all motions and questions relating to the administrative hearing.
- 12.2 The hearing officer is empowered to:
- 12.2.1 Issue subpoenas for witnesses and other sources of evidence, either on the agency's initiative or at the request of any party;
 - 12.2.2 Administer oaths to witnesses;
 - 12.2.3 Exclude plainly irrelevant, immaterial, insubstantial, cumulative and privileged evidence;
 - 12.2.4 Limit unduly repetitive proof, rebuttal and cross-examination; and
 - 12.2.5 Cause interrogatories to issue and depositions to be taken.
- 12.3 Status Conference and Discovery
- 12.3.1 At least two weeks before the scheduled administrative hearing, counsel (or the parties themselves, if pro se) shall participate in a scheduled status conference with the hearing officer.
 - 12.3.2 Status conferences may be in person or by telephone.
 - 12.3.3 The purposes of this conference will be to resolve any outstanding scheduling matters; to simplify factual and legal issues by stipulation; to resolve any discovery disputes or other preliminary or procedural matters; to pre-mark for identification and admission into evidence all stipulated exhibits; and to afford the parties the opportunity to discuss the admissibility or exclusion of any outstanding evidentiary issues.
 - 12.3.4 The hearing officer will permit the parties to argue their positions and may issue a ruling either during the conference or by subsequent written decision.
 - 12.3.5 The status conference may be waived by the written stipulation of the opposing parties. In the absence of such a stipulation, failure to participate in the status conference may result in a finding contrary to the party which fails to participate in the status conference.
 - 12.3.6 Prior to the administrative hearing, or at any time when directed by the hearing officer, the Department of Labor will make available to the employer all documents and records relevant to its decision, unless prohibited by statute or the confidentiality rights of others, or the documents in question are protected by attorney-client or other evidentiary privilege.
 - 12.3.7 Personal identifying information and confidential sources shall be redacted from any such disclosure.
 - 12.3.8 The hearing officer may at any time also direct the employer to make available to the Department any appropriate documents and records requested by the Department, and any evidence the employer intends to introduce during the administrative hearing.
 - 12.3.9 Failure to comply with this directive by the Department may result in dismissal of the alleged violation upon application of the employer to the hearing officer, who shall give the Department the opportunity to respond prior to reaching a decision upon the dismissal.
 - 12.3.10 Failure to comply with this directive by the contractor may result in the dismissal of their appeal, and the hearing officer may then impose the penalties sought in subsection 8.1 of this regulation.
- 12.4 The hearing officer shall rule on requests for changing the timing, manner, or location of the hearing. Such requests shall be made to the hearing officer within a reasonable time prior to the hearing. The opposing party shall have the right to oppose such a request. In ruling on such a request, the hearing officer shall include consideration of the sufficiency of the grounds for the request, the length of time appropriate for a continuance, and the degree of prejudice, if any, to the party opposing the request.
- 12.5 At the administrative hearing, any party or their representative shall have the opportunity to produce witnesses and cross-examine adverse witnesses; to express all pertinent facts and circumstances through evidence, oral or written; to advance any arguments without undue interference; and to question or refute any testimony or evidence.
- 12.6 The burden of proving facts alleged as the basis for its decision shall be on the Department by a preponderance of the evidence. The burden of proof regarding any affirmative defenses shall be on the employer by a preponderance of the evidence.

- 12.7 The rules of evidence applied in civil cases by the courts of the State of Delaware shall not be strictly followed. The hearing officer may allow evidence not admissible under these rules of evidence where, in the hearing officer's judgment, application of the exclusionary rule would result in unnecessary hardship and the evidence offered is of a kind commonly relied upon by reasonably prudent persons in the conduct of their affairs. Hearsay may be admissible in administrative hearings, but may not constitute the sole basis for the hearing officer's determination upon the factual issue addressed by the hearsay evidence.
- 12.8 The Secretary shall exercise reasonable discretion in deciding whether to deny, suspend or revoke a certificate of registration.
- 12.9 The Secretary may not revoke or suspend a certificate of registration for longer than 5 years. The Secretary shall consider the following criteria to determine the length of time that a certificate of registration is denied, revoked or suspended:
- 12.9.1 The contractor's prior record of violations of any civil or criminal law related to the fitness of the contractor to bid on or engage in construction services or maintenance, including, but not limited to, violations of the Delaware Contractor Registration Act and Delaware's Workplace Fraud Act Delaware's Prevailing Wage Law or other associated Delaware labor laws.
- 12.9.2 If the contractor should reasonably have known that a subcontractor to a contract did not have a certificate of registration, had a lapsed certificate of registration, or had a certificate of registration revoked or suspended.
- 12.9.3 The total number of unregistered subcontractors at a work site and the size and scope of the project on which the unregistered subcontractor worked.
- 12.9.4 If a contractor in contract with an unregistered subcontractor obeyed the Department's directive to remove the unregistered subcontractor from the work site to cure the violation of the Delaware Contractor Registration Act.
- 12.10 Administrative Dismissal
- 12.10.1 The hearing officer may in his or her discretion administratively dismiss a complaint for any of the following reasons:
- 12.10.1.1 Lack of jurisdiction;
- 12.10.1.2 The determination on its face fails to state a violation of the Delaware Contractor Registration Act.
- 12.10.2 Except for the reasons provided in subsection 12.10.1, the hearing officer may not administratively dismiss a complaint without the consent of the Office of Contractor Registration.
- 12.10.3 Prior to administratively dismissing a complaint, the hearing officer shall notify the Office of Contractor Registration of the reason for the proposed dismissal and shall offer the Office of Contractor Registration the opportunity to respond. If the basis for the dismissal is that the determination letter on its face fails to state a violation of the Delaware Contractor Registration Act, the Office of Contractor Registration shall be given 15 days to draft and produce a revised determination letter which adequately states a violation.
- 12.11 The hearing officer shall make a final determination as expeditiously as possible following the conclusion of the evidentiary hearing. Absent extenuating circumstances which shall be explained to the parties in writing, the final determination shall be issued within 30 days after the conclusion of the evidentiary hearing. The final determination shall otherwise comply with the requirements of 29 **Del.C.** Ch. 101, Subch. III

13.0 Judicial Review

- 13.1 A contractor may seek judicial review of the final determination of the hearing officer by commencing an action in Superior Court as described in the Delaware Contractor Registration Act.
- 13.2 When a determination by the Department to suspend or revoke a contractor's certificate of registration is final, the holder of the certificate shall surrender it to the Department within 20 days of the date of later of the date of the notice under 19 **Del.C.** §3608(b) or 19 **Del.C.** §3608(d) by sending the certificate of registration to the Secretary by certified mail.
- [13.3 If a contractor seeks judicial review of a final determination from the Secretary as provided in subsection 13.1, the 20-day period to return or surrender the contractor's certificate of registration pursuant to subsection 13.2, is tolled until the matter has been fully determined on appeal to the appropriate court.]**

14.0 Enforceability of settlement agreements

- 14.1 A settlement agreement reached during an investigation or informal settlement conference shall be set forth in writing and signed by the parties.

- 14.2 Allegations of breach of a settlement agreement shall be brought to the attention of the Administrator or hearing officer, depending upon which is responsible for enforcing settlement agreements in the matter at the time of the alleged breach. The Administrator or hearing officer shall review and investigate the allegations of breach of a settlement agreement to determine whether a breach has occurred.
- 14.3 The Administrator or hearing officer shall issue written findings to the parties with regard to the allegation of breach of a settlement agreement.
- 14.4 The Administrator or hearing officer in his discretion will determine whether to forward allegations of breach of the settlement agreement to the Attorney General for review and enforcement.

15.0 Confidentiality of Department's Files

- 15.1 Information obtained from contractors and applicants is not public information under 29 Del.C. Ch. 100.
- 15.2 The Department's investigatory records are confidential and exempt from public access under 29 Del.C. Ch. 100.

16.0 Retention of Investigatory Files

The Department shall retain investigatory files for a minimum of three years after the end of the administrative process.
25 DE Reg. 288 (09/01/21) (Final)