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PUBLIC COMMENT SESSION FOR DE ADMIN CODE  
106 FOR 6 DEL.C. SECTIONS 2511-2528  
106 HOME IMPROVEMENT SERVICES

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WEDNESDAY, MAY 24, 2023

PUBLIC COMMENT SESSOIN taken at CARVEL STATE  
BUILDING, 820 N. French Street, Wilmington,  
Delaware, commencing at 11:00 a.m., before John P.  
Donnelly, Registered Diplomate Reporter, and Notary  
Public in and for the State of Delaware.

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APPEARANCES:

DELAWARE DEPARTMENT OF JUSTICE

BY: BRIAN CANFIELD, ESQUIRE

MARION M. QUIRK, ESQUIRE

OWEN LEFKON, DIRECTOR OF THE FRAUD AND

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RHYNN EVANS

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820 N. French Street

Wilmington, Delaware 19801

302-577-8500

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INDEX

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EXHIBITS

- - -

NUMBER	DESCRIPTION	PAGE
1	The text of the proposed regulation	10
2	The Regulatory Flexibility Analysis and Regulatory Impact Statement	10
3	The verification of publication in The News Journal and Delaware State News	10
4	The Notice of Public Hearing	10
5	The Pre-hearing comments submitted by Dr. Jaye Silver	10

1 MR. CANFIELD: My name is Brian  
2 Canfield. I am a Deputy Attorney General with the  
3 Consumer Protection Unit of the Delaware Department  
4 of Justice. We're here today for a public hearing  
5 on the Consumer Protection Unit proposed regulations  
6 regarding home improvement services. This is an  
7 opportunity for the public to express their views to  
8 the Consumer Protection Unit. It's not a live  
9 question and answer session.

10 I want to quickly introduce my  
11 colleagues who are here with us today. Owen Lefkon,  
12 who is the Director of the Consumer Protection Fraud  
13 Division here at the Department of Justice. Mary  
14 Quirk is the director of Consumer Protection of the  
15 Department of Justice. Joe Rago is a special  
16 investigator in the Consumer Protection Unit and  
17 Rhynn Evans is a paralegal in the Consumer  
18 Protection Unit.

19 Now I'm going to turn it over to  
20 Rhynn who is going to discuss the rules and  
21 procedure for this hearing.

22 MR. EVANS: Welcome. Thank you all  
23 for attending today. After I go over the process  
24 and rules for commenters, those who have signed in

1 before the start, who I think is everyone here, will  
2 be acknowledged and provided the opportunity to  
3 offer comments on the proposed regulations. There  
4 is a court reporter present who will prepare a  
5 verbatim transcript of the hearing. When you come  
6 up to the podium, make sure to say your name very  
7 clearly and then spell your name.

8 All comments received must be limited  
9 solely to the subject matter of today's hearing,  
10 which is a proposed regulation. Comments received  
11 in advance in writing will be featured as exhibits.

12 To ensure everyone who would like the  
13 opportunity to comment is accommodated, the record  
14 will remain open following today's proceeding  
15 through June 9, 2023. Comments may be e-mailed for  
16 the Brian Canfield at [brian.canfield@delaware.gov](mailto:brian.canfield@delaware.gov).  
17 There will no question and answer or chat session  
18 permitted during the public hearing.

19 As I said, those who have signed up  
20 to comment will have the opportunity to offer verbal  
21 comments and will be invited to speak one at a time.  
22 We request that folks make their comments as concise  
23 as possible and respect the five-minute time limit  
24 when providing their comments about the proposed

1 regulation. As mentioned, comments must be limited  
2 solely to the proposed regulation.

3 To assist commenters, an alarm will  
4 sound when your time is up. There will also be a  
5 timer here counting down the five minutes. When it  
6 is your turn to comment, you will be called up to  
7 the podium and the timer will begin. At the end of  
8 five minutes, an alarm will sound and we will move  
9 on to the next commenter. If you are not able to  
10 finish your comments within the five-minute time  
11 period, we strongly encourage you to submit your  
12 comments in writing no later than June 9.

13 As a courtesy to others, please do  
14 not interrupt any commenters during their  
15 five-minute slot. If you would like to add some  
16 additional information pertinent to the regulation,  
17 we encourage you to do so in writing by June 9.  
18 And, lastly, please make sure that you silence your  
19 cell phones before people start speaking.

20 MR. CANFIELD: Before we get to the  
21 public comment portion of the hearing, I'm going to  
22 go over the regulation promulgation schedule. Go  
23 over the creation of the proposed regulation and  
24 then enter exhibits into the record.

1           This proposed regulation was  
2 published on April 1, 2023, in the April 2023,  
3 edition of the Delaware Register of Regulations.  
4 Notice of this public hearing was published on the  
5 Delaware Public Meeting Calendar on April 12, 2023.  
6 Notice of this hearing was also posted in both the  
7 News Journal, the Delaware State News on April 21,  
8 2023.

9           From April 21 to April 26, 2023, we  
10 reached out to individual contractors, contractor  
11 groups and consumer groups to notify them of the  
12 proposal of this regulation. The deadline to submit  
13 comments to be considered at this hearing was May 1,  
14 2023. Today, May 24, 2023, is the public hearing.

15           The opportunity to submit public  
16 comments will stay up until June 9, 2023. After the  
17 period for public comments is closed, the Consumer  
18 Protection Unit will review the record consisting of  
19 the transcript of the hearing today, all comments  
20 that come in, and all exhibits.

21           The Consumer Protection Unit will  
22 then decide on whether the regulation should be  
23 adopted, amended or repealed and will issue its  
24 conclusion in an order.

1                   Next I'm going to move on to the  
2                   creation of the proposed regulation.

3                   The proposed regulation was created  
4                   to assist in the implementation and clarification of  
5                   the Consumer Fraud Act by identifying certain home  
6                   improvement acts and practices that constitute  
7                   unlawful practices. Business practices observed by  
8                   the Consumer Protection Unit help guide creation of  
9                   this regulation, as did similar home improvement  
10                  regulations from other states. If you would like to  
11                  see the full text of the regulation, we have copies  
12                  on the table over there and it is available online  
13                  in the April 2023 edition of the Delaware Register  
14                  of Regulations.

15                  I will now read the exhibits into the  
16                  record. Exhibit 1 is the text of the proposed  
17                  regulation. Exhibit 2 is a copy of the Regulatory  
18                  Flexibility Analysis and Regulatory Impact Statement  
19                  corresponding to this proposed regulation as publish  
20                  inside April 2023 Delaware Register of Regulations.

21                  Exhibit 3 is evidence of the  
22                  publication of legal notice of this proposed  
23                  regulation in the News Journal and the Delaware  
24                  State News, which were both published on April 21,



1 2023.

2 Exhibit 4 is notice of this public  
3 hearing as it appeared on Delaware state-wide  
4 calendar, which was posted on April 12, 2023, and  
5 edited on April 13, 2023.

6 Exhibit 5 is a copy of the one  
7 comment we received prior to the May 1, 2023  
8 deadline to make comments to be considered at this  
9 hearing. That comment comes from Dr. Jaye Silver.  
10 This concludes the Consumer Protection Unit's  
11 presentation. I will now pass it over to Rhynn  
12 Evans who will administer the public comment portion  
13 of the hearing.

14 - - -

15 (Whereupon the court reporter marked  
16 for identification purposes Exhibits 1-5.)

17 - - -

18 MR. EVANS: Our first commenter today  
19 is Dan Shilling. You can come to the podium,  
20 please.

21 MR. SHILLING: Good afternoon, my  
22 name is Dan Shilling, D-A-N-I-E-L, S-H-I-L-L-I-N-G.

23 I was asked by the DOJ to come in and  
24 basically provide a story about what happened as a

1 consumer with contractors we had during a storm that  
2 happened back in 2020 in Dover, Delaware, as well as  
3 Odessa and some other areas.

4 So to give you an idea who I am so  
5 you are just not thinking well, you know, he is just  
6 a guy that really doesn't know that much about what  
7 he is talking about. I worked in the military for  
8 over 30 years as a military member, as well as over  
9 30 years as a Department of Defense civilian, as  
10 well. So I worked in most technical fields. My  
11 last position was chief of medical operations, not  
12 only for the Air Force but the Army, for an Army  
13 hospital as well as its supporting clinics that were  
14 associated with it.

15 So I have some understanding of what  
16 contractors do, written contracts, as well as being  
17 a clinical engineer, electrical engineer, electronic  
18 engineer.

19 So to go on with the story, back in  
20 2020, we had a tornado that touched down. It  
21 happened to hit, like, right at our intersection  
22 where we live. This is down in Dover, Delaware, in  
23 an area called Woods Manor, which we no longer call  
24 it Woods Manor, we call it "lack of woods." We had

1 significant trees that were 80 to 100-foot tall.  
2 When it hit, we had a contractor that I had spoken  
3 to probably two years prior, and asked them about  
4 replacing the roof, just giving us a like a roof  
5 replacement and cost estimate for what it was, free  
6 estimate. No dollar value.

7 He showed up two years later after  
8 the storm hit because we couldn't do anything at  
9 that time. He said we will be glad to help you out  
10 with it. He said well, we need you to sign this  
11 contract. I said well, I can't really sign a  
12 contract right now. I have no idea what the  
13 insurance company is going to do. I said but I'm  
14 looking for a free estimate. I can get back with  
15 you, whatever. Signed a document that he had as the  
16 lead agent for this contractor.

17 And it's funny because signed, dated  
18 information, free estimate only. I said we will  
19 have to get back to you once the insurance company  
20 does something with us. They drug it out.

21 Anyway, this contractor repeatedly  
22 came back week, after week, after week. Nothing  
23 happened. With our insurance company, we had  
24 replacement cost insurance. So with replacement

1 cost insurance, there is a timeline, and ours was a  
2 year to get any of this work done. We are almost  
3 two months in and he has done nothing. We decided  
4 that we weren't going to do anything with him. But  
5 before that happened, he asked us to sign with  
6 another contractor, which was a certified private  
7 public adjuster. And I'm, like, well, okay, haven't  
8 heard much of this but tell me what he does,  
9 whatever. They gave us paperwork after they had  
10 discussed it a number of times with us. Come to  
11 find out, the average for the nation is about 10  
12 percent of whatever the overall cost of whatever the  
13 contract is. He wanted 25 percent of the first  
14 \$25,000 or 12 percent of the first \$25,000, then  
15 another 10 percent of the balance.

16 Like, basically, I'm going to pay him  
17 12 percent of the first 25 for doing nothing. What  
18 is he going to do? He is going to get you more  
19 money from the insurance company. I said I don't  
20 even know what kind of money we are going to get  
21 from the insurance company. But if that's what he's  
22 going to do, and we are getting money from the  
23 insurance company, what are we going to take away  
24 from the construction of the house or reconstruction

1 of the house to make it whole again? No answers.  
2 So we decided not to go with them. They were, like,  
3 we have already paid this guy. I didn't ask you to  
4 pay the guy. I didn't sign for anything. I told  
5 you no.

6 The contractor came back, the CEO for  
7 the company and said listen, I'm downtown Dover.  
8 I'm going to be filing a case against you for not  
9 going with us under this contract. I said I didn't  
10 file anything for a contract. I asked for a free  
11 estimate, I still don't have one. His attorney sent  
12 paperwork to us saying you are going to have to pay  
13 us \$67,000 or we will accept \$23,000 just for you to  
14 clear this debt. Good luck to you.

15 Honestly, I came in today because the  
16 Department of Justice actually helped me and I felt  
17 like it was my turn to try to help them out, even if  
18 it was just a little bit, to come in and speak with  
19 you and explain that to you. They helped us as well  
20 hopefully as a number of other individuals that may  
21 have been in the same situation, from what I  
22 understand, and helped clear it up for us.

23 We had two other contractors after  
24 this and they all have their own issues when it came

1 to this. But this was rather unique. And then come  
2 to find out -- I will just finish with the last  
3 part -- is the front individual that had signed with  
4 this contractor, you know, for the free estimate  
5 come to find out that wasn't even his real legal  
6 name. Very interesting. Thank you.

7 MR. EVANS: Thank you, Mr. Shilling.  
8 We have two public commenters who are unsure whether  
9 they were going give public comments. Rashmi  
10 Rangan.

11 MS. RANGAN: Will not be commenting  
12 yet.

13 MR. EVANS: John Marroni.

14 MR. MARRONI: I would like to  
15 comment, sure. John Marroni. J-O-H-N  
16 M-A-R-R-O-N-I.

17 My heart goes out to you. 23 years  
18 in the business, all we do is insurance restoration.  
19 And regulations like these helped with the  
20 fly-by-night, if you will. So Delaware implemented  
21 with public adjusters a few years ago restrictions  
22 and limitations on the amount of any money they can  
23 charge, which I which think is a good thing because  
24 there is a lot of predatory things that happen

1 during storms or after catastrophic events.

2 So one of the challenging things for  
3 us as an emergency response company, I talked about  
4 it off record, but when we go into a property and we  
5 are called out and there is a fire, or water damage,  
6 or pipe breaks and something gets flooded out. And  
7 these are all residential properties. Commercial,  
8 entirely different world we live in.

9 But from a residential perspective, I  
10 think it's important that within a contractual  
11 obligation with the three day right of rescision,  
12 there has to be some kind of limitation protection  
13 on the contractor as well, from the simple fact that  
14 if we are in there and we work for two days, then  
15 they decide well, three day right of rescision, we  
16 are canceling that work and the contract should be  
17 paid for.

18 So that's the gray area that we face  
19 when we are dealing with an emergency situation.  
20 Thousands of jobs, I think it's happened once.  
21 There was -- I won't use the word, but it was an  
22 unethical person that we were dealing with. Does it  
23 happen? No, but so we try to do, from a contractual  
24 standpoint, is give a not to exceed number so the

1 owner has something. And that's something that I  
2 think should be looked at from a regulatory  
3 perspective.

4 Because if it's a not to exceed, that  
5 number could be \$3,000, could be \$5,000 could be  
6 \$20,000 depending on the extent of damage. But at  
7 least both parties are aware and the contracts that  
8 we use, it's specific language, you know, like for  
9 your example, if you had them board the house up or  
10 tarp the house, it should have been tarp, board up,  
11 cost \$1,500 bucks say. Then you would have been  
12 fine. Secure the house.

13 But without that clear indication as  
14 to what they actually were doing, you guys were  
15 deceptively trapped into a contract that you  
16 shouldn't have been.

17 So I think it's important that the  
18 regulations weed out contractors like this because  
19 we see it all over. We operate in 11 states. We  
20 see it all the time, the unscrupulous, guys will  
21 show up, get a deposit, disappears. Can you help us  
22 out. Now we are behind the eight ball. These are  
23 things that the regulations do help with.

24 I think there are certain things that



1 have to be looked at, especially when you are  
2 dealing with storms, and you are dealing with  
3 emergency service work.

4           When you get into the construction  
5 side of it, you are dealing with insurance  
6 specifically or any kind of home improvement  
7 contract, we use an estimating platform that's  
8 nationally known called Xactimate. That software  
9 provides line item details from square footages to  
10 lineal footage to perimeter footage to -- it's as  
11 descriptive as you possibly can be. So it leaves no  
12 room for ambiguity.

13           And I think that the regulations  
14 will -- we spend a lot of money on it so the guys  
15 that are, what we call, taillight warranties, right,  
16 when their taillights leave, you are out of  
17 warranty. Your warranty expires after the  
18 taillights disappear. We need to get rid of those  
19 guys. I spend \$90,000 in insurance. I spend -- I  
20 can't tell you how much in bonds. So the  
21 regulations are needed to weed out those kinds of  
22 contractors.

23           But again, my point would be there  
24 has to be some consideration regarding gray areas.

1 That's something that is a tough thing to do. Thank  
2 you, I appreciate it.

3 MR. EVANS: Thank you, Mr. Marroni.  
4 Brandy Patterson was unsure of public comment would  
5 you like to make a public comment at this time.

6 MS. PATTERSON: I'm unsure.

7 MR. EVANS: We are currently hearing  
8 public comments on home improvement regulations and  
9 only on the home improvement regulations that are  
10 proposed by the Consumer Protection Unit.

11 MS. PATTERSON: I requested as  
12 estimate. I reached out to various -- rules I was  
13 told to reach out to three. I did so. One of the  
14 ones was a contractor who was already doing work in  
15 my neighborhood. They had a sign out front with a  
16 phone number. I contacted it. The gentleman told  
17 me text him back what it was I wanted. I did just  
18 that. I would like an estimate for replacement of  
19 my roof.

20 The day we scheduled for him to come  
21 out, he tried to sell me an insurance -- go to my  
22 insurance. Your roof is discontinued, go to your  
23 insurance. I wanted an estimate. This gentleman  
24 had me fill out what I just thought was name,

1 demographic information, that's all I filled out on  
2 paperwork. And after a later date, me and my  
3 husband did end up going the insurance route because  
4 we went through the proper channels to see what we  
5 were or were not allotted in the situation.

6 As first-time home buyers, we were  
7 not knowledgeable. We paid for the insurance. We  
8 wanted to know what we were and were not allowed to  
9 use it for. In this case, I went through all the  
10 proper channels, filed a claim. I hadn't heard back  
11 from this guy for about two months. He never left  
12 that day with an estimate. He didn't have, per se,  
13 a proposal as my first two contractors did. They  
14 showed me the products they used. They had samples.  
15 They showed me pictures of their steps, all  
16 different things they did to replace your roof.

17 This company did not do that. Again,  
18 he was trying to sell me an insurance claim. All  
19 this work that needed to be done could get done.  
20 After about two months of me not contacting him  
21 back, I received this collection letter stating that  
22 I owed X amount of dollars for phone call, X amount  
23 of dollars for time, X amount of dollars for texts.  
24 I have no idea -- I didn't sign, in my opinion, a

1 contract. And the paperwork that was left with me  
2 was not that.

3 Basically long story short, I ended  
4 up going to court. He ended up winning because he  
5 has taken everyone to court and he continues to win.  
6 Specifically in my case, I live within a township.  
7 Not only did you need a Delaware license, but  
8 strictly in our town codes states before you even  
9 sell in our neighborhood, you are to have a  
10 contract. I have a letter from the Town of Smyrna,  
11 where I come from. It was refused in court by his  
12 attorney, was not allowed. The judge allowed it not  
13 to be allowed. He did not have a license at the  
14 time that not only did he come out to sell, he  
15 applied for it at a much later date.

16 Noting, this gentleman has already  
17 done work in the neighborhood because he had already  
18 done the neighbor across the street. Come to find  
19 out this gentleman in docket has at least 20 people  
20 suing through State of Delaware, that I'm aware of.  
21 That's kind of why I'm here today because it's  
22 worked itself up to the knowledge of this office and  
23 I contributed my information that I was able to  
24 share and what I went through.

1 MR. EVANS: Thank you,  
2 Mrs. Patterson. Does anyone else have any other  
3 public comments at this time?

4 MS. RANGAN: Good afternoon, I am  
5 Rashmi Rangan, R-A-S-H-M-I, R-A-N-G-A-N. I am with  
6 Delaware Community Reinvestment Action Counsel.  
7 Where congratulations and thank you, consumers, for  
8 speaking your truth, sharing your stories about how  
9 the wealth that you are building could so easily be  
10 stripped away through such unscrupulous practices.

11 So we support this regulation, this  
12 proposal, and the recommendations that you have  
13 made, if they are in the final rounds, we would like  
14 to take a review because they do make sense.

15 Emergencies are emergencies. That is where our  
16 homeowners are the most vulnerable. So a carve out  
17 of that could add enough layers of fraud and scam  
18 for our consumers. Thank you so much for  
19 considering ways this in which to protect our home  
20 owners DCRAC supports this proposal. Thank you.

21 MR. EVANS: Thank you very much. I  
22 will go ahead and turn it over to Brian Canfield.

23 MR. CANFIELD: Thank you to everyone  
24 who showed up and offered comments. At the moment

PUBLIC COMMENT SESSION

Page 22

1 we currently don't have anyone else that would like  
2 to speak. However, we will be here until at least  
3 2:00 p.m. to wait to see if anyone else wants to  
4 show up and offer comments. You are free to leave  
5 if you would like to. You are also free to stay to  
6 see if anyone else is going to offer my comments.  
7 Thank you.

8 MR. LEFKON: I'm Owen Lefkon,  
9 Director of the Fraud and Consumer Protection  
10 Division in the Department of Justice and on behalf  
11 of the Department I just want to extend my thanks to  
12 everybody would came out today to provide your  
13 comments. It means a lot to us. So thank you very  
14 much.

15 (The public comment session was held  
16 open and the reporter waited from 12:26 p.m.  
17 until 2 p.m.)

18 MR. CANFIELD: It is two o'clock now  
19 no members of the public are present at the moment  
20 so we are going conclude the public hearing. Thank  
21 you to all members of the public who offered  
22 comments.

23 (Whereupon, the public comment  
24 session was concluded.)

PUBLIC COMMENT SESSION

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PUBLIC COMMENT SESSION

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C E R T I F I C A T E

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I do hereby certify that I am a Notary Public in good standing; that the aforesaid testimony was taken before me, pursuant to notice, at the time and place indicated; that said deponent was by me duly sworn to tell the truth, the whole truth, and nothing but the truth; that the testimony of said deponent was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the deposition is a true and correct record of the testimony given by the witness; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

WITNESS my hand and official seal this 8TH day of JUNE 2023

*John P. Donnelly, RDR*

-----

John P. Donnelly, RDR  
Notary Public

Job No. 5900569



<p><b>1</b></p> <p>1 3:9 7:2,13 8:16 9:7</p> <p><b>1,500</b> 16:11</p> <p><b>1-5</b> 9:16</p> <p><b>10</b> 3:9,10,12,15 3:16 12:11,15</p> <p><b>100</b> 11:1</p> <p><b>106</b> 1:6,7</p> <p><b>11</b> 16:19</p> <p><b>11:00</b> 1:16</p> <p><b>12</b> 7:5 9:4 12:14,17</p> <p><b>12:26</b> 22:16</p> <p><b>13</b> 9:5</p> <p><b>17271</b> 24:18</p> <p><b>19801</b> 1:24 2:6</p>	<p><b>2511-2528</b> 1:6</p> <p><b>26</b> 7:9</p> <p><b>2:00</b> 22:3</p> <p><b>3</b></p> <p><b>3</b> 3:12 8:21</p> <p><b>3,000</b> 16:5</p> <p><b>30</b> 10:8,9</p> <p><b>300</b> 1:23</p> <p><b>302</b> 1:24</p> <p><b>302-577-8500</b> 2:7</p> <p><b>4</b></p> <p><b>4</b> 3:15 9:2</p> <p><b>5</b></p> <p><b>5</b> 3:16 9:6</p> <p><b>5,000</b> 16:5</p> <p><b>571-0510</b> 1:24</p> <p><b>5900569</b> 24:24</p>	<p><b>a</b></p> <p><b>a.m.</b> 1:16</p> <p><b>able</b> 6:9 20:23</p> <p><b>accept</b> 13:13</p> <p><b>accommodated</b> 5:13</p> <p><b>acknowledged</b> 5:2</p> <p><b>act</b> 8:5</p> <p><b>action</b> 21:6 24:11</p> <p><b>acts</b> 8:6</p> <p><b>actually</b> 13:16 16:14</p> <p><b>add</b> 6:15 21:17</p> <p><b>additional</b> 6:16</p> <p><b>adjuster</b> 12:7</p> <p><b>adjusters</b> 14:21</p> <p><b>admin</b> 1:6</p> <p><b>administer</b> 9:12</p> <p><b>adopted</b> 7:23</p> <p><b>advance</b> 5:11</p> <p><b>aforsaid</b> 24:6</p> <p><b>afternoon</b> 9:21 21:4</p> <p><b>agent</b> 11:16</p> <p><b>ago</b> 14:21</p> <p><b>ahead</b> 21:22</p> <p><b>aided</b> 24:9</p> <p><b>air</b> 10:12</p> <p><b>alarm</b> 6:3,8</p> <p><b>allowed</b> 19:8 20:12,12,13</p>	<p><b>alotted</b> 19:5</p> <p><b>ambiguity</b> 17:12</p> <p><b>amended</b> 7:23</p> <p><b>amount</b> 14:22 19:22,22,23</p> <p><b>analysis</b> 3:11 8:18</p> <p><b>answer</b> 4:9 5:17</p> <p><b>answers</b> 13:1</p> <p><b>anyway</b> 11:21</p> <p><b>appearances</b> 2:1</p> <p><b>appeared</b> 9:3</p> <p><b>applied</b> 20:15</p> <p><b>appreciate</b> 18:2</p> <p><b>april</b> 7:2,2,5,7 7:9,9 8:13,20 8:24 9:4,5</p> <p><b>area</b> 10:23 15:18</p> <p><b>areas</b> 10:3 17:24</p> <p><b>army</b> 10:12,12</p> <p><b>asked</b> 9:23 11:3 12:5 13:10</p> <p><b>assist</b> 6:3 8:4</p> <p><b>associated</b> 10:14</p> <p><b>attending</b> 4:23</p> <p><b>attorney</b> 4:2 13:11 20:12</p> <p><b>available</b> 8:12</p>
<p><b>2</b></p> <p><b>2</b> 3:10 8:17 22:17</p> <p><b>20</b> 20:19</p> <p><b>20,000</b> 16:6</p> <p><b>2020</b> 10:2,20</p> <p><b>2023</b> 1:12 5:15 7:2,2,5,8,9,14 7:14,16 8:13 8:20 9:1,4,5,7 24:14</p> <p><b>21</b> 7:7,9 8:24</p> <p><b>23</b> 14:17</p> <p><b>23,000</b> 13:13</p> <p><b>24</b> 1:12 7:14</p> <p><b>25</b> 12:13,17</p> <p><b>25,000</b> 12:14,14</p>	<p><b>6</b></p> <p><b>6</b> 1:6</p> <p><b>67,000</b> 13:13</p> <p><b>8</b></p> <p><b>80</b> 11:1</p> <p><b>815</b> 1:23</p> <p><b>820</b> 1:15 2:6</p> <p><b>8th</b> 24:13</p> <p><b>9</b></p> <p><b>9</b> 5:15 6:12,17 7:16</p> <p><b>90,000</b> 17:19</p>		

<b>avenue</b> 1:23 <b>average</b> 12:11 <b>aware</b> 16:7 20:20	<b>call</b> 10:23,24 17:15 19:22 <b>called</b> 6:6 10:23 15:5 17:8 <b>canceling</b> 15:16 <b>canfield</b> 2:3 4:1 4:2 5:16 6:20 21:22,23 22:18 <b>carve</b> 21:16 <b>carvel</b> 1:14 <b>case</b> 13:8 19:9 20:6 <b>catastrophic</b> 15:1 <b>cell</b> 6:19 <b>ceo</b> 13:6 <b>certain</b> 8:5 16:24 <b>certified</b> 12:6 <b>certify</b> 24:5 <b>challenging</b> 15:2 <b>channels</b> 19:4 19:10 <b>charge</b> 14:23 <b>chat</b> 5:17 <b>chief</b> 10:11 <b>civilian</b> 10:9 <b>claim</b> 19:10,18 <b>clarification</b> 8:4 <b>clear</b> 13:14,22 16:13 <b>clearly</b> 5:7	<b>clinical</b> 10:17 <b>clinics</b> 10:13 <b>closed</b> 7:17 <b>code</b> 1:6 <b>codes</b> 20:8 <b>colleagues</b> 4:11 <b>collection</b> 19:21 <b>come</b> 5:5 7:20 9:19,23 12:10 13:18 14:1,5 18:20 20:11,14 20:18 <b>comes</b> 9:9 <b>commencing</b> 1:16 <b>comment</b> 1:6 1:14 5:13,20 6:6,21 9:7,9,12 14:15 18:4,5 22:15,23 24:1 <b>commenter</b> 6:9 9:18 <b>commenters</b> 4:24 6:3,14 14:8 <b>commenting</b> 14:11 <b>comments</b> 3:16 5:3,8,10,15,21 5:22,24 6:1,10 6:12 7:13,16 7:17,19 9:8 14:9 18:8 21:3 21:24 22:4,6	22:13,22 <b>commercial</b> 15:7 <b>community</b> 21:6 <b>company</b> 11:13 11:19,23 12:19 12:21,23 13:7 15:3 19:17 <b>computer</b> 24:9 <b>concise</b> 5:22 <b>conclude</b> 22:20 <b>concluded</b> 22:24 <b>concludes</b> 9:10 <b>conclusion</b> 7:24 <b>congratulations</b> 21:7 <b>consideration</b> 17:24 <b>considered</b> 7:13 9:8 <b>considering</b> 21:19 <b>consisting</b> 7:18 <b>constitute</b> 8:6 <b>construction</b> 12:24 17:4 <b>consumer</b> 2:4 4:3,5,8,12,14 4:16,17 7:11 7:17,21 8:5,8 9:10 10:1 18:10 22:9
<b>b</b>			
<b>back</b> 10:2,19 11:14,19,22 13:6 18:17 19:10,21 <b>balance</b> 12:15 <b>ball</b> 16:22 <b>basically</b> 9:24 12:16 20:3 <b>behalf</b> 22:10 <b>bit</b> 13:18 <b>board</b> 16:9,10 <b>bonds</b> 17:20 <b>brandy</b> 18:4 <b>breaks</b> 15:6 <b>brian</b> 2:3 4:1 5:16 21:22 <b>brian.canfield</b> 5:16 <b>bucks</b> 16:11 <b>building</b> 1:15 21:9 <b>business</b> 8:7 14:18 <b>buyers</b> 19:6			
<b>c</b>			
<b>c</b> 24:3,3 <b>calendar</b> 7:5 9:4			

<p><b>consumers</b> 21:7 21:18 <b>contacted</b> 18:16 <b>contacting</b> 19:20 <b>continues</b> 20:5 <b>contract</b> 11:11 11:12 12:13 13:9,10 15:16 16:15 17:7 20:1,10</p>	<p><b>counsel</b> 21:6 24:11 <b>counting</b> 6:5 <b>court</b> 5:4 9:15 20:4,5,11 <b>courtesy</b> 6:13 <b>created</b> 8:3 <b>creation</b> 6:23 8:2,8 <b>currently</b> 18:7 22:1</p>	<p><b>defense</b> 10:9 <b>del.c.</b> 1:6 <b>delaware</b> 1:16 1:18,23 2:2,6 3:13 4:3 7:3,5 7:7 8:13,20,23 9:3 10:2,22 14:20 20:7,20 21:6 <b>delaware.gov.</b> 5:16</p>	<p><b>disappears</b> 16:21 <b>discontinued</b> 18:22 <b>discuss</b> 4:20 <b>discussed</b> 12:10 <b>division</b> 2:4 4:13 22:10 <b>docket</b> 20:19 <b>document</b> 11:15</p>
<p><b>contractor</b> 7:10 11:2,16,21 12:6 13:6 14:4 15:13 18:14 <b>contractors</b> 7:10 10:1,16 13:23 16:18 17:22 19:13 <b>contracts</b> 10:16 16:7 <b>contractual</b> 15:10,23 <b>contributed</b> 20:23 <b>copies</b> 8:11 <b>copy</b> 8:17 9:6 <b>correct</b> 24:10 <b>correctly</b> 24:8 <b>corresponding</b> 8:19 <b>cost</b> 11:5,24 12:1,12 16:11</p>	<p style="text-align: center;"><b>d</b></p> <p><b>d</b> 9:22 <b>damage</b> 15:5 16:6 <b>dan</b> 9:19,22 <b>date</b> 19:2 20:15 <b>dated</b> 11:17 <b>day</b> 15:11,15 18:20 19:12 24:14 <b>days</b> 15:14 <b>dcrac</b> 21:20 <b>de</b> 1:6,24 <b>deadline</b> 7:12 9:8 <b>dealing</b> 15:19 15:22 17:2,2,5 <b>debt</b> 13:14 <b>deceptively</b> 16:15 <b>decide</b> 7:22 15:15 <b>decided</b> 12:3 13:2</p>	<p><b>demographic</b> 19:1 <b>department</b> 2:2 4:3,13,15 10:9 13:16 22:10,11 <b>depending</b> 16:6 <b>deponent</b> 24:7 24:8 <b>deposit</b> 16:21 <b>deposition</b> 24:10 <b>deputy</b> 4:2 <b>description</b> 3:7 <b>descriptive</b> 17:11 <b>details</b> 17:9 <b>different</b> 15:8 19:16 <b>diplomate</b> 1:17 <b>director</b> 2:4 4:12,14 22:9 <b>disappear</b> 17:18</p>	<p><b>doing</b> 12:17 16:14 18:14 <b>doj</b> 9:23 <b>dollar</b> 11:6 <b>dollars</b> 19:22 19:23,23 <b>donnelly</b> 1:17 24:19 <b>dover</b> 10:2,22 13:7 <b>downtown</b> 13:7 <b>dr</b> 3:16 9:9 <b>drug</b> 11:20 <b>duly</b> 24:7</p>
			<p style="text-align: center;"><b>e</b></p> <p><b>e</b> 5:15 9:22 24:3 24:3 <b>easily</b> 21:9 <b>edited</b> 9:5 <b>edition</b> 7:3 8:13 <b>eight</b> 16:22 <b>electrical</b> 10:17 <b>electronic</b> 10:17</p>

<p><b>emergencies</b> 21:15,15  <b>emergency</b> 15:3,19 17:3  <b>encourage</b> 6:11 6:17  <b>ended</b> 20:3,4  <b>engineer</b> 10:17 10:17,18  <b>ensure</b> 5:12  <b>enter</b> 6:24  <b>entirely</b> 15:8  <b>especially</b> 17:1  <b>esquire</b> 2:3,3  <b>estimate</b> 11:5,6 11:14,18 13:11 14:4 18:12,18 18:23 19:12  <b>estimating</b> 17:7  <b>evans</b> 2:5 4:17 4:22 9:12,18 14:7,13 18:3,7 21:1,21  <b>events</b> 15:1  <b>everybody</b> 22:12  <b>evidence</b> 8:21  <b>example</b> 16:9  <b>exceed</b> 15:24 16:4  <b>exhibit</b> 8:16,17 8:21 9:2,6  <b>exhibits</b> 3:5 5:11 6:24 7:20 8:15 9:16</p>	<p><b>expires</b> 17:17  <b>explain</b> 13:19  <b>express</b> 4:7  <b>extend</b> 22:11  <b>extent</b> 16:6</p> <p style="text-align: center;"><b>f</b></p> <p><b>f</b> 24:3  <b>face</b> 15:18  <b>fact</b> 15:13  <b>featured</b> 5:11  <b>felt</b> 13:16  <b>fields</b> 10:10  <b>file</b> 13:10  <b>filed</b> 19:10  <b>filing</b> 13:8  <b>fill</b> 18:24  <b>filled</b> 19:1  <b>final</b> 21:13  <b>find</b> 12:11 14:2 14:5 20:18  <b>fine</b> 16:12  <b>finish</b> 6:10 14:2  <b>fire</b> 15:5  <b>first</b> 9:18 12:13 12:14,17 19:6 19:13  <b>five</b> 5:23 6:5,8 6:10,15  <b>flexibility</b> 3:10 8:18  <b>flooded</b> 15:6  <b>fly</b> 14:20  <b>folks</b> 5:22  <b>following</b> 5:14</p>	<p><b>foot</b> 11:1  <b>footage</b> 17:10 17:10  <b>footages</b> 17:9  <b>force</b> 10:12  <b>fraud</b> 2:4 4:12 8:5 21:17 22:9  <b>free</b> 11:5,14,18 13:10 14:4 22:4,5  <b>french</b> 1:15 2:6  <b>front</b> 14:3 18:15  <b>full</b> 8:11  <b>funny</b> 11:17</p> <p style="text-align: center;"><b>g</b></p> <p><b>g</b> 9:22 21:5  <b>general</b> 4:2  <b>gentleman</b> 18:16,23 20:16 20:19  <b>getting</b> 12:22  <b>give</b> 10:4 14:9 15:24  <b>given</b> 24:10  <b>giving</b> 11:4  <b>glad</b> 11:9  <b>go</b> 4:23 6:22,22 10:19 13:2 15:4 18:21,22 21:22  <b>goes</b> 14:17  <b>going</b> 4:19,20 6:21 8:1 11:13 12:4,16,18,18</p>	<p>12:20,22,23  13:8,9,12 14:9  19:3 20:4 22:6  22:20  <b>good</b> 9:21 13:14 14:23 21:4 24:6  <b>gray</b> 15:18 17:24  <b>groups</b> 7:11,11  <b>guide</b> 8:8  <b>guy</b> 10:6 13:3,4 19:11  <b>guys</b> 16:14,20 17:14,19</p> <p style="text-align: center;"><b>h</b></p> <p><b>h</b> 9:22 14:15 21:5  <b>hand</b> 24:13  <b>happen</b> 14:24 15:23  <b>happened</b> 9:24 10:2,21 11:23 12:5 15:20  <b>heard</b> 12:8 19:10  <b>hearing</b> 3:15,16 4:4,21 5:5,9,18 6:21 7:4,6,13 7:14,19 9:3,9 9:13 18:7 22:20  <b>heart</b> 14:17  <b>held</b> 22:15</p>
---	--	---	---

<p><b>help</b> 8:8 11:9 13:17 16:21,23 <b>helped</b> 13:16 13:19,22 14:19 <b>hit</b> 10:21 11:2,8 <b>home</b> 1:7 4:6 8:5,9 17:6 18:8 18:9 19:6 21:19 <b>homeowners</b> 21:16 <b>honestly</b> 13:15 <b>hopefully</b> 13:20 <b>hospital</b> 10:13 <b>house</b> 12:24 13:1 16:9,10 16:12 <b>husband</b> 19:3</p>	<p><b>index</b> 3:1 <b>indicated</b> 24:7 <b>indication</b> 16:13 <b>individual</b> 7:10 14:3 <b>individuals</b> 13:20 <b>information</b> 6:16 11:18 19:1 20:23 <b>inside</b> 8:20 <b>insurance</b> 11:13,19,23,24 12:1,19,21,23 14:18 17:5,19 18:21,22,23 19:3,7,18</p>	<p style="text-align: center;"><b>j</b></p> <p><b>j</b> 14:15 <b>jaye</b> 3:16 9:9 <b>job</b> 24:24 <b>jobs</b> 15:20 <b>joe</b> 4:15 <b>john</b> 1:16 14:13 14:15 24:19 <b>joseph</b> 2:5 <b>journal</b> 3:13 7:7 8:23 <b>judge</b> 20:12 <b>june</b> 5:15 6:12 6:17 7:16 24:14 <b>justice</b> 2:2 4:4 4:13,15 13:16 22:10</p>	<p style="text-align: center;"><b>l</b></p> <p><b>l</b> 9:22,22,22 <b>lack</b> 10:24 <b>language</b> 16:8 <b>lastly</b> 6:18 <b>layers</b> 21:17 <b>lead</b> 11:16 <b>leave</b> 17:16 22:4 <b>leaves</b> 17:11 <b>lefkon</b> 2:4 4:11 22:8,8 <b>left</b> 19:11 20:1 <b>legal</b> 1:22 8:22 14:5 <b>letter</b> 19:21 20:10 <b>license</b> 20:7,13</p>
<p><b>i</b></p>	<p><b>interested</b> 24:11</p>	<p><b>k</b></p>	<p><b>limit</b> 5:23</p>
<p><b>idea</b> 10:4 11:12 19:24 <b>identification</b> 9:16 <b>identifying</b> 8:5 <b>impact</b> 3:11 8:18 <b>implementati...</b> 8:4 <b>implemented</b> 14:20 <b>important</b> 15:10 16:17 <b>improvement</b> 1:7 4:6 8:6,9 17:6 18:8,9</p>	<p><b>interesting</b> 14:6 <b>interrupt</b> 6:14 <b>intersection</b> 10:21 <b>introduce</b> 4:10 <b>investigator</b> 4:16 <b>invited</b> 5:21 <b>issue</b> 7:23 <b>issues</b> 13:24 <b>item</b> 17:9</p>	<p><b>kin</b> 24:11 <b>kind</b> 12:20 15:12 17:6 20:21 <b>kinds</b> 17:21 <b>know</b> 10:5,6 12:20 14:4 16:8 19:8 <b>knowledge</b> 20:22 <b>knowledgeable</b> 19:7 <b>known</b> 17:8</p>	<p><b>limitation</b> 15:12 <b>limitations</b> 14:22 <b>limited</b> 5:8 6:1 <b>line</b> 17:9 <b>lineal</b> 17:10 <b>listen</b> 13:7 <b>little</b> 13:18 <b>live</b> 4:8 10:22 15:8 20:6 <b>long</b> 20:3 <b>longer</b> 10:23 <b>looked</b> 16:2 17:1</p>

<b>looking</b> 11:14 <b>lot</b> 14:24 17:14 22:13 <b>luck</b> 13:14	<b>money</b> 12:19 12:20,22 14:22 17:14 <b>months</b> 12:3 19:11,20 <b>move</b> 6:8 8:1	<b>number</b> 3:7 12:10 13:20 15:24 16:5 18:16	<b>owed</b> 19:22 <b>owen</b> 2:4 4:11 22:8 <b>own</b> 13:24 <b>owner</b> 16:1 <b>owners</b> 21:20
<b>m</b>	<b>n</b>	<b>o</b>	<b>p</b>
<b>m</b> 2:3 14:16 21:5 <b>machine</b> 24:8 <b>made</b> 21:13 <b>mailed</b> 5:15 <b>make</b> 5:6,22 6:18 9:8 13:1 18:5 21:14 <b>manor</b> 10:23 10:24 <b>marion</b> 2:3 <b>marked</b> 9:15 <b>marroni</b> 14:13 14:14,15 18:3 <b>mary</b> 4:13 <b>matter</b> 5:9 <b>means</b> 22:13 <b>medical</b> 10:11 <b>meeting</b> 7:5 <b>member</b> 10:8 <b>members</b> 22:19 22:21 <b>mentioned</b> 6:1 <b>military</b> 10:7,8 <b>minute</b> 5:23 6:10,15 <b>minutes</b> 6:5,8 <b>moment</b> 21:24 22:19	<b>n</b> 1:15 2:6 9:22 9:22 14:15,16 21:5,5 <b>name</b> 4:1 5:6,7 9:22 14:6 18:24 <b>nation</b> 12:11 <b>nationally</b> 17:8 <b>need</b> 11:10 17:18 20:7 <b>needed</b> 17:21 19:19 <b>neighbor</b> 20:18 <b>neighborhood</b> 18:15 20:9,17 <b>neither</b> 24:11 <b>never</b> 19:11 <b>news</b> 3:13,14 7:7,7 8:23,24 <b>night</b> 14:20 <b>notary</b> 1:17 24:5,20 <b>notice</b> 3:15 7:4 7:6 8:22 9:2 24:6 <b>notify</b> 7:11 <b>noting</b> 20:16	<b>o</b> 14:15,16 <b>o'clock</b> 22:18 <b>obligation</b> 15:11 <b>observed</b> 8:7 <b>odessa</b> 10:3 <b>offer</b> 5:3,20 22:4,6 <b>offered</b> 21:24 22:21 <b>office</b> 20:22 <b>official</b> 24:13 <b>okay</b> 12:7 <b>once</b> 11:19 15:20 <b>ones</b> 18:14 <b>online</b> 8:12 <b>open</b> 5:14 22:16 <b>operate</b> 16:19 <b>operations</b> 10:11 <b>opinion</b> 19:24 <b>opportunity</b> 4:7 5:2,13,20 7:15 <b>order</b> 7:24 <b>outcome</b> 24:11 <b>overall</b> 12:12	<b>p</b> 1:16 24:19 <b>p.m.</b> 22:3,16,17 <b>page</b> 3:7 <b>paid</b> 13:3 15:17 19:7 <b>paperwork</b> 12:9 13:12 19:2 20:1 <b>paralegal</b> 4:17 <b>part</b> 14:3 <b>parties</b> 16:7 <b>party</b> 24:11 <b>pass</b> 9:11 <b>patterson</b> 18:4 18:6,11 21:2 <b>pay</b> 12:16 13:4 13:12 <b>people</b> 6:19 20:19 <b>percent</b> 12:12 12:13,14,15,17 <b>perimeter</b> 17:10 <b>period</b> 6:11 7:17 <b>permitted</b> 5:18 <b>person</b> 15:22

<p><b>perspective</b> 15:9 16:3</p> <p><b>pertinent</b> 6:16</p> <p><b>phone</b> 18:16 19:22</p> <p><b>phones</b> 6:19</p> <p><b>pictures</b> 19:15</p> <p><b>pipe</b> 15:6</p> <p><b>place</b> 24:7</p> <p><b>platform</b> 17:7</p> <p><b>please</b> 6:13,18 9:20</p> <p><b>podium</b> 5:6 6:7 9:19</p> <p><b>point</b> 17:23</p> <p><b>portion</b> 6:21 9:12</p> <p><b>position</b> 10:11</p> <p><b>possible</b> 5:23</p> <p><b>possibly</b> 17:11</p> <p><b>posted</b> 7:6 9:4</p> <p><b>practices</b> 8:6,7 8:7 21:10</p> <p><b>pre</b> 3:16</p> <p><b>predatory</b> 14:24</p> <p><b>prepare</b> 5:4</p> <p><b>present</b> 5:4 22:19</p> <p><b>presentation</b> 9:11</p> <p><b>prior</b> 9:7 11:3</p> <p><b>private</b> 12:6</p> <p><b>probably</b> 11:3</p>	<p><b>procedure</b> 4:21</p> <p><b>proceeding</b> 5:14</p> <p><b>process</b> 4:23</p> <p><b>products</b> 19:14</p> <p><b>professional</b> 1:23</p> <p><b>promulgation</b> 6:22</p> <p><b>proper</b> 19:4,10</p> <p><b>properties</b> 15:7</p> <p><b>property</b> 15:4</p> <p><b>proposal</b> 7:12 19:13 21:12,20</p> <p><b>proposed</b> 3:9 4:5 5:3,10,24 6:2,23 7:1 8:2 8:3,16,19,22 18:10</p> <p><b>protect</b> 21:19</p> <p><b>protection</b> 2:4 4:3,5,8,12,14 4:16,18 7:18 7:21 8:8 9:10 15:12 18:10 22:9</p> <p><b>provide</b> 9:24 22:12</p> <p><b>provided</b> 5:2</p> <p><b>provides</b> 17:9</p> <p><b>providing</b> 5:24</p> <p><b>public</b> 1:6,14 1:18 3:15 4:4,7 5:18 6:21 7:4,5 7:14,15,17 9:2</p>	<p>9:12 12:7 14:8 14:9,21 18:4,5 18:8 21:3 22:15,19,20,21 22:23 24:1,6 24:20</p> <p><b>publication</b> 3:13 8:22</p> <p><b>publish</b> 8:19</p> <p><b>published</b> 7:2,4 8:24</p> <p><b>purposes</b> 9:16</p> <p><b>pursuant</b> 24:6</p> <p style="text-align: center;"><b>q</b></p> <p><b>question</b> 4:9 5:17</p> <p><b>quickly</b> 4:10</p> <p><b>quirk</b> 2:3 4:14</p> <p style="text-align: center;"><b>r</b></p> <p><b>r</b> 14:16,16 21:5 21:5 24:3</p> <p><b>rago</b> 2:5 4:15</p> <p><b>rangan</b> 14:10 14:11 21:4,5</p> <p><b>rashmi</b> 14:9 21:5</p> <p><b>rather</b> 14:1</p> <p><b>rdr</b> 24:19</p> <p><b>reach</b> 18:13</p> <p><b>reached</b> 7:10 18:12</p> <p><b>read</b> 8:15</p> <p><b>real</b> 14:5</p>	<p><b>really</b> 10:6 11:11</p> <p><b>received</b> 5:8,10 9:7 19:21</p> <p><b>recision</b> 15:11 15:15</p> <p><b>recommenda...</b> 21:12</p> <p><b>reconstruction</b> 12:24</p> <p><b>record</b> 5:13 6:24 7:18 8:16 15:4 24:10</p> <p><b>recorded</b> 24:8</p> <p><b>refused</b> 20:11</p> <p><b>regarding</b> 4:6 17:24</p> <p><b>register</b> 7:3 8:13,20</p> <p><b>registered</b> 1:17 1:23</p> <p><b>regulation</b> 3:9 5:10 6:1,2,16 6:22,23 7:1,12 7:22 8:2,3,9,11 8:17,19,23 21:11</p> <p><b>regulations</b> 4:5 5:3 7:3 8:10,14 8:20 14:19 16:18,23 17:13 17:21 18:8,9</p> <p><b>regulatory</b> 3:10 3:11 8:17,18 16:2</p>
--	--	--	---

<p><b>reinvestment</b> 21:6  <b>remain</b> 5:14  <b>repealed</b> 7:23  <b>repeatedly</b> 11:21  <b>replace</b> 19:16  <b>replacement</b> 11:5,24,24 18:18  <b>replacing</b> 11:4  <b>reporter</b> 1:17 5:4 9:15 22:16  <b>reporters</b> 1:23  <b>request</b> 5:22  <b>requested</b> 18:11  <b>residential</b> 15:7 15:9  <b>respect</b> 5:23  <b>response</b> 15:3  <b>restoration</b> 14:18  <b>restrictions</b> 14:21  <b>review</b> 7:18 21:14  <b>rhynn</b> 2:5 4:17 4:20 9:11  <b>rid</b> 17:18  <b>right</b> 10:21 11:12 15:11,15 17:15  <b>roof</b> 11:4,4 18:19,22 19:16</p>	<p><b>room</b> 17:12  <b>rounds</b> 21:13  <b>route</b> 19:3  <b>rules</b> 4:20,24 18:12</p> <hr/> <p style="text-align: center;"><b>s</b></p> <hr/> <p><b>s</b> 9:22 21:5  <b>samples</b> 19:14  <b>saying</b> 13:12  <b>scam</b> 21:17  <b>schedule</b> 6:22  <b>scheduled</b> 18:20  <b>se</b> 19:12  <b>seal</b> 24:13  <b>sections</b> 1:6  <b>secure</b> 16:12  <b>see</b> 8:11 16:19 16:20 19:4 22:3,6  <b>sell</b> 18:21 19:18 20:9,14  <b>sense</b> 21:14  <b>sent</b> 13:11  <b>service</b> 17:3  <b>services</b> 1:7 4:6  <b>session</b> 1:6 4:9 5:17 22:15,24 24:1  <b>sessoin</b> 1:14  <b>share</b> 20:24  <b>sharing</b> 21:8  <b>shilling</b> 9:19,21 9:22 14:7</p>	<p><b>short</b> 20:3  <b>shorthand</b> 24:9  <b>show</b> 16:21 22:4  <b>showed</b> 11:7 19:14,15 21:24  <b>side</b> 17:5  <b>sign</b> 11:10,11 12:5 13:4 18:15 19:24  <b>signature</b> 24:18  <b>signed</b> 4:24 5:19 11:15,17 14:3  <b>significant</b> 11:1  <b>silence</b> 6:18  <b>silver</b> 3:16 9:9  <b>similar</b> 8:9  <b>simple</b> 15:13  <b>situation</b> 13:21 15:19 19:5  <b>slot</b> 6:15  <b>smyrna</b> 20:10  <b>software</b> 17:8  <b>solely</b> 5:9 6:2  <b>solutions</b> 1:22  <b>sound</b> 6:4,8  <b>speak</b> 5:21 13:18 22:2  <b>speaking</b> 6:19 21:8  <b>special</b> 4:15  <b>specific</b> 16:8  <b>specifically</b> 17:6 20:6</p>	<p><b>spell</b> 5:7  <b>spend</b> 17:14,19 17:19  <b>spoken</b> 11:2  <b>square</b> 17:9  <b>standing</b> 24:6  <b>standpoint</b> 15:24  <b>start</b> 5:1 6:19  <b>state</b> 1:14,18 3:13 7:7 8:24 9:3 20:20  <b>statement</b> 3:11 8:18  <b>states</b> 8:10 16:19 20:8  <b>stating</b> 19:21  <b>stay</b> 7:16 22:5  <b>steps</b> 19:15  <b>stories</b> 21:8  <b>storm</b> 10:1 11:8  <b>storms</b> 15:1 17:2  <b>story</b> 9:24 10:19 20:3  <b>street</b> 1:15 2:6 20:18  <b>strictly</b> 20:8  <b>stripped</b> 21:10  <b>strongly</b> 6:11  <b>subject</b> 5:9  <b>submit</b> 6:11 7:12,15  <b>submitted</b> 3:16</p>
--	---	---	--



<b>suing</b> 20:20 <b>suite</b> 1:23 <b>supervision</b> 24:9 <b>support</b> 21:11 <b>supporting</b> 10:13 <b>supports</b> 21:20 <b>sure</b> 5:6 6:18 14:15 <b>sworn</b> 24:7	21:1,7,18,20,21 21:23 22:7,13 22:20 <b>thanks</b> 22:11 <b>thereof</b> 24:11 <b>thing</b> 14:23 18:1 <b>things</b> 14:24 15:2 16:23,24 19:16 <b>think</b> 5:1 14:23 15:10,20 16:2 16:17,24 17:13 <b>thinking</b> 10:5 <b>thought</b> 18:24 <b>thousands</b> 15:20 <b>three</b> 15:11,15 18:13 <b>time</b> 5:21,23 6:4,10 11:9 16:20 18:5 19:6,23 20:14 21:3 24:7 <b>timeline</b> 12:1 <b>timer</b> 6:5,7 <b>times</b> 12:10 <b>today</b> 4:4,11,23 7:14,19 9:18 13:15 20:21 22:12 <b>today's</b> 5:9,14 <b>told</b> 13:4 18:13 18:16	<b>tornado</b> 10:20 <b>touched</b> 10:20 <b>tough</b> 18:1 <b>town</b> 20:8,10 <b>township</b> 20:6 <b>transcribed</b> 24:9 <b>transcript</b> 5:5 7:19 <b>transcription</b> 24:9 <b>trapped</b> 16:15 <b>trees</b> 11:1 <b>tried</b> 18:21 <b>true</b> 24:10 <b>truth</b> 21:8 24:7 24:8,8 <b>try</b> 13:17 15:23 <b>trying</b> 19:18 <b>turn</b> 4:19 6:6 13:17 21:22 <b>two</b> 11:3,7 12:3 13:23 14:8 15:14 19:11,13 19:20 22:18	<b>unit</b> 4:3,5,8,16 4:18 7:18,21 8:8 18:10 <b>unit's</b> 9:10 <b>unlawful</b> 8:7 <b>unscrupulous</b> 16:20 21:10 <b>unsure</b> 14:8 18:4,6 <b>use</b> 15:21 16:8 17:7 19:9 <b>used</b> 19:14
<b>t</b>			<b>v</b>
<b>t</b> 24:3,3 <b>table</b> 8:12 <b>taillight</b> 17:15 <b>taillights</b> 17:16 17:18 <b>take</b> 12:23 21:14 <b>taken</b> 1:14 20:5 24:6 <b>talked</b> 15:3 <b>talking</b> 10:7 <b>tall</b> 11:1 <b>tarp</b> 16:10,10 <b>technical</b> 10:10 <b>tell</b> 12:8 17:20 24:7 <b>testimony</b> 24:6 24:8,10 <b>text</b> 3:9 8:11,16 18:17 <b>texts</b> 19:23 <b>thank</b> 4:22 14:6 14:7 18:1,3			<b>value</b> 11:6 <b>various</b> 18:12 <b>verbal</b> 5:20 <b>verbatim</b> 5:5 <b>verification</b> 3:12 <b>veritext</b> 1:22 <b>views</b> 4:7 <b>vulnerable</b> 21:16
			<b>w</b>
		<b>u</b>	<b>wait</b> 22:3 <b>waited</b> 22:16 <b>want</b> 4:10 22:11 <b>wanted</b> 12:13 18:17,23 19:8 <b>wants</b> 22:3 <b>warranties</b> 17:15
		<b>under</b> 13:9 24:9 <b>understand</b> 13:22 <b>understanding</b> 10:15 <b>unethical</b> 15:22 <b>unique</b> 14:1	

<b>warranty</b> 17:17 17:17	<b>x</b>
<b>water</b> 15:5 <b>ways</b> 21:19 <b>wealth</b> 21:9	<b>x</b> 19:22,22,23 <b>xactimate</b> 17:8
<b>wednesday</b> 1:12 <b>weed</b> 16:18 17:21 <b>week</b> 11:22,22 11:22 <b>welcome</b> 4:22 <b>went</b> 19:4,9 20:24 <b>wide</b> 9:3 <b>wilmington</b> 1:15,24 2:6 <b>win</b> 20:5 <b>winning</b> 20:4 <b>witness</b> 24:10 24:13 <b>woods</b> 10:23,24 10:24 <b>word</b> 15:21 <b>work</b> 12:2 15:14,16 17:3 18:14 19:19 20:17 <b>worked</b> 10:7,10 20:22 <b>world</b> 15:8 <b>writing</b> 5:11 6:12,17 <b>written</b> 10:16	<b>y</b> <b>year</b> 12:2 <b>years</b> 10:8,9 11:3,7 14:17 14:21

DE Admin Code 106 for 6 **Del.C.** §§ 2511 – 2528

106. Home Improvement Services

1.0 Authority

1.1 Authority. The Director of the Division of Consumer Protection enforces the Consumer Fraud Act pursuant to the authority granted to that Director through 29 **Del.C.** § 2520, and has the authority to promulgate rules and regulations to implement or clarify the statutes that the Division of Consumer Protection is charged to enforce or otherwise to carry out the purposes of those statutes pursuant to 29 Del. C. §§ 2520(6) and 2521. The Division of Consumer Protection has designated the Director of the Consumer Protection Unit to promulgate this regulation.

1.2. Scope. This regulation of the Consumer Fraud Act covers certain unlawful practices covering home improvement transactions but shall not cover new construction of single-family dwellings or rebuilding all or substantially all of an existing or preexisting single-family dwelling.

1.3 Construction. This regulation shall be liberally construed to effectuate the purposes of the Consumer Fraud Act, 6 **Del.C.** § 2511, et seq.

1.4 Severability. If, for any reason, any section, subsection, sentence, clause, phrase, or provision of this regulation or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other sections, subsections, sentences, clauses, phrases, or provisions of its application to any other person or circumstance, and to this end each and every section, subsection, sentence, clause, phrase, or provision of this regulation is hereby declared severable.

2.0 Definitions

The following words and terms, when used in this regulation, have the following meaning:

"**Buyer**" means the buyer of home improvement merchandise from a home improvement contractor.

"**Clearly and conspicuously**" has the meaning set forth in 6 **Del.C.** § 2731.

"**Consumer Protection Unit**" means the Consumer Protection Unit of the Department of Justice

"**Home improvement**" means any alteration, repair, addition, modification or improvement to any dwelling or the property on which it is situated, including but not limited to the construction, painting or coating, installation, replacement or repair of driveways, sidewalks, swimming pools, unattached structures, porches, kitchens, bathrooms, chimneys, fireplaces, stoves, air conditioning or heating systems, hot water heaters, water treatment systems, electrical wiring or systems, plumbing fixtures or systems, doors or windows, roofs, gutters, downspouts and siding.

"**Home improvement contractor**" means all persons, firms, partnerships, joint ventures, limited liability companies, and companies, their officers, representatives, agents, and employees, engaged in the trade or commerce of home improvement.

"**Home improvement contract**" means a written agreement, including all amendments, modifications, and addenda thereto, between a home improvement contractor and a buyer and includes all agreements under which the home improvement contractor is to perform labor or render services for home improvements, or furnish materials in connection therewith.

"**Merchandise**" has the meaning set forth in 6 **Del.C.** § 2511.

"**Person**" has the meaning set forth in 6 **Del.C.** § 2511.

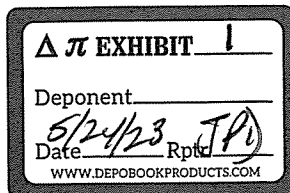
3.0 Home Improvement Transactions

3.1 In connection with any home improvement transaction, it is an unlawful practice, as set forth in 6 **Del.C.** § 2513(a) for any person to:

3.1.1 Fail to provide the buyer with a home improvement contract that describes, in a meaningful way, the merchandise purchased, the contract price together with all financing information or credit terms required by applicable law, any other terms required by this regulation, and any other material terms agreed by the parties, by the time performance is due from either party;

3.1.2 Fail to provide to the buyer in writing an approximate completion date for all home improvements in a home improvement contract unless the home improvement contract clearly and conspicuously discloses that no completion date is provided;

3.1.3 Fail to fill in all the relevant final terms in a home improvement contract before it is signed by the buyer;



- 3.1.4 Structure a home improvement contract in such a way as to require the buyer to sign or signify assent to a proposal before it is binding on the home improvement contractor;
- 3.1.5 Fail to include the home improvement contractor's name, address, telephone number, website (if any), and e-mail address in a home improvement contract;
- 3.1.6 Fail to include in a home improvement contract proper notification of the buyer's right to cancel the home improvement contract if required pursuant to 6 **Del.C.** § 4404(2);
- 3.1.7 Fail to include in a home improvement contract all affirmations of fact, promises, or descriptions which constitute express warranties under 6 **Del.C.** § 2-313 or would so constitute express warranties if the sale of goods only were involved;
- 3.1.8 Fail to disclose in a home improvement contract all delivery and installment charges;
- 3.1.9 Fail to clearly and conspicuously disclose in a home improvement contract that a warranty only covers a product and does not cover the installation or delivery of the product, when such is the case;
- 3.1.10 Fail to disclaim on a separate page of a home improvement contract that the home improvement contractor is not responsible for their oral representations, promises, or assurances, when it is the intent of the home improvement contractor that their oral representations, promises, or assurances not be binding;
- 3.1.11 Fail to provide the buyer with a summary of these regulations, as prepared by the Consumer Protection Unit, as published on the Consumer Protection Unit website, prior to the buyer signing a home improvement contract;
- 3.1.12 Include a liquidated damages provision in a home improvement contract that would provide the home improvement contractor with the same amount of liquidated damages regardless of the amount of work completed;
- 3.1.13 Misrepresent the binding nature of a home improvement contract, such as by representing that a home improvement contract is an estimate;
- 3.1.14 Fail to complete the home improvement by the completion date as stated in a home improvement contract unless such home improvement is delayed by events beyond the home improvement contractor's control or the buyer has agreed in writing to a later date;
- 3.1.15 Where the contract price is to be calculated on a "cost plus" basis, fail to clearly and conspicuously state this fact along with the method of calculating additions to cost and a good faith estimate of the final contract price;
- 3.1.16 Disclaim, exclude, modify or otherwise attempt to limit any warranty, including the warranties of merchantability and fitness for a particular purpose, or to exclude, modify or attempt to limit any remedy provided by law, including the measure of damages available, for a breach of warranty, express or implied, except in a clear and conspicuous manner accompanied by the buyer's initials;
- 3.1.17 Represent that the buyer or prospective buyer has been specially selected to receive a bargain, discount, or other advantage that will reduce the cost of the merchandise, when the offer is available to all customers similarly situated or is otherwise not the case;
- 3.1.18 Represent to a prospective buyer that their dwelling or building is to serve as a lure for prospective buyers, "model home," "advertising job," or other similar inducement, and that a reduced price is offered for that reason, if such is not the case;
- 3.1.19 Represent to a prospective buyer that the buyer is being given an introductory, confidential, closeout, going-out-of-business, factory, or wholesale price discount, if such is not the case;
- 3.1.20 Represent to a prospective buyer that a price discount is being made due to materials left over from another job, if such is not the case;
- 3.1.21 Represent to a prospective buyer that the offer is a test of the local market or a market survey if such is not the case;
- 3.1.22 Represent to a prospective buyer that the prices offered are discounted, if such is not the case;

3.1.23 Where models or other exemplars are used to show the merchandise to be provided or services to be offered, represent that such models or exemplars are current when they are not current or are discontinued;

3.1.24 Represent that the merchandise being offered are current or state of the art, when, in fact, they are not current or state of the art, or are discontinued;

3.1.25 Misrepresent the quality, capacity, character, nature, manufacturer, or composition of any merchandise;

3.1.26 Misrepresent or falsely state that the buyer's present equipment, materials, goods, fixtures, or property are dangerous, defective, or in need of repair or replacement;

3.1.27 Present to a buyer for signature, or otherwise attempt to induce a buyer to sign, any certificate of completion before the relevant home improvement is actually completed;

3.1.28 Induce or persuade a buyer or prospective buyer to sign any writing when the home improvement contractor knows or has reason to know that the buyer or prospective buyer is unable to read or write, cannot read the language in which the instrument is written, or, after reading the instrument, does not understand the terms of the instrument;

3.1.29 Mislead the prospective buyer or buyer into believing that the down payment or some other figure constitutes the full amount they will be obligated to pay, or to omit or exclude any other obligations, fees, charges or costs to the buyer;

3.1.30 Gain entry or access to a prospective buyer's home or property under the false guise of performing a governmental, public utility or other official inspection, or to falsely represent that the home improvement contractor is acting on behalf of or as an employee of any governmental entity or public utility;

3.1.31 Represent that the home improvement contractor is an employee, officer or representative of a manufacturer, importer, or any other person, firm, organization, or that such person, firm, or organization will assume some obligation in fulfilling the terms of the contract, when such is not the case.



## Regulatory Flexibility Analysis and Impact Statement Form

### For Proposed New and Amended Regulations Affecting Small Businesses or Individuals

#### Introduction

Beginning January 1, 2016, agencies submitting proposed new or amended regulations that affect small businesses or individuals are required, under the new Regulatory Transparency and Accountability Acts of 2015 (see 80 Del. Laws, c. 112 and 113), to submit a Regulatory Flexibility Analysis (RFA) and a Regulatory Impact Statement (RIS) with the proposed regulation to the Registrar of Regulations (see **29 Del.C. Ch. 104**).

This RFA and RIS form is intended to benefit the small businesses and individuals impacted by proposed regulations by ensuring a reasonable level of consistency in the formatting of RFAs and RISs across different agencies and regulations.

State agencies proposing new or amended regulations that are substantially likely to impose additional costs or burdens on small businesses<sup>1</sup> or individuals<sup>2</sup> must submit a Regulatory Flexibility Analysis (RFA) **and** a Regulatory Impact Statement (RIS) to the Registrar of Regulations, with the proposed regulation. For agencies proposing amendments to existing regulations, the promulgating agency shall only be required to complete the RFA and RIS for the proposed amended portion of the existing regulation, and not for the entire existing regulation.

#### What is a Regulatory Flexibility Analysis (RFA)?

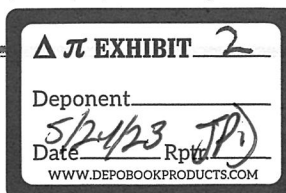
In each RFA, an agency must consider, where applicable, lawful, feasible and desirable, specific methods of reducing the burdens of the regulation on individuals and/or small businesses, including: (1) establishing less stringent requirements and deadlines; (2) establishing performance standards to replace design standards; (3) exempting individuals and small businesses from all or part of the regulation; and (4) examining other ways to accomplish the regulation's purpose, while minimizing the impact upon individuals and/or small businesses.

#### What is a Regulatory Impact Statement (RIS)?

Among other things, each RIS must (1) describe the purpose of the regulation; (2) identify the individuals and/or small businesses subject to it; (3) provide an estimate of the potential costs of compliance; and (4) describe any less intrusive or less costly alternative methods of achieving the purpose of the regulation. In addition, the Act further enhances transparency by requiring the Registrar of Regulations to transmit regulatory impact statements to the appropriate standing committee of the General Assembly.

<sup>1</sup>"Small business" means any not-for-profit enterprise, sheltered workshop or business enterprise which is engaged in any phase of manufacturing, agricultural production or personal service, regardless of the form of its organization, when such enterprise or workshop employs fewer than 50 persons, has gross receipts of less than \$10,000,000 and is not owned, operated or controlled by another business enterprise.

<sup>2</sup>"Individual" means any natural person, including any sole proprietorship. The term "individual" does not include any natural person affected by a regulation in his/her capacity as an officer, director, or employee of an organization that is not a "small business"; e.g. the CEO of a large business.



*Agencies, Boards, and Commissions: please fill out this form when proposing new or amended regulations for the purpose of informing the public and business community. All proposed regulations, even if an exemption applies, must have this form attached when submitting to the Registrar of Regulations.*

Date 2/24/23 Agency Dept of Justice Division/Office Consumer Protection Unit  
Contact Name Marion Quirk  
Contact Email (or mailing address for comments) Marion.Quirk@delaware.gov  
Regulation # 106 Title Home Improvement Services

### Exemptions

- Exemption A:* This proposed regulation is **not subject to Chapter 104, Title 29 of the Delaware Code**, because it will not apply to small businesses or individuals at all.
- Exemption B:* The agency, board, or commission is exempt from completing the RFA and Impact Statement due to the nature of the proposed regulation.

Choose the reason for exemption:

- B1.* This proposed regulation is not substantially likely to impose additional costs or burdens upon individuals and/or small businesses. Explain this conclusion:
- B2.* This is an emergency regulation pursuant to **29 Del.C. §10119**.
- B3.* This proposed regulation is exempt from the procedural requirements of the Administrative Procedures Act, **29 Del.C. §10113(b)**. Choose which reason:
- B3a.* Descriptions of agency organization, operations and procedures for obtaining information
  - B3b.* Rules of practice and procedure used by the agency
  - B3c.* Delegations of authority to subordinates
  - B3d.* Nonsubstantive changes in existing regulations to alter style or form or to correct technical errors
  - B3e.* Amendments to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations
  - B3f.* Codifications of existing agency or judicial principles of decision derived from previous decisions and rulings

- B4. This proposed regulation defines standard of conduct or qualifications of individuals applying for licensure or as licensed professionals. Identify which professional license or professional qualification this would apply to:

- B5. Regulations that are required by federal law and/or have already complied with the federal Regulatory Flexibility Act, 5 U.S.C. § 601 et seq. *(If this is checked, the agency, board, or commission shall cite the federal law, regulation, directive, or guidance strictly mandating such state regulation and shall attach any applicable Federal RFA related to the regulation, if available. Attach the Federal RFA statement to this form, or provide the URL):*

*End of Exemption Section*



# Regulatory Flexibility Analysis

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State agencies, boards, and commissions proposing to adopt or amend a regulation that is substantially likely to impose additional costs or burdens upon individuals and/or small businesses shall consider, where **applicable, lawful, feasible and desirable**, the following methods of reducing the additional costs and burdens of proposed regulations **on individuals and small businesses**:

1. The establishment of less stringent compliance or reporting requirements;
2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements;
3. The consolidation or simplification of compliance or reporting requirements;
4. The establishment of performance standards to replace design or operational standards required in the proposed regulation;
5. The exemption of certain individuals or small businesses from all or part of the requirements contained in the proposed regulation; and
6. Such other alternative regulatory methods that will accomplish the objectives of the proposed regulation while minimizing the adverse impact upon individuals and small businesses.

Explain whether each of the above methods would be applicable, lawful, feasible, and desirable to reduce the costs or burdens of the proposed regulation:

1. The compliance requirements are as minimally stringent as possible without leaving consumers vulnerable. Making these regulations any less stringent would harm consumers. Therefore, making these regulations less stringent is not desirable.
2. Many of these regulations can be complied with instantly with little effort. For those that would require possible changes, the changes are fairly easy to make and would not take a long time. Giving contractors more time would leave consumers unprotected for a period of time.
3. These regulations were drafted as simple and consolidated as we felt possible, so no further simplification or consolidation would be desirable.
4. This method is not applicable to these regulations.
5. Small businesses or individuals who violate these regulations are still capable of harming consumers and compliance costs are low, so accordingly, exempting them would not be desirable.
6. No other alternatives would better achieve the goals of these regulations, and thus alternative measures would not be desirable.

If the above RFA section does not address each of the six methods and there is not an exemption that applies, explain why the agency, board, or commission decided it was not applicable, lawful, feasible, and desirable to complete the RFA section above:

The above RFA section address each of the six methods.

*End of Regulatory Flexibility Analysis Section*

# Regulatory Impact Statement

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Any agency, board, or commission that proposes to adopt or amend a regulation that is substantially likely to impose additional costs or burdens upon individuals and/or small businesses must submit the below Regulatory Impact Statement (RIS).

- Reference the statutory provision that allows for the adoption or amendment of the regulation and the statutory provisions that address the subject matter of the regulation. In addition, provide the URL to the specific section of the Delaware Code to allow the public easy access to view the provision.
  - Statutory Citation: 29 Del. C. § 2521
  - URL: <https://delcode.delaware.gov/title29/c025/sc02/index.html#2521>
  - Subject Matter Statutory Citation: 6 Del. C. § 2513
  - URL: <https://delcode.delaware.gov/title6/c025/sc02/index.html>
- Describe the purpose of the proposed regulation (what is the need for the proposed regulation?):

The purpose of the regulation is to protect consumers in the Home Improvement market. CPU has observed instances of consumers being exploited by home improvement contractors. These regulations require home improvement contractors to take measures that would prevent these types of consumer harm and would allow consumers to have transparency on what services they are purchasing. Other states (Wisconsin, New Jersey, Massachusetts, and West Virginia) also have promulgated similar regulations.

- What are the anticipated benefits of the proposed regulation? (Describe the benefits that are expected to accrue as a result of the implemented regulation). Please quantify such benefits, as feasible:

CPU anticipates that consumers will benefit from these regulations, as these regulations will prevent them from being deceived into paying for services they do not receive, as well as providing consumers with greater transparency into what price they are paying and what products/services they are receiving, leading to greater consumer welfare.

- Identify the types of individuals and/or small businesses that would be subject to compliance under the regulation:

Home Improvement contractors would be subject to these regulations. A Home Improvement contractor is defined as "all persons, firms, partnerships, joint ventures, limited liability companies, and companies, their officers, representatives, agents, and employees, engaged in the trade or commerce of Home Improvement".

- Provide a **good-faith estimate** of the potential cost of compliance for individuals and/or small businesses, which at minimum shall include the projected reporting, recordkeeping, and other administrative costs required to comply with the proposed regulation. Use the below space for a free-text response (*Cost Estimate Option 1*) or, use the questionnaire below to guide the response (*Cost Estimate Option 2*):

***Cost Estimate Option 1:***

N/A

	<b>Cost Estimate Option 2</b>	<b>Yes</b>	<b>No</b>	<b>Unknown</b>
1	Is this regulation being proposed to implement a state or federal program that provides funds to Delaware?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
2	If this regulation is not implemented, will individuals, businesses, or programs lose federal funding?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
3	Does this regulation implement a plan that has already been approved by the federal government, after an opportunity for public comment?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
4	Does this regulation follow industry standards and best practices?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
5	Are there potential costs in not establishing these standards?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
6	Does the regulation require capital costs (building costs, material costs, upgrades to property or structures, retrofitting of systems, etc.)?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
7	Does the regulation require additional recurring costs on small businesses or individuals?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
8	Does the regulation impose additional administrative burden for a small business or individual?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
8a	If answering yes to #8, is it ongoing reporting or one time? (Choose answer) <input type="radio"/> Ongoing <input type="radio"/> One Time <input checked="" type="radio"/> Unknown			
8b	If answering yes to #8, generally, how much administrative effort will be required to comply with the regulation? <input type="radio"/> Large Amount <input type="radio"/> Small Amount <input checked="" type="radio"/> Unknown			
9	Does the regulation require new or changed record keeping that will create new processes or change processes already in place for small businesses or individuals?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

<i>Cost Estimate Option 2 (continued)</i>		Yes	No	Unknown
10	Would a small businesses or individual be required to hire an outside professional to comply with the proposed regulation (such as an attorney, accountant, tax advisor, environmental consultant, engineering firm, etc.)?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
10a	If answering yes to #10, estimate how many hours an outside professional may be needed to assist 5 hours			
10b	If answering yes to #10, will a small business or individual be required to retain the services of the outside professional on an ongoing basis?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
11	Does the regulation require small businesses to purchase goods or services that are unusual or not commercially reasonable?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
12	Does the regulation require that small businesses exceed commercially reasonable data storage and transmission standards?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
13	Will small businesses have to hire additional employees in order to comply with the proposed regulation?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
14	Does the regulation require small businesses to cooperate with audits, inspections, or other regulatory enforcement activities?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
15	Does the regulation have the effect of creating additional licenses, taxes and/or fees for small businesses?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
16	Does the regulation require small businesses to obtain additional education to keep up to date with regulatory requirements?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
17	Please further explain any additional costs or burdens, which at a minimum shall include the projected reporting, recordkeeping, and other administrative costs required to comply with the proposed regulation. The costs of these regulations are minimal. Home Improvement contractors may have to rewrite their contracts.			

- Provide a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation, and why these methods were not preferred to a regulation:

Since the only cost to businesses is the potential need to rewrite their contracts, the only less intrusive method would be to not require contracts or remove the requirements from contracts. CPU feels that the contract and contract requirements are vital to protecting consumers, so removing those requirements are not preferred to this regulation.

- *(Optional)* Estimate the amount of agency, board, or commission staff hours it took to prepare this RFA and RIS statement:

- *(Optional)* Agencies are encouraged to list trade or industry groups, small businesses, or other stakeholders such as currently regulated parties that were consulted by the agency, board, or commission in preparing this RFA and RIS. The agency, board, or commission is further encouraged to send them a copy of the RFA and RIS upon completion:

*End of Regulatory Impact Statement Section*

**PROOF OF PUBLICATION**

Brian Canfield  
820 N French ST  
Wilmington DE 19801-3509

STATE OF DELAWARE, COUNTY OF NEW CASTLE

The Wilmington News Journal is a daily newspaper of general circulation, printed and published in the State of Delaware; that the publication, a copy of which is attached hereto, was published in the said newspaper in the issues dated:

04/21/2023


Sworn to and subscribed before on 04/21/2023

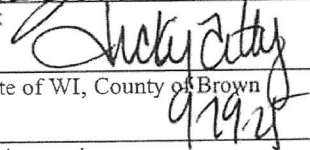
DEPARTMENT OF JUSTICE  
Fraud And Consumer Protection Division  
Notice of Public Hearing Related to Consumer Protection  
Unit's Home Improvement Services Regulation

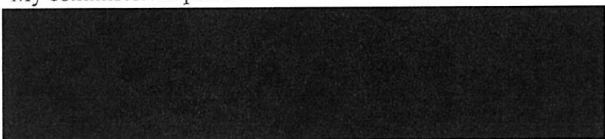
The Consumer Protection Unit of the Delaware Department of Justice hereby gives notice of a proposed regulation to the Consumer Fraud Act (6 Del. C. § 2511 et seq.) pursuant to 29 Del. C. § 2521. The proposed regulation was created to assist in the implementation and clarification of the Consumer Fraud Act by identifying certain home improvement acts and practices that constitute unlawful practices as described in 6 Del. C. § 2513(a). The proposed regulation can be seen in full in the April edition of the Delaware Register of Regulations.

A public hearing on the regulation will be held on May 24, 2023, beginning at 12:00 PM in the 3rd Floor Conference Room in the Carvel State Office Building, 820 N. French Street, Wilmington, DE 19801, where members of the public can offer comments.

Persons wishing to submit written comments on the proposed regulation may submit their comments in writing no later than June 9, 2023, by email to Brian.Canfield@Delaware.gov. To be considered at the May 24, 2023 hearing, however, written materials must be submitted on or before May 1, 2023.  
4/21-NJ

  
\_\_\_\_\_  
Legal Clerk

  
\_\_\_\_\_  
Notary, State of WI, County of Brown

My commission expires  
\_\_\_\_\_  


**THIS IS NOT AN INVOICE!**

*Please do not use this form for payment remittance.*

VICKY FELTY  
Notary Public  
State of Wisconsin



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**State of Delaware:**

**County of Kent:**

Before me, a Notary Public, for the County and State aforesaid. G. Konrad La Prade, known to me to be such, who being sworn according to law deposed and says that he is the Publisher of **Delaware State News**, a daily newspaper published at  
Dover, County of Kent, and State of Delaware, and that the notice, a copy of which is hereto attached, as published in the **Delaware State News** in its issue of 04/21/23.

*G. Konrad La Prade*

Publisher  
Independent Newsmedia Inc. USA

Sworn to and subscribed before me this 21st Day of April, A.D., 2023



*Roxanne Brooks*  
\_\_\_\_\_  
Notary Public



**DEPARTMENT OF JUSTICE**

**FRAUD AND CONSUMER  
PROTECTION DIVISION**

**Notice of Public Hearing Related to  
Consumer Protection Unit's  
Home Improvement Services Regulation**

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593754 DSN 4/21/2023



Search and view public meetings with information back to March 2004.

SUBSCRIPTIONS SYNC

# Public Hearing Related to Consumer Protection Unit's Home Improvement Services Regulation

12:00 PM - 02:00 PM Wednesday May 24, 2023

Justice / Department of Justice

## MEETING DESCRIPTION

Public Hearing Related to Consumer Protection Unit's Home Improvement Services Regulation

## CONTACT INFORMATION

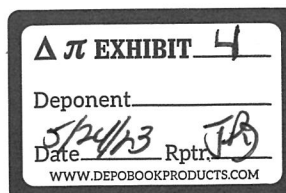
Brian Canfield

302-683-8808

Email:

[brian.canfield@delaware.gov](mailto:brian.canfield@delaware.gov)

Website



 **ADDRESS**

To Be Announced  
3rd Floor Conference Room  
Carvel State Office Building, 820 N.  
French Street, Wilmington, DE  
19801

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 **VIRTUAL MEETING INFORMATION**

None

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 **DOCUMENTS**

None

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 **CHANGE HISTORY**

Date	Reason
04/13/2023	Topic change - Title, Purpose, Meeting Information
04/12/2023	New

# Meeting Location

GeoLocation not available for meeting.

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**GOVERNMENT :::**

- Cities & Towns
- Delaware Courts
- Delaware State Code
- Elected Officials
- General Assembly
- Delaware Governor
- Locations Directory

- Phone Directory
- State Employees
- State Agencies
- State Regulations
- Transparency
- Calendar API
- Make a FOIA Request

**BUSINESS :::**

- Economic Development
- Incorporate
- Business First Steps
- Tax Center
- Bid for State Contracts
- Export Assistance
- Start a Small Business



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Dr. Jaye Silver  
[REDACTED]  
[REDACTED]  
3 [REDACTED]  
[REDACTED]

---

Tuesday, May 23, 2023

Brian Canfield  
Lead Prosecutor  
Delaware Department of Justice  
820 North French Street  
Wilmington, DE 19801

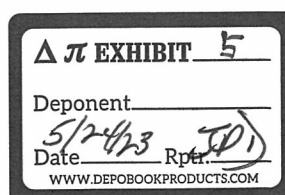
[Brian.Canfield@Delaware.gov](mailto:Brian.Canfield@Delaware.gov)

Greetings,

The recorded video home system and the Ring video system captured Mike Strong entering my driveway traveling West on Hickory Ridge Rd. He rings the bell, my wife answers the door, and he proceeds to tell my wife who he is and that our roof shingles are defective and outdated. He gives this elaborate speech about how he works with insurance companies so there is no money out of pocket, but he makes no promises. Naturally, he needs to do an inspection where drones are flown over the house to take measurements by using the same software that insurance companies use.

The wife and I found this odd as we had the gutters replaced on the house, poll barn, and both sheds assessed and that was not the case. This encounter took place in 2021, we bought the house in 2018, and three years later the roof is outdated and defective! I called USAA and the Veteran's Administration as they provided one of two in the home inspection. Neither agency confirmed Mr. Strong's claims and USAA sent their own inspector to evaluate the roof. The independent inspection did not yield what Mr. Strong claimed to be wrong.

Based on the findings from the USAA inspector, I drove to the Dover/Camden Delaware office on Mr. Strong's card and that did not exist. I ran background on his phone numbers and



other information that led nowhere, except vague overtures to other businesses that could masquerade as a legitimate business. Frustrated from the cloak and dagger routine, I called Mike Strong and told him not to return to my property. Returning would be classified as defiant trespass and not a good outlook on his behalf.

Sincerely,

*Dr. Jaye Silver*